

LFC Requester:

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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: March 3, 2025

Check all that apply:

Bill Number: HB205

Original Correction
Amendment Substitute

Sponsor: Rep. Gail Armstrong, Rep. Eleanor Chávez, Rep. Meredith A. Dixon, Rep. Rebecca Dow, Rep Joshua Hernandez, Sen. Linda Trujillo

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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 Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: Section 1: Adds additional definitions to NMSA 1978, Section 9-2A-3 to define the nominating committee for the secretary of the Children, Youth and Families Department (CYFD).

Section 2: amends NMSA 1978, Section 9-2A-6 to amend the Governor’s power to appoint the secretary to require the appointment to be a selection from a list of qualified nominees submitted by the nominating committee.

Section 3: adds a new statute, proposed Section 9-2A-6.1, to establish the 10-member nominating committee, describe how it is created and who may serve on it, and clarify that the committee is subject to various acts including IPRA, provide for support. The new section also notes that committee members are not compensated and shall only be reimbursed for travel. Subsection (F) of the new statute describes the first meeting and requirements for the committee, including that they shall submit a list of no fewer than 5 qualified nominees from at least three different counties, for the term beginning January 1, 2027, and a list of no fewer than 2 qualified nominees from diverse geographical areas for subsequent periods. Subsection (J) of the new statute permits committee members to actively solicit, accept, and evaluate applications, and Subsection (K) requires a majority vote to include someone on the list of qualified applicants.

Section 4: amends Section 9-2A-8 to enact “rules” insofar as placement of children under the Children’s Code is concerned; replace “human services department” with “health care authority” (HCA); and update reference to a statute and any relevant rules regarding behavioral health services. Section 4 also adds a new subsection (M) that requires CYFD to develop and implement the families first strategic plan for the delivery of services and access programs as required under the Families First Act.

Section 5: amends NMSA 32A-1-4 by updating the definition of “guardian” to include a person authorized to care for the child by a parental power of attorney as permitted by law. It also updates the definition of “plan of care” to include a plan that provides prenatal support to a pregnant person dealing with substance use disorder.

Section 6: amends NMSA 32-3A-13 to replace human services department with the HCA

and reorder the entities who shall work together to develop rules regarding the care of the identified newborns. Various other modifications generally expand the guidelines the rules should provide. This section also replaces the requirement of certain collection and recordation of data by the family health bureau with a requirement that the HCA provide an annual report to the LFC, DFA, and the interim legislative health and human services committee that includes various statistical information related to the creation of plans of care. The Section also requires the HCA to work in consultation with CYFD for training and updates the grammar in the cause-of-action subsection for clarity (replacing “no person shall have” with “a person shall not have”).

Section 7: amends Section 32A-3A-14, regarding what happens if a family fails to comply with a treatment plan, by including the HCA, a Medicaid managed care organization insurance plan care coordinator, or a care coordinator contracted with the HCA as potential notifiers and require (rather than permit) a family assessment. The Section also amends the language to state that, rather than *permit* CYFD to proceed with an investigation if a child’s family declines recommended services or programs, if CYFD determines that such services or programs are necessary to address potential imminent harm to the child, CYFD *shall* proceed with an investigation.

Section 8: amends Section 32A-4-3(H), regarding who has a duty to report child abuse and neglect and the responsibility to investigate the same, to add a clinic that provides prenatal care to those who must complete a written plan of care for a substance-exposed newborn, to add a pregnant person who agrees to such a plan to the list of recipients, and to add the HCA as an agency who must receive notification in such a case (also part of the revision to Section 32A-4-3(I)).

Section 9: amends Section 32A-4-4.1 to remove the subsection that grants permission to CYFD to pilot a multilevel response system for handling child abuse and neglect prior to statewide implementation; remove the subsection that grants permission to CYFD to limit implementation of the system to areas where appropriate services are available and operate the system within available resources; add various committees and entities to those entitled to receive report from CYFD on the system implementation; and change language regarding a pilot program through July of 2022 to required implementation of a statewide system by July 1, 2027.

Section 10: creates a new section in the Children’s Code, which contains the short title of the newly enacted (by this bill) Families First Act (FFA).

Section 11: creates a new statute that defines two new terms as part the FFA: families first services and families first strategic plan. The former means foster care prevention services categorized under the federal Title IV-E prevention services clearinghouse that are provided by CYFD through implementation of a families first strategic plan. The latter means the plan developed and implemented by CYFD in accordance with the regulations and requirements set forth in the federal Family First Prevention Services Act.

Section 12: creates a new statute under the FFA that sets forth the duties of CYFD, the early childhood education and care department, the department of health (DOH), and the HCA regarding the development and implementation of the families first strategic plan, including ensuring alignment with the federal law and maximizing federal resources. This section sets forth in detail the requirements for the plan, including a comprehensive description of CYFD responsibilities and duties for families first services; a comprehensive and detailed list of

such services CYFD will provide; a list of network services providers that CYFD will use for such services; a list of eligible persons for such services; identification of processes and procedures a list of network services providers that CYFD will use for such services; a list of eligible persons for such services; identification of processes and procedures to determine eligibility; identification of processes and procedures for maximizing federal resources; identification of processes for monitoring and overseeing the safety of children; appropriate metrics for determining and evaluating outcomes; a timeline that complies with the deadlines in the statute: provisions of services through a pilot project by 6/30/27 and statewide implementation rollout by 6/30/32; a detailed description of how CYFD will monitor the plan; and identification of the appropriate information to include in an annual report, with an additional list of requirements for such report.

The Section also defines “approving authority” (the federal administration) and requires that, by 8/1/25, the plan shall be finalized, posted to CYFD website, and provided to LFC, the interim legislative health and human services committee, and the Governor; by 9/1/25, the plan shall be submitted to the approving authority and services shall begin to be provided; if not approved, the plan shall be revised as soon as practicable; and CYFD shall include certain information in its reports. Finally, the Section provides that by 7/1/26 and by each July 1 thereafter, CYFD shall post annual reports as set forth therein.

Section 13: adds a new section to the Children’s Code that provides rule making power to CYFD to comply with FFA.

Section 14: amends Section 32A-4-21 to add to the information that may be contained in the predisposition study, families first services provided pursuant to the FFA and referrals to income support or other services or programs.

Section 15: amends Section 32A-4-33 to replace in the list of people the records described in Section 32A-4-33(A) may be disclosed to, “any local substitute care review board or any agency contracted to implement local substitute care review boards,” with the substitute care advisory council and their staff, if the records are requested for the purpose of carrying out the provisions of the Citizen Substitute Care Review Act.

Section 16: amends NMSA 32A-8-2 within the Citizen Substitute Care Review Act (the CSCRA). The current statute states that the purpose of the Act is to provide a permanent system for independent and objective monitoring *of children placed in the custody* of CYFD by examining various things, including specific cases to evaluate *the extent to which CYFD is effectively* discharging its responsibilities. The amendment removes “of children placed in the custody,” replaces “the extent to which [CYFD] is effectively” with “its effectiveness in,” and adds “and to meet federal requirements for citizen review panels under the federal Child Abuse Prevention and Treatment Act.”

Section 17: creates a new section of the CSCRA to provide definitions.

Section 18: amends Section 32A-8-4 discussing the substitute care advisory council to move it from the regulation and licensing department to the NMDOJ, but to state that it shall exercise its functions independently. The section expands the council from 9 persons to 10 voting members, and alters the membership. The section substantially alters the duties and powers of the council.

Section 19: creates a new statute within the CSCRA that describes council administration and

staffing. Specifically, it describes the Director of the council, their qualifications, and their obligations. The Section permits the director of the council to hire staff who are required to complete annual training. This section also requires that the director submit the council budget request to the New Mexico Department of Justice. This budget request may include the creation of staffing positions for the council as needed.

Section 20: creates a new statute within the CSCRA that requires that the NMDOJ provide advice and consult with the council and render legal services upon their request.

Section 21: creates a new statute within the CSCRA that grants rule-making power to the council regarding volunteer member participation, including setting forth certain requirements for the provisions of such rules. The Section also requires specified participation of volunteer members and permits per diem and mileage, but not compensation, perquisite, or allowance.

Section 22: creates a new statute within the CSCRA that requires the council to establish boards composed of volunteer members to review cases, as described in some detail. The Section also requires the board to submit a report to the children's court, CYFD, and the parties, as well as anyone entitled to notice under the Indian Family Protection Act if applicable; and requires CYFD to acknowledge receipt of the report within 10 business days and provide a response within 30 days of receipt. The Section also requires quarterly, or as needed, meetings.

Section 23: creates a new statute within the CSCRA that grants council staff access to the records necessary to carry out their responsibilities, including various records specified therein. The Section requires CYFD to establish procedures for CYFD and its agents and contractors to both provide the records in a timely manner and ensure staff availability to provide input. The Section prohibits CYFD, its agents, or its contractors, from discriminating in any manner against anyone who in good faith communicates with the council about a case review under this section.

