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## FISCAL IMPACT REPORT

SPONSOR Romero DATE TYPED 2/10/04 HB \_\_\_\_\_

SHORT TITLE Drug Manufacturing As Child Abuse SB 161 /aSPAC

ANALYST Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 112.

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Children, Youth and Families Department  
 Administrative Offices of the Courts  
 Public Defenders Department

No Response Received From  
 Administrative Office of the District Attorneys  
 Department of Public Safety

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 161 includes:

1. addition of a “knowing or intentional” standard to the negligent standard; and
2. tightened language requiring chemicals, materials and equipment all be present on the premises, rather than just one of the three manufacturing components.

Synopsis of Original Bill

SB 161 would amend NMSA 1978, § 30-6-1 (Abandonment or abuse of a child) to include a new section. The new section would direct that evidence that demonstrates that a child has been negligently allowed to enter or remain in a motor vehicle or building that contains the raw materials or equipment used or intended for use in the manufacture of a controlled substance “shall be deemed prima facie evidence of abuse of a child.”

Significant Issues

- Effective enforcement of existing child abuse and endangerment laws would likely achieve the same results (e.g., protection of children through removal from parental or guardian custody, and heightened sanctions for parents and guardians who choose to combine children and illegal substance activities).
- Further, the language of this statute may be broader than what is necessary to achieve the intended goal. Conceivably, an 18-year-old in possession of illegal chemicals, etc. could be charged with child abuse for driving with a 17-year old friend in the car, even if the 17-year-old knew about, and/or participated in, the chemical activities.

Similarly, parents of a 17-year-old who has possessed drugs in the past (thereby giving his or her parents reason to consider the possibility of future possession) could be found to have been negligent if their child, or a friend of the child, was in the home and drugs were hidden in the child’s bedroom.

The Public Defender Department notes:

- Under the child abuse statute as presently enacted, prosecutors already routinely secure convictions in circumstances where a child is negligently allowed near drugs, drug precursors, or drug manufacturing equipment and facilities. This bill does not increase the ability of law enforcement to protect children.
- *In re Winship*, 397 U.S. 358 (1970) holds that the due process clause of the United States Constitution requires proof beyond a reasonable doubt of every fact necessary to constitute the crime charged.” The United States Supreme Court has frequently recognized the general power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence in the courts of its own government. *Fong Yue Ting v. United States*, 149 U.S. 698 (1893). In the exercise of this power numerous statutes have been enacted providing that proof of one fact shall be prima facie evidence of the main fact in issue. Where the inference is not purely arbitrary and there is a rational relationship between the two facts, and the accused is not deprived of a proper opportunity to submit all the facts bearing upon the issue, it has been held that such statutes do not violate the requirements of due process of law. *Adams v. New York*, 192 U.S. 585 (1904). However, where this does not occur, the statute may be held unconstitutional as violative of due process. See *Pollock v. Williams*, 322 U.S. 4 (1944); *Bailey v. Alabama*, 219U.S. 219 (1911).
- This bill, if enacted with the “shall be deemed prima facie evidence” language in place,

would certainly be subject to such a constitutional challenge in the New Mexico Court of Appeals and Supreme Courts.

- It is important that the people of the State know what behaviors are forbidden under the law. This bill does not presently define with specificity the “chemicals, materials or equipment used or intended for use in the manufacture of a controlled substance.” Many everyday objects would fit into this language. Accordingly, it is possible that a grandmother could be subjected to charge and conviction under the amended section for driving her grandchildren to school while she has a bottle of Sudafed in the glove box or in a Wal-Mart bag in her trunk. Likewise, a high school chemistry teacher with a test tube in his classroom would be a criminal under this act, as would a flower gardener with a “grow-lamp” for her orchids. One would hope that prosecutors and police would not pursue such charges, but this bill would criminalize such acts.
- The bill does not presently define with specificity the “chemicals, materials or equipment used or intended for use in the manufacture of a controlled substance,” and could lead to the criminalization of innocent behavior as detailed *supra*.

According to the Children, Youth and Families Department:

- The bill provides prosecutors with greater flexibility and fewer requirements in prosecuting cases involving the manufacturing of controlled substances.
- The bill safeguards children from exposure to toxic chemicals that have research-based impact on behavioral functioning. CYFD staff will require additional training to recognize and respond appropriately to environmental chemical abuse.

### **FISCAL IMPLICATIONS**

Senate Bill 161 does not contain an appropriation. However, there will be administrative implications in that there will be an increased case load for police, child welfare entities, district attorneys, public defenders, courts and the like.

### **ALTERNATIVES**

In lieu of this specific abuse standard, the focus could be effective enforcement of existing child abuse and endangerment laws.

**SJM/prr:dm**