

LFC Requester:	Rachel Mercer-Garcia
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 **Amendment** _____
Correction _____ **Substitute** _____

Date 1-18-2024
Bill No: HB 121

Sponsor: G. Armstrong, A. Reeb, S. Lord,
H. Vincent, J. Jones
Short Title: CYFD PLAN OF CARE
INVESTIGATIONS

Agency Name and Code AOC 218
Number: _____
Person Writing Twila A. Hoon Witz
Phone: 505-470-6867 **Email** aoctah@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
None	None	None	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 83
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 121 amends Sec. 32A-3A-14 NMSA 1978 to change permissive language “may” in the section to mandatory language “shall” regarding the actions CYFD undertakes when a plan of care is considered.

This change would remove the CYFD's discretion i.e. that it “may” conduct a family assessment upon the failure to comply with a plan of care to “shall” conduct an assessment.

It would remove CYFD's discretion regarding offering referrals to services and programs from “may” to “shall”.

It would replace “may” with “shall” removing the department’s discretion about whether to proceed to an investigation should those services or programs be declined.

FISCAL IMPLICATIONS

No appropriations are requested in HB 121, however, there may be fiscal implications on CYFD, the Office of Family Representation and Advocacy (OFRA), and the courts.

The first impact is that CYFD shall be required to conduct an assessment in every situation where there is a failure to comply with a plan of care irrespective of any mitigating or other factors. The current permissive language permits CYFD to triage and determine if it should conduct an assessment based on fact-specific factors. A mandatory clause will likely increase current time demands and require additional resources.

An additional impact is the mandatory requirement that CYFD offer or provide referrals for counseling, training, or other services. This will increase the workload of CYFD staff and this requirement will increase burdens on existing service resources that are already limited, especially in certain areas of the state.

CYFD case managers and service aides provide some direct services to families. Additionally, CYFD coordinates with community-based entities in each county to provide programs and other services. This can include case management from the department but also pairing with case managers in programs such as PB&J with parenting and community outreach programs. These partnership services can also include, where available, assistance locating housing, accessing

food banks and other programs, budget management, mental and behavioral health services, counseling, parenting, and other skill-building services that are tailored to the family's needs. Partnerships with programs, such as YDI, UNM, Presbyterian, and other providers, focus on infant mental health programs, family outreach, reintegration from incarceration employment programs, and management programs to assist with Adverse Childhood Experiences (ACEs). Many of these programs are also the support and service programs utilized in legal cases by CYFD to establish reasonable efforts (or in the case of ICWA cases, active efforts) to address the concerns, meet the best needs of the child, and reunify families.

HB 121 would make referrals mandatory, which would necessitate additional work on behalf of CYFD to locate, create, and track referrals as well as for agencies to absorb an increase in referrals that are made to fulfill a mandate irrespective of need. Increased utilization of available programs or services may also have an impact on insurance/Medicaid/Medicare and will increase wait times for services while diluting the ability of high-priority scenarios to get into services promptly.

Under requirements pertaining to the Indian Child Welfare Act and New Mexico's Indian Family Protection Act, mandatory referrals and investigations there may also be an increased burden on the Department to ensure compliance with notification and communication to an Indian Child's tribe as well as an impact on the tribe's resources.

Another impact is that removing CYFD's discretion (on proceeding to an investigation if the family declines participation in services or programs) will increase the workload of CYFD staff. CYFD will no longer be able to decline to initiate an investigation when services or programs are rejected with no consideration of facts that mitigate the need to investigate. This could include scenarios where the services or programs are unavailable to the family or where the child is readmitted or transferred from the hospital or freestanding birthing center. Increased investigations will increase demands on CYFD resources and potentially dilute the time available to investigate other matters.

Mandatory investigations may also lead to more legal filings which will also require additional resources from CYFD, the judiciary, and OFRA.

