

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 303 amends Section 30-6-1 NMSA 1978, regarding abuse of a child, to add exposure to Schedule I and II controlled substances that results in the child testing positive at birth to the list of acts that constitute abuse of a child. The bill makes an exception if the child tests positive for a Schedule II controlled substance at birth as a result of the mother taking a medication as prescribed.

HB 303 amends Section 30-6-1, Subsections I and J, to add that, in instances when a child was allowed to be in a place where controlled substances were manufactured or methamphetamines were used, it shall be no defense that the defendant did not know that “a child was present, a child could be found, a child resided on the premises or a vehicle contained a child.”

The bill also proposes the addition of a new section of the Abuse and Neglect Act, Chapter 32A, Article 4 NMSA 1978, “Taking newborn children into temporary protective custody”. That section defines a newborn as a child less than 72 hours old. It requires that a court find that an emergency situation exists and that the newborn child is seriously endangered before a newborn in a hospital can be taken into temporary protective custody. It allows that a newborn may be detained in the hospital while that court order is being pursued.

For a newborn outside a hospital setting, HB 303 would allow temporary protective custody for up to 24 hours without a court order. The bill lists the circumstances under which a newborn child may be taken into temporary protective custody without a court order. Those circumstances are: when a newborn is identified by a medical professional as being affected by substance abuse or exhibiting withdrawal symptoms, or when the newborn is subject to an environment where controlled substances are manufactured.

The bill specifies that the taking of a newborn into protective custody shall not be deemed an arrest or constitute a police record.

Section 3 of HB 303 is an emergency clause, declaring that it is necessary that the bill take effect immediately.

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.

SIGNIFICANT ISSUES

While HB 303 amends Subsections I and J of Section 30-6-1 to state that it shall be no defense to

the crime of child abuse that a defendant did not know that a child was present in a place where controlled substances were manufactured or methamphetamines were used, those subsections themselves require that the child's presence must have been allowed knowingly or intentionally (or alternatively, in the case of the manufacture of controlled substances, "negligently"). If the statute is amended to add that lack of knowledge shall not be a defense, the "knowingly" and "intentionally" mens rea elements of the existing offenses would be contradicted.

Between 2008 and 2017, the rate of babies being diagnosed with Neonatal Abstinence Syndrome (neonatal withdrawal) increased 324% in New Mexico. (See "Neonatal Abstinence Syndrome Surveillance in New Mexico" by Luigi Saavedra, published New Mexico Epidemiology, Nov. 2018, available here: [https://www.nmhealth.org/data/view/report/2194/.](https://www.nmhealth.org/data/view/report/2194/))

Since 2020, over 2,000 babies have been identified in New Mexico hospitals as being exposed to a controlled substance. (See "Substance Abuse Hurts New Mexico Infants and Moms" published by the Albuquerque Journal, available at: <https://www.abqjournal.com/2541744/substance-abuse-hurts-new-mexico-infants-and-moms.html>)

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS