

LFC Requestor: Self Assigned

2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS

Section I: General

Chamber: House  
Number: HB 303

Category: Bill  
Type: Introduced

Date (of THIS analysis): 2/7/2025

Sponsor(s): Rebecca Dow

Short Title: EXPOSURE TO CERTAIN DRUGS AS CHILD ABUSE

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

### **Section III: Relationship to other legislation**

Duplicates: none

Conflicts with: HB 230 Comprehensive Addiction and Recovery Act (Passed in the 2019 Leg. Session)

Companion to: None

Relates to: Abuse and Neglect Act

Duplicates/Relates to an Appropriation in the General Appropriation Act: N/A

### **Section IV: Narrative**

#### **1. BILL SUMMARY**

a) Synopsis

House Bill 303 (HB303) introduces new language to modify the Abuse and Neglect Act. The bill would change Section 30-6-1 NMSA 1978, ABANDONMENT OR ABUSE OF A CHILD to clarify that faults and habits of the parent or caregiver constitute ‘criminal negligence’. It would require that a person who commits abandonment of a child is guilty of a misdemeanor unless the abandonment results in the child's death or great bodily harm, which would incur a second-degree felony. It adds that there is no defense against the prosecution of child abuse for not knowing a child is present or residing on a property or found in a vehicle.

HB303 would allow for parents who surrender an infant less than 90 days old at a hospital to be prosecuted for actions occurring before the infant was left at the hospital.

HB303 expands child abuse to include substance exposure of a newborn if the infant tests positive for a schedule I controlled substance or a schedule II-controlled substance, unless the mother was lawfully prescribed and using the controlled substance.

The bill would add a new section for the Child Abuse and Neglect Act allowing temporary detainment by a law enforcement officer of an infant born in a hospital and determined to be in serious danger, or if recommended by a nurse, doctor or physician assistant, the Health Care Authority, or the Children’s Youth and Families Department, while a court order is pursued. If the court order is denied, the infant must be released.

Infants born outside a hospital may be taken into temporary protective custody for 24 hours if someone finds there is an emergency situation and the child is endangered.

HB 303 would allow for a newborn infant, under 72 hours of age, to be taken into protective custody without a court order under the following circumstances:

- a licensed nurse or doctor deems an infant affected by substances or with symptoms of withdrawal from a substance;
- when a child is subjected to an environment with a laboratory or manufacturing of controlled substances

The temporary protective custody would not be deemed an arrest or constitute a police report.

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

b) Significant Issues

Parental substance use disorders (SUDs) can have negative impacts on children, including contributing to lower socioeconomic status, more difficulties in academic and social settings, and compromised family functioning when compared with children living with parents without an SUD. 8.7 million U.S. children aged 17 or younger live in households with at least one parent who has an SUD. This highlights the potential breadth of substance use prevention and treatment needs for the whole family—from substance abuse treatment for the affected adults to prevention and supportive services for the children. [Children Living with Parents Who Have a Substance Use Disorder - PubMed](#)

Many States have expanded civil definitions of child abuse or neglect to address exposure of children to manufacturing of controlled substances. In addition, approximately 33 States and the Virgin Islands address in their criminal statutes the issue of exposing children to illegal drug activity, including:

- In 19 States the manufacture or possession of methamphetamine in the presence of a child is a felony.
- In 16 States, the manufacture or possession of any controlled substance in the presence of a child is considered a felony.
- Twelve states have enacted enhanced penalties for any conviction for the manufacture of methamphetamine when a child was on the premises where the crime occurred.
- Exposing children to the manufacture, possession, or distribution of illegal drugs is considered child endangerment in 14 States.
- The exposure of a child to drugs or drug paraphernalia is a crime in eight states.
- In North Carolina and Wyoming, selling or giving an illegal drug to a child by any person is a felony [Parental Substance Use as Child Abuse \(childwelfare.gov\)](#)

Adverse or unexpected results may occur from such laws. Punitive approaches toward pregnant women with substance use disorders lead to fear of seeking prenatal care and substance abuse treatment, resulting in late or no prenatal care.

[\(State Policies That Treat Prenatal Substance Use As Child Abuse Or Neglect Fail To Achieve Their Intended Goals | Health Affairs.\)](#) Lack of prenatal care is associated with adverse neonatal outcomes. If HB303 deters parents from seeking medical care, the risks to both the child and parents may be greater. Balancing evidence-based SUD strategies with the need to intervene and protect vulnerable infants or children in unsafe environments is a difficult policy question and one that states continue to grapple with.

- There are only nine (9) Indian Health Service run health care facilities in six state that have a labor and delivery program, according to the agency...About 75% of

American Indian and Alaskan Native births occur in non-Indigenous health care centers. Hassanein. Indigenous People are Promised Healthcare; for Rural Moms, it's an empty one. Center for Health Journalism 2022

- Taking an infant into custody who appears affected or exhibits withdrawal symptoms from methadone or buprenorphine used and prescribed for substance use in the perinatal period may interrupt completion of treatment protocols. Methadone is a schedule II medication and may be used lawfully if taken as prescribed, while buprenorphine is a schedule III medication not subject to the provisions of HB303. Both medications are used to treat Substance Abuse Disorders in pregnant women ([Drug misusing parents: key points for health professionals | Archives of Disease in Childhood \(bmj.com\)](#)) with the potential for neonatal abstinence syndrome. It is important to distinguish between parents engaged in a substance abuse treatment plan (and subjecting them to an unnecessary abuse/neglect investigation) and women actively using to support a drug addiction.
- HB303 may conflict with or deter parents from surrendering infants under the Safe Haven for Infants Act, since HB303 allows parents to be prosecuted for actions before an infant is left at the hospital.
- HB303 conflicts with HB230 (passed in the 2019 Legislative Session) which states that a notification of substance exposure in a newborn infant would not by itself be sufficient for a report of child abuse or neglect. Under HB303, identification of substance exposure in a newborn infant would constitute child abuse and neglect.

#### Tribal Jurisdiction

- HB303 lacks consideration for Tribal Nations and populations, especially pertaining to the Indian Child Welfare Act (ICWA). ICWA governs State child-custody proceedings in multiple ways, including: (1) by recognizing Tribal jurisdiction over decisions for their Indian children; (2) by establishing minimum federal standards for the removal of Indian children from their families; (3) by establishing preferences for placement of Indian children with extended family or other Tribal families; and (4) by instituting protections to ensure that birth parents' voluntary relinquishments of their children are truly voluntary.
- ICWA applies to any state child-custody proceeding involving an "Indian child," based on the child's political affiliation with the Tribe. A child is an "Indian child" only if: (1) The child is himself or herself a member of a federally recognized Tribe; or (2) The child's parent is a member of a federally recognized Tribe, and the child is eligible for membership.

#### Tribal collaboration

- Per the State-Tribal Collaboration Act, Section 3 C:  
A state agency shall make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives. (Emphasis added)

#### Department of Health (DOH) Implications:

- Increased demand for neonatal care and intervention services (Klaman et al., 2017).

- Training for healthcare providers on new reporting requirements.
- Coordination with CYFD for child protection procedures.
- Increase of infants in custody and lack of qualified resource families that can adequately care for children (CYFD).
- Clarification needed on whether positive drug tests alone warrant child removal (if mother is currently prescribed MAT for the purpose of their management of recovery).

## 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?  
 Yes  No

Increases demand and use of maternal health and substance use treatment programs.

Increased need for staff who are trained in ICWA and have a fundamental awareness of Tribal sovereignty when working with Tribal Social Service/ICWA staff.

- Is this proposal related to the NMDOH Strategic Plan?  Yes  No

**Goal 1:** We expand equitable access to services for all New Mexicans

**Goal 2:** We ensure safety in New Mexico healthcare environments

**Goal 3:** We improve health status for all New Mexicans

**Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

## 3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?  
 Yes  No  N/A
- If there is an appropriation, is it included in the LFC Budget Request?  
 Yes  No  N/A
- Does this bill have a fiscal impact on NMDOH?  Yes  No

Increased demand and use of maternal health and substance use treatment programs.

There will need to be evaluation of current staff capacity to be able to be responsive to the 24 Tribes, Pueblos, and Nations in NM; including in the evaluation/capacity map will be the need to identify cultural humility training completion by NMDOH staff.

## 4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH?  Yes  No

May need additional staff to ensure compliance with the State-Tribal Collaboration Act in terms of changes to current policies on engagement with Tribal ICWA/Social Services.

## 5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

Potential conflicts with HB230.

## 6. TECHNICAL ISSUES

Are there technical issues with the bill?  Yes  No

## 7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written?  Yes  No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)?  Yes  No
- Does this bill conflict with federal grant requirements or associated regulations?  
 Yes  No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?  Yes  No

The list of Schedule I controlled substances in HB303 does not include cannabis; however, it is unclear if the list is intended to be comprehensive (i.e., only a subset of Schedule I controlled substances is contemplated in HB303). Marijuana (cannabis, THC) remains a DEA Schedule I drug with “no currently accepted medical use in treatment in the U.S.”([List of Schedule 1 Drugs; Controlled Substances & CSA Schedule Lists - Drugs.com](#)). As a result, this section may conflict with New Mexico’s Lynn and Erin Compassionate Use Act (Section 26-2B-2 NMSA) where the person – even if enrolled in the NMDOH Medical Cannabis Program - would be subject to prosecution if a baby was born that tested positive for cannabis. To address this, an exception to the Schedule I drugs that includes cannabis may be indicated.

Birthing facilities do not universally use biologic testing of neonates, nor do they all isolate specific drugs – for example, if an infant tests positive for an opioid, if it may be legitimate (e.g., methadone, buprenorphine) or illegal (e.g., heroin), or both. ([Urine Drug Tests: Ordering and Interpretation | AAFP](#))

## 8. DISPARITIES ISSUES

- Screening for substance use can be done in different ways including verbal screening or testing of biologic substances. The bill’s temporary protective custody of newborns may inadvertently impact some populations more than others and could inequitably subject people to the bill’s requirements who give birth in hospitals that test meconium or use toxicology and urine testing, rather than verbal screening alone. State agencies would also be able to recommend temporary protective custody of infants for whom they may not have full knowledge; this could potentially expose families to consequences of implicit bias.
- Pregnant women with opioid and stimulant addiction face barriers to prenatal care due to stigma, lack of access, and punitive policies. Studies indicate that only 46% of pregnant women with opioid use disorder receive appropriate treatment, contributing to increased risks of preterm birth and neonatal complications (Terplan et al., 2018).
- Policies regarding prenatal drug exposure disproportionately impact low-income, Indigenous, and Hispanic populations. Data from the National Survey on Drug Use and Health (NSDUH) indicate that Indigenous and Hispanic women are more likely to face

legal repercussions for substance use during pregnancy, despite similar substance use rates among racial groups (Patrick et al., 2017).

- Many pregnant women lack access to medication-assisted treatment (MAT), which is crucial for managing substance use disorder during pregnancy. Research shows that only 21% of pregnant individuals in rural areas have access to MAT, compared to 41% in urban settings, highlighting a significant gap in treatment equity (Klaman et al., 2017).
- The increasing rates of NAS, where newborns experience withdrawal symptoms due to in utero drug exposure, highlight a growing public health concern. The incidence of NAS has risen from 1.2 cases per 1,000 births in 2000 to 7.3 cases per 1,000 births in 2020, demonstrating the urgent need for policy intervention (Ko et al., 2016).
- Most NM families with infants exposed to drugs skip treatment. Only one-in-seven local families with substance-exposed newborns accepts referrals to addiction treatment, the study found. [Most NM families with infants exposed to drugs skip treatment - The Tri-City Record](#)
- Native Americans have some of the highest rates of fetal alcohol syndrome in the Nation. Among some tribes, the rates are as high as 1.5 to 2.5 per 1,000 live births. Among others, the rates are comparable to that of the general population in the United States and range between 0.2 to 1.0.
- Substance use is a leading factor in many maternal and infant deaths. According to the New Mexico Maternal Mortality Review Committee, substance use disorders were a contributing factor in 49 percent of the 87 maternal deaths in the state from 2015 through 2019. DOH's 2022 child fatality review report found 1-in-5 reviewed child deaths (36 deaths out of 163 reviewed deaths) were supervised by an individual with a known history of a substance use disorder.