Section 24: creates a new statute in the CSCRA that describes which information shall be maintained as confidential, by whom, and from whom. The section expressly states that "Information obtained or generated by a member of the council, a staff member of the council, or a member of a board for the purpose of performing duties in compliance with the [CSCRA] is not subject to the provisions of [IPRA]."

Section 25: Transfers the resources, obligations, and statutory references of the regulation and licensing department pertaining to the substitute advisory care counsel from the regulation and licensing department to the New Mexico Department of Justice, effective July 1, 2025.

Section 26: repeals NMSA 32A-8-5 and 32A-8-6.

Section 27: makes the effective date of this bill, if passed, July 1, 2025.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be

reported in this section.

Although the bill requires NMDOJ to provide advice and render legal services upon the council's request, no appropriations have been made. These legal services may have fiscal implications for NMDOJ and additional resources may be required to meet its obligations.

The bill mandates that the council will be a part of the NMDOJ and again does not appear to have appropriations for this council to be paid until next year and just relies on the budget transfer and would likely put a strain on the NMDOJ budget.

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

The NMDOJ would be required to provide additional services under this bill, but additional resources, in addition to the funding referenced above, have not been provided. As a result, NMDOJ's performance in discharging its duties would likely be degraded.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Department of Justice is tasked with reviewing and approving the budget for the council created by this bill. The former council handling this matter including its records, staff, and remaining budget is set to be transferred to the NMDOJ from the regulations and licensing department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB458 originally conflicted with HB205 in that both are seeking to amend NMSA 32A-3A-14 and create a nominating committee for the secretary of CYFD. The current version of SB458, or the revised version after the subcommittee review, has changed SB458 greatly. Removed from the edited SB458 is any conflict with a nominating committee, and it now focuses on addressing the implementation of the multilevel response system to address foster care and handle the report of child abuse. It should be noted that while the revised bill is now focused on dealing with the assessment of child abuse cases and meeting the requirements in the federal family first prevention services act. The original version of SB458 conflicted with HB205 and they both to a certain degree were duplications in conflict seeking similar changes. As it currently stands SB458 has been revised to address the placement of children in foster care and implant a system to comply with the federal family first prevention services act.

HB205 Section 7 conflicts with HB173 in that both are seeking to amend NMSA 32A-3A-14. The difference is that HB205 has CYFD determine if programs or services would be helpful to proceed with the investigation, whereas HB173 makes the investigation mandatory if the services and programs recommended are not followed.

HB205 may also conflict with HJR05 in that both seek to create a commission overseeing CYFD. The difference is that HJR05 seeks to amend the New Mexico Constitution to have a commission created to oversee CYFD. HJR05 would not take place until 2027, as voters would need to approve the New Mexico Constitution being amended.

HB205 does not appear to conflict with SB84. SB84 addresses media and public access to children's court hearings and amends Sections 32A-4-2 and -33. Although both bills seek to amend Section 32A-4-33, HB205 replaces language to reflect the other changes in the bill related to the creation of/clarification of the substitute care advisory council and their staff, whereas SB84 addresses media access/coverage in legal cases before the court.

HB205 adds language and wording using the safe care plan outlined in SB42, making it a companionship bill, and means it has a relationship with HB136, HB383, and HB303. Considering the relationship between HB205 and SB42, an analysis of the impact that HB136, HB383, and HB303 would have on SB42 is included here.

HB136 is not in conflict but has an important relationship, since it is changing the statute of child abuse to include a child exposed to fentanyl as a prima facia evidence of child abuse as it impacts when a plan of safe care would be issued. This also creates the issue of fentanyl still being a prescription drug and its impact on people unaware they might be pregnant.

HB383 is not in conflict but has an important relationship to SB42 as it is changing the statute of child abuse to include exposing a child to fentanyl. The difference to HB136 is that HB383 requires that the intent is knowingly exposing the child to fentanyl to make it prima facia evidence of child abuse. Like HB136, this change would impact when a plan of safe care would be issued.

HB303 is not in conflict to SB42, but it has an important relationship since it is addressing child abuse as it relates to controlled substances and children that test positive at birth. HB303 would also require that a plan of safe care be issued if a recently born child tested positive for a controlled substance without a lawful intake. It is important to note that HB303 would not require a plan for safe care under SB42 to issue if the child tested positive for a controlled substance if it is lawful. SB42 and the safe care plan discussed in this bill appear to complement one another.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

The newly created council in this bill has possible conflicts in how the NMDOJ would review requests for public records complaints and open meeting complaints which are usually reviewed by the NMDOJ. With the council being a part of the NMDOJ on paper there could be issues with how NMDOJ has in the past handled complaints about state agencies.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None.