

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date 2/27/2025 *Check all that apply:*

Prepared: _____

Bill Number: HB303 Original _____ Correction _____

Amendment X Substitute _____

Sponsor:	Rep. Rebecca Dow, Rep. Gail Armstrong, Rep. Jenifer Jones, Rep. Alan Martinez	Agency Name and Code Number:	305 – New Mexico Department of Justice
Short Title:	EXPOSURE TO CERTAIN DRUGS AS CHILD ABUSE	Person Writing Analysis:	Lara C. Sundermann, Assistant Attorney General
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fun d Affec ted
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

- HB 303 amends §30-6-1(D), NMSA 1978 “Abandonment or Abuse of a Child,” by adding subsection (D)(4) and causing the exposure of a newborn child to certain Schedule I and Schedule II drugs to be added to the elements and criminal code definition of child abuse.
- Section 1(D)(4) proposes that instances in which an infant tests positive at birth for Schedule I drugs that have no legitimate medical use, or Schedule II controlled substances that are used or manufactured contrary to accepted medical use, would be deemed criminal child abuse.
- Section 1(D)(4) makes an exception for newborns who test positive for Schedule II substances as a result of lawful intake and prescription of those substances.
- Section 2(A) proposes that newborn children who are in the hospital “shall not be taken into temporary protective custody without a court order that includes findings that an emergency situation exists and the newborn child is seriously endangered” and that law enforcement may “detain” a child in the hospital upon recommendation of health care providers or CYFD while the court order is being pursued. It further proposes that if a court order is denied, the newborn child must be released.
- Section 2(B) proposes that a newborn not in a hospital setting “shall not be taken into protective custody for a period of longer than twenty-four hours” without a court order finding an emergency and the child is seriously endangered.
- Section 2(C) proposes that newborn children may be taken into protective custody without a court order (1) when medical staff identify the child is affected or withdrawing from substances used by parents, or (2) when the newborn is

exposed to the manufacturing of controlled substances, without requiring any evidence of effects of exposure on the child.

- Section 2(D) proposes that the taking of a newborn child into temporary custody shall not be deemed an arrest nor a crime indicated on a police record.
- Section 2 (E) defines “newborn child” as a child less than seventy-two hours old.
- Section 3 proposes classification as an emergency to public peace, health and safety and calls for HB303 to take effect immediately.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

- HB303 would appear to override NM case law, see: State of N.M. ex rel CYFD v. Amanda H., 2007-NMCA-029, ¶ 23, 141 N.M. 299, 304, 154 P.3d 674, 679. While evidence of a mother’s prenatal drug use can be relevant to show neglect, the court there disagreed that “a child who has been exposed to drugs prenatally is per se a neglected child under the Abuse and Neglect Act.”
- Currently, law enforcement officers are the only state agents that can place a child on 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. NMSA §32A-4-6. Then CYFD is charged with finding placement of children in state custody, with relatives, or other willing caregivers. It is unclear who is responsible for taking an infant into temporary custody under Section 2 of HB303. Section 2(A) indicates that a law enforcement officer may detain an infant in a 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 for taking the infant into custody.
- Section 2 introduces the concept of requiring a court order to detain an infant but does not indicate which party that is responsible for seeking a court order. Consider clarifying the party responsible for seeking a court order.
- HB303 proposes that an 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. For example, there may be associated costs for lodging and caring for the infant.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- The Children’s Code, NMSA 1978, §§32A-4-1, et seq., “Child Abuse and Neglect,” provides statutory basis and authority for a child to be placed in the State’s emergency protective custody, including temporary custody, when it is found to be “contrary to the welfare of the child” to remain in the home and after reasonable efforts are made by CYFD to locate a relative or other willing and able caretaker to prevent state custody. HB303 may conflict with these provisions for emergency custody in the Children’s Code.
- The Children’s Court rules, NMRA 10-101 et seq., and Children’s Code statutes, §§32A- 4-1, et seq. provide guidance for emergency placement of children, including newborns, in temporary state custody. HB303’s proposed timelines and procedures may conflict with those of the Children’s Court and Children’s code.
- Legal mechanisms exist in the Children’s Code, §32A-4-18, et seq. for findings of probable cause, court orders for continued custody of a child, etc., and provides that a child may be held in temporary custody for a period of 72 hours while making reasonable and active efforts, and must file a petition within those 72 hours or release the child to their parents. Further, 32A-4-18 orders that a hearing to determine probable cause shall be held within 10 days of a petition for temporary custody being filed with the Court. These timelines seem to conflict with those proposed in HB303.
- 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.
- The Indian Child Welfare Act of 1978, 25 U.S.C.A. § 1901 et seq., and New Mexico’s Indian Family Protection Act, 32A-28-1, NMSA, require active efforts to prevent removal of Native American children from their parents’, relatives’ or their tribes’ care, to protect the integrity of the Native American family. Consider amendments consistent with these provisions.
- HB303 may conflict with the New Mexico Comprehensive Addictions and Recovery Act Guidelines NMAC 8-10-5-1 et. seq, which provides procedures for handling newborn substance exposure.
- HB136 - FENTANYL EXPOSURE AS CHILD ABUSE - House Bill 136 (HB136) proposes an amendment to Article 6, Crimes Against Children and Dependents, Section 30-6-1, NMSA 1978, Abandonment or Abuse of a Child, subsection (J), relating to prima facie evidence of child abuse. This proposed amendment would add evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of fentanyl as prima facie evidence of abuse of a child.

TECHNICAL ISSUES

- Section 2(D) proposes that the taking of a newborn child into temporary custody shall not be deemed an arrest nor a crime indicated on a police record – it is unclear who’s criminal record or “arrest” the legislation is referring to, and whether it might refer to an infant being taken into custody as possibly an “arrest” of the child.
- Section 2(C)(1): Consider defining “affected.”

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A