

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

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{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: SB 83

Sponsor: Crystal Diamond Brantley
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: HB 121
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 83 seeks to amend Sec. 32A-3A-14 NMSA 1978 to change permissive language “may” in the section to mandatory language “shall” requiring CYFD to perform a family assessment when a plan of care is not complied with. This removes CYFD's discretion i.e. that it “may” conduct a family assessment upon the failure to comply with a plan of care.

SB 83 also removes the permissive ‘may’ and inserts ‘shall’ requiring CYFD to provide referrals based on the results of the family assessment and removes CYFD's discretion.

SB 83 also removes language from Sec. 32A-3A-14 NMSA 1978 which indicates the ‘child’s parents, relatives, guardians or caretakers may choose to accept or decline’ and provides CYFD may proceed with an investigation with no modifier as to whether the family accepted or declined the offered services or programs. It does leave the determination of whether to proceed with an investigation in the discretion of CYFD.

FISCAL IMPLICATIONS

No appropriations are requested in SB 83, however, there may be fiscal implications on CYFD, the Office of Family Representation and Advocacy (OFRA), other entities in the state, 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. Many of the utilized 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.

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).

Under requirements pertaining to the Indian Family Protection Act, 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 language permitting the family to voluntarily engage changes the tenor of the legislation from an engagement that seeks to involve the family voluntarily to an engagement that becomes mandatory. Currently, CYFD seeks to engage voluntarily, empower families to advocate for their own needs, and engage with a receptive mindset.

Further, while CYFD retains discretion (on proceeding to an investigation) the lack of distinguishing between situations where the family accepts the services or program and where they decline muddies the line of when an investigation is appropriate and lessens incentives from voluntary engagement. It may also increase the workload of CYFD staff by requiring evaluation on every case for investigation even when services are in place. Increased investigations will increase demands on CYFD resources and potentially dilute the time available to investigate other matters.

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

SIGNIFICANT ISSUES

SB 83 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 some of CYFD's discretion may create a more punitive atmosphere which will be heightened by the seemingly removal of voluntary participation by the family.

SB 83, 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 about 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 some of that discretion and the removal of the family's agreement or declination to voluntarily engage may undermine the previous work.

SB 83 may result in the plan of care becoming viewed as a punitive tool. That 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

SB 83 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

SB 83 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 in HB 121 Sec. 32A-3A-14 NMSA 1978 but does contain differences.

TECHNICAL ISSUES

Due to potential disparate application SB 83 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 enact the mandatory language will not remove existing protections.

AMENDMENTS

None Identified