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## FISCAL IMPACT REPORT

SPONSOR Gentry ORIGINAL DATE 02/08/14  
 LAST UPDATED \_\_\_\_\_ HB 334

SHORT TITLE Reporting of Child Abuse SB \_\_\_\_\_

ANALYST Klundt

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

This bill amends the duty to report portion of the Children’s Code Section 32A-4-3 NMSA 1978 by to clarify that “every person” has a duty to report, and leaving in enumerated professional required to report child abuse but eliminating the phrase “acting in an official capacity” which was pivotal in the *Strauch* decision. State v. Strauch N.M. App. 2013 (Cert. pending). The duty is also affirmative “without limitation.” An important change is that attorneys are specifically added to the list of professionals required to report. A new subsection rewords language eliminated in subsection A regarding information privileged as a matter of law.

### FISCAL IMPLICATIONS

AOC reports that the agency anticipated that there will be minimal fiscal impact resulting from printing and distribution of the statute, and there is no fiscal implications reported by CYFD.

### SIGNIFICANT ISSUES

This bill stems from State v. Strauch N.M. App. 2013) and the Court of Appeals’ interpretation of Section 32A-4-3(A) NMSA 1978. This case is currently on cert. by the New Mexico Supreme

Court. In addition, this issue may impact youth clients in child welfare cases in addition to those who are respondents by virtue of the fact that there may be a chilling effect on the child or youth's forthrightness in disclosing this information to a professional working in their case. Moreover, attorneys may choose to inform clients that they have an affirmative duty to report thereby prohibiting the disclosure from client to attorney which could jeopardize child safety.

This bill clarifies that every person in New Mexico has a duty to report reasonable suspicions of child abuse. CYFD reports that the agency supports this change, especially since a recent Court of Appeals decision which limited the duty to report to the so-called laundry list of professions listed in the statute. CYFD believes that the duty to report should be universal, without exception, and not qualified by any claim of privilege, so this bill is consistent with those goals.

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

HB 265 – This bill also amends NMSA §32A-4-3 by eliminating the list of enumerated professionals, but it also adds language regarding privileges as a matter of law which ultimate limits, rather than broadens, the statute.

HB 324 - This bill also amends NMSA §32A-4-3 by eliminating the list of enumerated professionals, but it also adds language regarding privileges as a matter of law which ultimate limits, rather than broadens, the statute.

Related to NMRA 11-504(D)(4) – privilege and NMRA 16-106(B)6 – attorney confidentiality; rules of professional conduct. The effect of the amendment on NMRA 16-106(B)6 is unknown.

### **TECHNICAL ISSUES**

The AOC reports that this bill may not correct the issue created by the Court of Appeals in *State v. Strauch*, Ct. App. No. 32,425 where the Court interpreted the statute to limit mandatory reporters to those enumerated in §32A-4-3(A). Given that a list of professionals is still specifically enumerated in the bill, it is possible that the Courts would interpret it in the same manner as they did in *Strauch*.

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

Status quo based on the recent Court of Appeals (*State v. Strauch*, Ct. App. No. 32,425) decision which limits mandatory reporters to those enumerated in §32A-4-3(A). Writ of Certiorari was granted by the Supreme Court on January 10, 2014.

KK/jl