

LFC Requester:	Mercer-Garcia, Rachel
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/6/25 *Check all that apply:*
Bill Number: HB 303 Original Correction
 Amendment Substitute

Sponsor: Rep. Rebecca Dow **Agency Name and Code** AOC
Short Title: Exposure to Certain Drugs as **Number:** 218
Child Abuse **Person Writing** Kathleen Sabo
Phone: 505-470-3214 **Email** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with HB 136 (also amending Section 30-6-1 NMSA 1978).

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 303 amends Section 30-6-1 NMSA 1978, within the Criminal Code and governing the crime of Abandonment or Abuse of a Child, to include, as abuse of a child, a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be exposed to the extent that the child tests positive at birth for either a Schedule I controlled substance pursuant to the Controlled Substances Act, including opiates, opiate derivatives, hallucinogens, stimulants and depressants that have no legitimate medical use, or a Schedule II controlled substance pursuant to the Controlled Substances Act, including any potentially addictive substance that is used or manufactured contrary to its current accepted medical use, unless the child tests positive for a Schedule II controlled substance pursuant to the Controlled Substances Act as a result of the mother's lawful intake of such substance as prescribed.

HB 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, a child could be found, a child resided on the premises or a vehicle contained a child.

HB 303 also enacts a new statutory section within the Abuse and Neglect Act, Section 32A-4-1 NMSA 1978 et. seq, and within the Children's Code, to prohibit a newborn child in a hospital setting from being taken into temporary 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 Health Care Authority (HCA) 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.

Under HB 303's new statutory section, a newborn child who is not in a hospital setting may be taken into temporary protective custody for up to 24 hours without a court order. For a period longer than 24 hours, a court order must be obtained that includes findings that an emergency situation exists and that the newborn child is seriously endangered. HB 303 specifies the circumstances under which a newborn child may be taken into temporary custody without a court order.

HB 303 provides that the taking of a newborn child into temporary custody under the new statutory section is not deemed an arrest, nor shall it constitute a police record.

HB 303 defines "newborn child" to mean a child less than 72 hours old.

The Act contains an emergency clause.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the

enforcement of this law and commenced prosecutions, and appeals from convictions. It appears that HB 303 would significantly increase the number of filings in abuse and neglect proceedings as well as felony criminal matters.

New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Severe penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services.

SIGNIFICANT ISSUES

- 1) HB 303 does not explicitly or implicitly recognize New Mexico's current laws regarding the 2019 enactment by the New Mexico Legislature of New Mexico's Comprehensive Recovery and Addiction Act (CARA), CARA, utilizing the federal Comprehensive Addiction Recover Act goal of keeping mom and baby together with supportive services, helps fund prevention, education, harm reduction, treatment and recovery services for pregnant people. Specifically, New Mexico's CARA focuses on supportive care for pregnant people affected by substance use and the coordination of services and support for the parents and family of newborns affected by substance exposure before birth.

The development and enactment of CARA followed the amendment to the federal Child Abuse Prevention and Treatment Act (CAPTA) which required all state child welfare agencies to ensure every baby born exposed to substances receive a plan of care and that data be reported to the federal agency. During the development of the plan, based upon reports of disparate and discriminatory impact (especially on women of color) New Mexico went beyond reporting to instead include changes and training to address the systemic inequity and instead provide a less stigmatizing, equitable plan. The steps undertaken and the ultimate law enacted was explored in depth by a taskforce which included healthcare providers, insurance care coordinators, state agency representatives and other stake holders who worked on a plan from 2017 until the bill's passing.

This addition to the Children's Code required hospitals to create plans of care when which are then sent to CYFD and the Dept. of Health. Significantly the legislation stated "substance use in pregnancy should not, by itself, be considered a reason for a mandatory child abuse report." This non-punitive approach to substance use in pregnancy is grounded in recognition that supportive assistance in reducing and eliminating substance use during pregnancy is more effective and that punitive approaches (see <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2755302>) and lead to disparate results impacting BIPOC pregnant persons. See also (https://sitefinitystorage.blob.core.windows.net/sitefinity-productionblobs/docs/default-source/advocacy/2022-pps-on-advancing-racial-justice-inhealth-care-through-adm---final.pdf?sfvrsn=3ba5e94f_3)

HB 303 by seeking to both criminalize and encourage removal of newborns who are born drug affected, would discourage pregnant people from seeking prenatal care and treatment for substance use disorders. This would result in greater risks for pregnant persons and their child and lessen opportunities for treatment for pregnant women as well as appropriate therapy for exposed infants. "Early identification and treatment of women

with substance use disorders and/or dependence is a critical component of preconception and prenatal care and is important for supporting healthy birth outcomes.” See Criminalization of Pregnant Women with Substance Use Disorders, AWHONN Position Statement [https://www.jognn.org/article/S0884-2175\(15\)31770-6/fulltext](https://www.jognn.org/article/S0884-2175(15)31770-6/fulltext) .

HB 303 would result in disparate treatment of pregnant persons with substance use disorder and create a penalty class which does not impact other individuals with substance use disorder as well as from those pregnant persons who use alcohol or other unenumerated substances which create maternal and neonatal complications. As addressed in the American Journal of Obstetrics and Gynecology by Schemph A.H. and Strobino D.M. ([https://www.ajog.org/article/S0002-9378\(08\)02198-4/pdf](https://www.ajog.org/article/S0002-9378(08)02198-4/pdf)) the threat of incarceration is an ineffective strategy for reducing substance abuse.

- 2) 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 and for second and subsequent offenses is a second degree felony. 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 the child is a first degree felony.
 - Intentional abuse of a child twelve to eighteen years of age that results in the death of the 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.
- 3) Severe penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services. It appears that HB 303 would significantly increase the filings in abuse and neglect proceedings as well as felony criminal matters.
- 4) See *Parental Substance Use as Child Abuse*, Child Welfare Information Gateway, 2019, which can be downloaded at <https://www.childwelfare.gov/resources/parental-substance-use-child-abuse/> , and which notes that summaries of laws on this topic for all individual States and U.S. territories are available from the State Statutes Search page at <https://www.childwelfare.gov/resources/states-territories-tribes/state-statutes/?rt=1381> .

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 136 (also amending Section 30-6-1 NMSA 1978).

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS