

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input type="checkbox"/>	Amendment	<input checked="" type="checkbox"/>	Date	<u>2/5/2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>SB 456</u>

Sponsor:	<u>Sen. Lisa A. Torraco</u>	Agency Code:	<u>Attorney General's Office</u>
Short Title:	<u>Duty to Report Suspected Child Abuse</u>	Person Writing	<u>James Torres, AAG</u>
		Phone:	<u>827-6064</u>
		Email	<u>jtorres@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

BILL SUMMARY

Synopsis:

SB 456 proposes to amend and modify Section 32A-4-3, relating to the duty to report child abuse and neglect. This bill strikes language from subsection (A) listing categories required to report, leaving a requirement that "every person" is under a duty to report. Where the codified statute limits the duty to report to instances of abuse committed by parents, guardians or custodians, SB 456 expands this duty by requiring "everyone" to report any person reasonably suspected of child abuse or neglect. Finally, proposed subsection (B) carves out an exception from the duty to report for clergy in receipt of information obtained during confidential spiritual communications.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

SB 456 makes an apparent attempt to override the New Mexico Court of Appeals in *State v. Strauch*, 2014-NMCA-020, 317 P.3d 878. In *Strauch*, the Court held that the reporting requirement in 32A-4-3(A) does not apply to "every person," but only to the ten categories of people listed in that subsection because the statute was limited by the word "including". SB 456 would remove the word "including," as well as the subsequent list of people. Thus, "every person" would be subject to the reporting requirement.

It is unclear whether SB 456 would override privileges set forth in Rule 11 Article 5. For instance, Rule 11-504(D)(2) states, "[n]o privilege shall apply for confidential communications concerning any material that a physician, psychotherapist, state or nationally licensed mental-health therapist, or patient is required by law to report to a public employee or public agency." Given that the reporting requirement set forth in SB 456 applies to "everyone," it may be argued that the proposed statute would "require[] by law" physicians, psychotherapists, and therapists to report privileged communications. Because there is ambiguity in whether reporting requirements would trump privileged communications, physicians will not know whether they are breaking the law by either reporting or failing to report privileged communications. Being that proposed subsection (B) carves out a specific protection for confidential spiritual communications made to clergy, SB 456 may be interpreted as superseding all other privileges.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 29 proposes very similar amendments to 32A-4-3. HB 29 also strikes the language containing the categories of people subject to the reporting requirement. However, HB 29 does not carve out a specific exception for confidential communications made to clergy members, nor does it include a requirement to report abusers other than parents, guardians or custodians.

TECHNICAL ISSUES

Addressed above

OTHER SUBSTANTIVE ISSUES

Drafters may consider amending SB 453 to specifically state whether reporting requirements supersede privileges set forth in Rule 11 Article 1.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS