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FISCAL IMPACT REPORT

SPONSOR <u>Dow</u>	LAST UPDATED <u>3/6/2025</u>	ORIGINAL DATE <u>2/15/2025</u>
SHORT TITLE <u>Exposure to Certain Drugs as Child Abuse</u>	BILL NUMBER <u>House Bill 303/ec/aHHHC</u>	
	ANALYST <u>Garcia</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD	\$333.3 to \$2,333.3	\$1,000.0 to \$7,000.0	\$1,000.0 to \$7,000.0	\$2,333.3 to \$16,333.3	Recurring	General Fund
OFRA	\$150.0	\$300.0	\$300.0	\$750.0	Recurring	General Fund
NMCD	Indeterminate but minimal	At least \$7,050.0	At least 14,100.0	At least \$21,150	Recurring	General Fund
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
LOPD	At least \$174.6	At least \$582.0	At least \$582.0	At least \$1,338.6	Recurring	General Fund
AODA	At least \$174.6	At least \$582.0	At least \$582.0	At least \$1,338.6	Recurring	General Fund
Total	\$832.5 to \$2,682.5	\$9,514.0 to \$15,514.0	\$9,514.0 to \$15,514.0	\$19,860.5 to \$33,710.5	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 13

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Offices of the Public Defender (LOPD)
 Sentencing Commission
 Office of Family Representation and Advocacy (OFRA)
 Children, Youth and Families Department (CYFD)
 New Mexico Attorney General (NMAG)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From
 New Mexico Corrections Department (NMCD)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of HHHC Amendment to House Bill 303

The amendment strikes language that would have stated that “it shall be no defense to the crime of abuse of a children 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.”

Synopsis of House Bill 303

House Bill 303 (HB303) amends Section 30-6-1 NMSA 1978, which deals with crimes against children and dependents (Abandonment and Abuse of a Child). The bill would add to the existing statutory definition of “abuse of a child” instances in which a child tests positive at birth for a Schedule I controlled substance, pursuant to the Controlled Substances Act, or a Schedule II controlled substance, including any potentially addictive substance that is used or manufactured contrary to accepted medical use. The definition provides an exception for a positive test that results from a mother’s lawful intake of a substance as prescribed.

House Bill 303 further amends Section 30-6-1 NMSA 1978 to provide that it shall be no defense to the crime of abuse of a child that the defendant did not know that a child was present. The bill amends similar language related to exposing a child to methamphetamine.

The bill would then add a new section to the Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 within the Children’s Code that would prohibit a newborn child in a hospital setting from being taken into protective custody without a court order that includes findings that an emergency situation exists and that the newborn is seriously endangered. The law allows medical personnel or the Children, Youth and Families Department (CYFD) to recommend that law enforcement detain a newborn child who is in a hospital setting, pending a court order.

The bill would allow a newborn child, defined as a child who is less than seventy-two hours old, not in a hospital setting to be taken into protective custody for up to 24 hours without a court order. For a period of longer than 24 hours, a court order must be obtained that finds an emergency exists and a newborn is seriously endangered. Within the proposed statute, taking a newborn child into temporary custody is not deemed an arrest.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

Extrapolating from data regarding the number of plans of safe care developed annually (see significant issues below), LFC estimates an approximate number of 1,000 newborns annually to whom this bill may apply. As such, House Bill 303 could result in at least one thousand additional potential prosecutions annually.

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of

felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports that the average cost to incarcerate a single inmate in FY22 was \$56.2 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities.

HB303 is anticipated to increase the number of individuals in New Mexico’s prison system or amount of time individuals spend incarcerated. The bill proposes expanded definitions of child abuse under the criminal code, which could result in more felony prosecutions. Given that this bill would only be in effect for a small portion of FY25, this bill assumes a minimal cost of incarceration in that year. Beginning in FY26, based on the above estimate of potential prosecutions, this analysis assumes an increase of at least 250 people annually incarcerated at a cost of roughly \$7 million.

Judiciary Costs. Additional increased costs beyond incarceration, such as costs to the judicial branch for increased trials or for law enforcement to investigate and arrest individuals for new crimes. These costs could be moderate. The Administrative Office of the Courts reports minimal administrative costs for statewide update, distribution, and documentation of statutory changes but notes additional activity within the judiciary will result in increased costs. In addition, both the Administrative Office of the District Attorneys and the Law Offices of the Public Defender would likely experience cost increases associated with increased prosecutions and the need for legal defense. This analysis assumes each would require at least two additional attorneys with corresponding administrative costs, for a total of at least \$582 thousand per agency.

