

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: 2/10/25

Check all that apply:

Bill Number: HB343

Original x Correction       
Amendment      Substitute     

Sponsor: Rep. Gail Armstrong, Rep. Meredith A. Dixon, Rep. Eleanor Chávez, Rep. Jenifer Jones, Rep. Rebecca Dow

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

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Short Title: CYFD Plans of Safe Care for Certain Children

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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
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: relates to HB 173, HB 205  
 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: HB 343 seeks to amend various provisions of the Children’s Code that address the safety and well-being of substance-exposed newborns.

**Section 1** adds a definition for “substance-exposed newborn” to the Voluntary Placement and Family Services Act, NMSA 1978, §§ 32A-3A-1 to -25 (1993, as amended through 2023). HB 343 defines a “substance-exposed newborn” as “a newborn child who is affected by prenatal exposure to a controlled substance, including a prescribed or non-prescribed drug or alcohol ingested by the newborn’s mother in utero[.]”

**Section 2** amends Section 32A-3A-13 concerning plans of care, which the bill proposes to rename “plans of safe care.” This Section provides that rules shall include not only guidelines for hospitals, birthing centers, and medical facilities (as in existing law) but also *requirements* for those entities.

A new Subsection is also added to address procedures “[w]hen a health care provider or other individual who is involved in creating a substance-exposed newborn’s plan of safe care has concerns about the continued safety of the newborn prior to or after the newborn’s discharge from a hospital or birthing facility,” including a requirement that “the health care provider or individual shall make a report regarding the concerns to the [Children, Youth and Families Department’s (CYFD)] statewide central intake.” Upon receiving this report, CYFD must review the report, assess the plan of care, and may “initiate an investigation[.]” which could result in CYFD updating the plan of care.

**Section 3** amends Section 32A-3A-14 to require that a family assessment must include an assessment of the likelihood of “any relevant involvement with the protective services division of” CYFD.

**Section 4** amends Section 32A-4-3 of the Abuse and Neglect Act, NMSA 1978, §§ 32A-3A-1 to -35 (1993, as amended through 2023). Currently, Section 32A-4-3(G) provides that “[a] finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect[.]” HB 343 would strike this language and add the following in its place: “[u]nless a newborn child has a positive toxicology screen for

methamphetamine, fentanyl, cocaine or heroin, a finding that a newborn is identified with substance abuse or is being affected by substance abuse shall not alone form a sufficient basis to report child abuse or neglect[.]”

This Section also removes language about volunteers and contractors, changing it to “health care provider.” In addition, this Section adds a definition for “substance-exposed newborn,” which is the same definition from Section 1.

**Section 5** provides for an effective date of July 1, 2025.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

The definition of “substance-exposed newborn,” which refers to a newborn who is “affected by” exposure to controlled substances—including prescribed drugs—could be considered vague. *See, e.g., United States v. Lesh*, 107 F.4th 1239, 1247 (10th Cir. 2024) (“The void for vagueness doctrine addresses two concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” (text only)).

## **PERFORMANCE IMPLICATIONS**

None for this office

## **ADMINISTRATIVE IMPLICATIONS**

None for this office

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 343 and HB 173 both propose to amend Section 32A-3A-14. The proposed changes do not appear to conflict; HB 343 provides for additional information that must be included in a family assessment, whereas HB 173 makes an investigation mandatory if the services and programs recommended in a plan of care are not followed.

HB 343 and HB 205 both propose to amend Sections 32A-3A-13 and -14. Both bills propose significant amendments to plan of care procedures and could conceivably conflict.

HB 343 proposes to change the term “plan of care” to “plan of safe care;” however, “plan of care” is still used in other sections of existing law. *See, e.g., NMSA 1978, § 32A-1-4(Y)* (2023) (defining “plan of care”); 8.326.3.15 NMAC (describing requirements for a plan of care).

## **TECHNICAL ISSUES**

The existing statutory language requiring that a family assessment include “an assessment of the likelihood of . . .” does not appear to coincide with the proposed additional language in Section 3, Subsection B, Paragraph 4 stating “any relevant involvement with the protective services division of the department.”

## **OTHER SUBSTANTIVE ISSUES**

Section 4, Subsection G would allow for a positive toxicology screen for methamphetamine, fentanyl, cocaine, or heroin to alone form a basis to report child abuse or neglect. This provision could cause issues if fentanyl appears on a toxicology screen because it was prescribed to a pregnant person or used in an epidural during childbirth. Concerning this same portion of the bill, the proposed deletion of language could result in lack of clarity and/or a significant change in the law because the deleted language addresses admissions and screenings conducted *before* childbirth, while the proposed inserted language addresses testing conducted once the child is born.

## **ALTERNATIVES**

None

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

## **AMENDMENTS**

N/A