## 9. HEALTH IMPACT(S)

- HB303 could also adversely impact health outcomes for infants if it results in people delaying or refusing to seek prenatal care.
- Neonatal Abstinence Syndrome (NAS) cases have increased 82% nationally from 2010–2020 (Jilani et al., 2019).
- Prenatal exposure to opioids, stimulants, and alcohol can cause cognitive and behavioral issues in childhood (Nygaard et al., 2015).
- Pregnant women with opioid use disorder (OUD) are at a higher risk of overdose postpartum (Schiff et al., 2018).
- The removal of infants and children from their families and placement into state custody has significant mental health consequences, often exacerbating adverse childhood experiences (ACEs) and increasing long-term psychological distress. Research shows that separation from primary caregivers can lead to attachment disruptions, increased anxiety, depression, and post-traumatic stress symptoms (Dozier et al., 2019). Studies also show that children in resource family care exhibit higher ACE scores, which correlate with

increased risks for mental health disorders, substance use, and chronic health conditions later in life (Felitti et al., 1998; Lanier et al., 2018).

- Dozier, M., Zeanah, C. H., Wallin, A. R., & Shaffer, C. (2019). Institutional care for young children: Review of literature and policy implications. *Social Issues and Policy Review*, 13(1), 1-33.
  - Felitti, V. J., Anda, R. F., Nordenberg, D., Williamson, D. F., Spitz, A. M., Edwards, V., Koss, M. P., & Marks, J. S. (1998). Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: The Adverse Childhood Experiences (ACE) Study. *American Journal of Preventive Medicine*, 14(4), 245-258.
- Services are greatly needed to address Fetal Alcohol Spectrum Disorder FASD in Native American communities, including prevention efforts and interventions for children and adults with an FASD.
  - An assessment of 10 tribal reservations and five urban Indian Community Health Centers showed that such services were limited or nonexistent. SAMHSA FASD Center for Excellence. FASD in Indian Country Site Visit: Final Report Executive Summary. March 2004. <http://fasdcenter.samhsa.gov/documents/FASDNASiteVisitExSum0404.pdf>

## 10. ALTERNATIVES

Early identification and reporting of newborns exposed to maternal substance use during pregnancy can be associated with beneficial changes in the environment of the infants and successful rehabilitation of the mothers. ([Perinatal substance abuse: the impact of reporting infants to child protective services - PubMed \(nih.gov\)](#)) However, criminalizing the behavior, and involving healthcare providers in the detection and prosecution of this behavior, may not improve outcomes.

Alternatively, the use of judicial supervision, rehabilitative and supportive services, and long-term involvement of social services without criminal prosecution may be more successful interventions. ([Perinatal substance abuse: the impact of reporting infants to child protective services - PubMed \(nih.gov\)](#))

Mandating prenatal provider conduct screening for all pregnant persons.

Trauma-informed policies that prioritize family preservation when safe and feasible, alongside supportive interventions to mitigate the psychological consequences of state custody.

## 11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB303 is not enacted, there will be no provision stating the exposure of a child to any Schedule I or Schedule II controlled substances (that are not medically prescribed) constitutes child abuse. In addition, new provisions related to temporary custody of newborns in hospital and non-hospital settings due to an emergency situation and serious endangerment would not be added.

## 12. AMENDMENTS

Clarification needed on whether positive drug tests alone warrant child removal.