Child Welfare System Costs. The Office of Family Representation and Advocacy (OFRA) estimates the bill could increase caseloads related to increased abuse and neglect filings in Children’s Court, as newborns are taken into protective custody. In the analysis submitted for the amendment, OFRA projected an annual cost increase of \$400 thousand in FY25; \$800 thousand in FY26, and \$1 million in FY27 but did not provide details about these costs of the increases over time. For the purpose of this analysis, LFC assumes the need for roughly two additional attorneys, at a total cost of \$300 annually.

CYFD projects increased case involvement and the need for at least 6 additional caseworker FTE and 3 additional Children’s Court attorneys, totaling roughly \$1.1 million annually. CYFD also reports the agency would require additional budget to handle after-hour responses to implement court orders prior to the 24-hour timeframe referenced in the bill. In analysis submitted for a similar bill in 2023, CYFD estimated costs of \$7 million annually. The analysis above assumes costs ranging between \$1 million and \$7 million annually.

SIGNIFICANT ISSUES

Infant Substance Exposure. The Sentencing Commission cited data noting that the rate of babies diagnosed with Neonatal Abstinence Syndrome increased by 324 percent between 2008 and 2017. In 2020, 2,000 babies were identified in New Mexico hospitals as being exposed to a controlled substance.

According to LFC analysis, New Mexico has a higher rate of newborns who have been exposed

to substances than the national average. The federal Comprehensive Addiction and Recovery Act (CARA) amended the federal Child Abuse Prevention and Treatment Act (CAPTA) to require states to develop plans and monitor the implementation of plans of safe care. Under CAPTA, a plan of safe care is a collaborative plan designed to ensure the safety and well-being of infants affected by prenatal substance exposure by addressing the health and substance use treatment needs of the infant and their caregivers and aiming to prevent child safety risks.

According to the 2023 LFC program evaluation *Implementation of the Comprehensive Addiction and Recovery Act (CARA)*, 1,200 plans of safe care were created annually for New Mexico newborns between 2020 and 2022, accounting for roughly 6 percent of all births during that period. LFC analysis found among plans of safe care created, only 1 percent were developed for cases of alcohol use alone.

In 2019, New Mexico passed legislation requiring staff in hospitals and birthing centers develop plans of care for substance-exposed newborns, which refer families to voluntary support and treatment services. New Mexico's CARA law changed reporting requirements to CYFD such that a finding that a woman is using or abusing drugs would not alone be a sufficient basis to report child abuse or neglect. Section 32A-4-3 NMSA 1978 states that substance use in pregnancy should not, by itself, be considered a reason for a mandatory child abuse report.

AOC notes House Bill 303 “does not implicitly or explicitly recognize New Mexico’s current laws regarding New Mexico’s implementation of the federal Comprehensive Addiction and Recovery Act (CARA), which requires all states to ensure substance exposed newborns receive a plan of care and that this data is reported to the federal government. CYFD similarly indicates the bill does not provide guidance “on a differentiated responses for infants and caregivers with a plan of safe care.”

AOC reports House Bill 303 seeks to “criminalize and encourage removal of newborns who are drug affected and would discourage pregnant people from seeking prenatal care and treatment for substance use disorders.”

LOPD notes:

The New Mexico Court of Appeals addressed this issue in *State v. Martinez*, 2006-NMCA-068, 137 P.3d 1195. There, the Court held that a “child,” for the purposes of the child abuse statute is a “person” under the age of eighteen, and a “fetus” is not a person under New Mexico law...Analyst further presents concerns regarding the breadth of the legislation, as it appears to establish a third-degree felony every time an infant “tests positive” without a minimal drug concentration requirement or corresponding evidence that the levels detected would be harmful to an infant.

LOPD also cites research from the American College of Obstetricians and Gynecologists, who suggest criminalization and incarceration for substance use disorders during pregnancy are ineffective behavioral deterrents.

NMAG reports the bill appears to conflict with current case law, citing *State of New Mexico ex rel CYFD v. Amanda*, where the court determined while evidence of a mother’s prenatal drug use can be relevant to show neglect, the court disagreed that “a child who has been exposed to drugs prenatally is per se a neglected child under the Abuse and Neglect Act.

CYFD reports:

This legislation mandates court orders to take emergency custody of newborns in both a hospital and non-hospital setting, while also reducing the statutory timeframe for emergency custody from 72 hours to 24 hours. As written, the bill would require CYFD to return a newborn to the parent if a court order is not obtained within 24 hours. While the bill outlines specific circumstances under which temporary custody is permitted, the criteria are narrowly defined and do not allow CYFD to independently assess broader danger indicators within the family which may warrant intervention.

NMAG also notes that law enforcement officers are the only state agents statutorily authorized place a child on a hold in temporary state custody if law enforcement officers find there are reasonable grounds to believe the child is abused or neglected and there is an immediate threat to the child. NMAG states:

It is unclear who is responsible for taking an infant into temporary custody in Section 2 of HB303. Section 2(A) indicates that a law enforcement officer may detain an infant in the hospital, but Section 2(B) does not similarly indicate who takes an infant into protective custody outside of a hospital setting. Consider clarifying the party responsible.

NMAG similarly suggests clarifying which party is responsible for seeking a court order under Section 2 of the bill.

Criminal Penalties for Child Abuse. Section 30-6-1 NMSA 1978 contains the following penalties for abuse of a child:

- Abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, a third degree felony, which carries a sentence of three years incarceration. For a second and subsequent offenses is a second degree felony, which carries a sentence of nine years incarceration. If the abuse results in great bodily harm to the child, a first degree felony.
- Negligent abuse of a child that results in the death of a child is a first degree felony
- Intentional abuse of a child twelve to eighteen years of age that results in the death of a child is a first degree felony.
- Intentional abuse of a child less than twelve years of age that results in the death of the child is a first degree felony resulting in the death of a child.

PERFORMANCE IMPLICATIONS

AOC notes any increase to activity within the judiciary can impact case filings and cases disposed.

CYFD reports:

This bill creates serious performance and outcomes conflicts for CYFD in the way the department interacts with law enforcement when determining when emergency or temporary custody is needed to protect a child. The bill would also require an overhaul of the court system in order to be able to process and produce the court orders needed to obtain emergency custody beyond 24 hours. This would likely require the creation of a new process or system that would require the Courts to be able to consistently work well beyond traditional business hours and one weekends and holidays.

CYFD also notes “this bill would not allow for sufficient time to investigate and assess the family for possible danger indicators” and “appears to conflict with the Children’s Code and the timeframes established for emergency custody holds.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The bill relates to House Bill 136, which also amends the same criminal child abuse statute (Section 30-6-1) that would add evidence that demonstrates a child has been knowingly and intentionally exposed to the use of fentanyl as prima facie evidence of abuse of a child.

OTHER SUBSTANTIVE ISSUES

Both AODA and LOPD report the new statutory language proposed in the bill related to a defendant’s ignorance that a child was present would conflict with Section 30-6-1(D), which states, “Abuse of a child consists of a person knowingly, intentionally, or negligently, and without justifiable cause, causing or permitting a child to be placed in a situation that may endanger the child’s life or health...”. AODA notes the proposed language thus presents an “irreconcilable conflict.” The amendment adopted in the House Health Committee addresses this concern.

OFRA notes the bill contains an exemption for the lawful use of Schedule II Controlled Substance but does not contain an exemption for the lawful use of Cannabis, a Schedule I Controlled Substance. OFRA also notes because of the 72 hour definition of “newborn,” the bill could result in mothers delaying pre-natal or post-partum care until their child is 72 hours old, which could result in adverse health outcomes or deaths for the parent and baby.

NMAG states the bill proposes the infant remain at a hospital when there are concerns for abuse; however, it may be problematic to require private hospitals to keep patients in the hospital longer than medically required and without a custodial plan.

NMAG also notes the bill may conflict with other existing sections of the Children’s Code, state and federal case law, the Indian Child Welfare Act and the Indian Family Protection Act, which outline processes, procedures, and timelines for emergency and temporary placement for children.

NMAG also reports the Children’s Code and state and federal case law afford constitutional rights to parents for the care of their children and orders placement preferences be followed when a child is taken into state custody: “HB303 may conflict with the requirements of the Children’s Code for placement of a child in state custody.”