SIGNIFICANT ISSUES

HB 121 does not account for sparse resources both internal to CYFD as well as in the community. Sec. 32A-3A-4 NMSA 1978 recognizes that referrals are subject to availability and the current language in Sec. 32A-3A-14, with its permissive 'may' takes those limitations into account. The revised mandatory language does not.

There is no definition in HB 121 regarding what constitutes a "failure to comply". Current law permits CYFD to weigh each scenario and be guided by the language in Sec. 32A-3A-13 (3)(C) (which specifies that reporting the creation of a plan of care "shall not constitute a report of suspected child abuse and neglect and shall not initiate investigation by the department or a report to law enforcement" that matters based upon these plans of care are focused on creating engagement and involvement in voluntary services by families that also protect children. Removal of CYFD's discretion may create a more punitive atmosphere. The hospital or freestanding birthing center is already required, in Sec. 32A-3A-14(A) to notify CYFD when there is a failure to comply with a plan of care, but CYFD can then address each case individually considering fact-specific modifiers when determining the next steps. This allows

for ‘failure to comply’ to be balanced against each scenario.

HB 121, by requiring mandatory action, may increase disparate impact. The development and enactment of CARA followed the amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) (requiring all state child welfare agencies to ensure every baby born exposed to substances receives a plan of care and that data be reported to the federal agency.) During the development of the plan a task force, comprised of healthcare providers, insurance care coordinators, state agency representatives, and other stakeholders, raised concerns of disparate and discriminatory impact (especially on women of color). Due to historical systemic abuses, New Mexico went beyond reporting to include changes and training to address systemic inequity and create a less stigmatizing, equitable plan. An important part of that plan is contained in CYFD’s ability to consider the factors unique to each family. HB 121 would remove that discretion and as a result may undermine the previous work.

HB 121 may result in the plan of care becoming viewed as a punitive tool which may discourage pregnant people from seeking prenatal care and treatment for substance use disorders. This would result in greater risks for pregnant persons and their child and lessen opportunities for treatment for pregnant women as well as appropriate therapy for exposed infants. “Early identification and treatment of women with substance use disorders and/or dependence is a critical component of preconception and prenatal care and is important for supporting healthy birth outcomes.” See Criminalization of Pregnant Women with Substance Use Disorders, AWHONN Position Statement [https://www.jognn.org/article/S0884-2175\(15\)31770-6/fulltext](https://www.jognn.org/article/S0884-2175(15)31770-6/fulltext).

PERFORMANCE IMPLICATIONS

HB 121 may impact CYFD, OFRA, and the judiciary by increasing the involvement of the court system in situations where voluntary services and engagement could still succeed. It may also affect New Mexico as a whole by diluting the effectiveness of encouraging the treatment of pregnant persons and open disclosure by families of substance use on the neonatal or newborn.

ADMINISTRATIVE IMPLICATIONS

HB 121 may significantly increase the number of filings in abuse and neglect proceedings as well as felony criminal matters. HB 121 would also require administrative adjustment to protocols and increase the demand on resources.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 83 relates to the same matter but is not identical.

TECHNICAL ISSUES

Due to potential disparate application HB 121 modifications to Sec. 32A-3A-14 may face evidentiary and constitutional challenges.

OTHER SUBSTANTIVE ISSUES

The non-punitive approach to off-setting the impact on children of substance use in pregnancy is grounded in a recognition that supportive assistance in reducing and eliminating substance use during pregnancy is more effective and that punitive approaches (see <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2755302>) and lead to disparate results impacting BIPOC pregnant persons.

See also (https://sitefinitystorage.blob.core.windows.net/sitefinity-production-blobs/docs/default-source/advocacy/2022-pps-on-advancing-racial-justice-in-health-care-through-adm---final.pdf?sfvrsn=3ba5e94f_3)

ALTERNATIVES

None identified

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current permissive language in Sec. 32A-3A-14 provides an avenue for involving CYFD in situations where the family does not follow through with the plan of care. Failure to not enact the mandatory language will not remove existing protections.

AMENDMENTS

None Identified