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FISCAL IMPACT REPORT

SPONSOR <u>Reeb/Terrazas</u>	LAST UPDATED <u>2/4/2025</u>	ORIGINAL DATE <u>01/28/2025</u>
SHORT TITLE <u>Fentanyl Exposure as Child Abuse</u>	BILL	
	NUMBER	<u>House Bill 136</u>
	ANALYST <u>Chilton/Tolman</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	At least \$28.2	At least \$56.4	At least \$70.5	At least \$155.1	Recurring	General Fund
LOPD	At least \$225.1	At least \$219.9	At least \$219.9	At least \$664.9	Recurring	General Fund
Total	At least \$253.3	At least \$276.3	At least \$290.4	At least \$820.0	Recurring	General Fund

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

Relates to House Bill 205 and House Bill 173

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)
 Children, Youth and Families Department (CYFD)
 Office of Family Representation and Advocacy (OFRA)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 136

House Bill 136 (HB136) amends Section 30-6-1 NMSA 1978, which deals with crimes against children and dependents. Section 1, subsection J of the bill, would amend Section 30-6-1-J NMSA 1978 to add fentanyl to methamphetamine, where now knowing or intentional exposure to either of these two drugs would represent prima facie evidence of child abuse.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

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. HB136 is anticipated to increase the number of individuals in New Mexico's prison system or amount of time individuals spend incarcerated.

The changes proposed by HB136 would only have an impact when an individual who had knowingly and intentionally exposed a child to the use of fentanyl would otherwise not have been charged with a crime or subsequent offenses of abuse of a child. Currently, statute dictates, "A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third-degree felony and for second and subsequent offenses is guilty of a second-degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first-degree felony." Based on estimates of actual time served provided by the New Mexico Sentencing Commission (NMSC), the average length of stay for individuals who commit a third -degree felony is 2.50 years, 3.98 years for a third-degree felony, and 14.63 years for a first-degree felony. If the passage of HB136 results in at least one additional individual a year being charged and imprisoned for a first offense abuse of a child due to knowing and intentional exposure of a child to the use of fentanyl, this would cost NMCD at least \$28.2 thousand in FY26, \$56.4 thousand in FY27, and \$70.5 thousand in FY28.

In a similar bill proposed in 2024 (House Bill 106) and other bills that propose changes to the criminal code, which could increase the number of individuals charged with a crime or the penalties for that offense, the Law Office of the Public Defender (LOPD) indicated that if more trials result as a passage of HB136, LOPD may need to hire more trial attorneys with greater experience. The recurring agency cost for an entry-level associate trial attorney's mid-point salary including benefits is \$104,860 in Albuquerque/Santa Fe and \$113,350 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780 with start-up costs of \$5,210. Additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$102,226. Therefore, the passage of HB136 could cost LOPD at least \$225.1 thousand in FY25 and \$219.9 thousand in FY26 and FY27.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials, law enforcement to investigate and arrest individuals for the new crimes under HB136, and caseworkers at the Children, Youth and Families Department (CYFD) to investigate suspected cases of child abuse or neglect, are not included in this analysis, but could be moderate. The Office of Family Representation and Advocacy (OFRA), the Administrative Office of the Courts (AOC), and CYFD all indicate the possibility of an increased workload for courts and prosecuting and defending attorneys related to this bill. CYFD anticipates the likelihood of an increased workload as well. CYFD reports, "As of now, CYFD is unable to project the potential fiscal impact. However, it is anticipated that an increase in criminal prosecutions will lead to greater involvement of CYFD case workers in court proceedings and may result in a higher volume of abuse and neglect investigations."

SIGNIFICANT ISSUES

Fentanyl continues to be a major problem for the United States in general and New Mexico in particular. The rate of drug overdose deaths New Mexico has increased rapidly over the last 30 years (with a slight decline in the last two years), with fentanyl becoming the most likely cause. New Mexico ranks among the top six states in drug overdose deaths.

The New Mexico Poison and Drug Information Center takes numerous calls each year regarding fentanyl exposure (both prescribed and illicit) in children – according to their data, 22 in the last three years, probably most or all of them due to exposure to illicit fentanyl. Anecdotal information from providers of neonatal care at the University of New Mexico appear to affirm the incidence of prenatal exposure to fentanyl has increased markedly in recent years. Knowledge a child has been exposed to fentanyl in utero is useful in providing anticipatory treatment for withdrawal; however, it is possible that defining fentanyl exposure as child abuse would result in pregnant users not reporting that use to their prenatal or neonatal care providers.

According to the New Mexico Sentencing Commission:

The United States Drug Enforcement Administration has identified fentanyl as the “top drug threat” in Albuquerque. (See <https://www.dea.gov/engage/operation-engagealbuquerque>.) The rapid increase in fentanyl overdoses statewide since 2015 indicates that fentanyl exposure and abuse is a problem statewide, and thus that this bill may find wide application in the state. (See chart “12 Months Running Totals of Overdose Deaths by Drug Class, New Mexico 2015-2020 (Provisional)” available at <https://www.anotherwaynm.org/fentanyl-facts>.)

The risk of overdose is particularly high in children who are exposed to fentanyl. (See “Accidental Fentanyl Exposure in Children Can be Fatal” here: <https://www.nps.org.au/news/accidental-fentanyl-exposure-in-children-can-be-fatal>.) In 2021, 94 percent of pediatric deaths caused by opioid overdose in the United States were caused by fentanyl, and the majority of fentanyl poisonings occurred in the child’s own home. (See “Study Shows How the Nation’s Fentanyl Crisis Affects Kids” here: <https://medicine.yale.edu/news-article/new-study-from-yale-shows-how-the-nationsfentanyl-crisis-affects-kids/>.)

Section 32A-4-3 NMSA 1978 states:

A finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation, or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section. A volunteer, contractor or staff of a hospital or freestanding birthing center shall not make a report based solely on that finding...Nothing in this subsection shall be construed to prevent a person from reporting to the department a reasonable suspicion that a child is an abused or neglected child...

However, as noted by AOC, other exposure to fentanyl can now be considered prima facie evidence of child abuse according to Section 30-6-1-D1 NMSA 1978 if it “[places the child] in a situation that may endanger the child’s life or health,” whether or not House Bill 136 is passed.

DPS states that it:

Supports critical changes to New Mexico’s criminal code, particularly the classification of fentanyl exposure to children as child abuse. During investigations of “drug houses,” DPS often encounters children who are in direct contact with fentanyl, a highly potent and dangerous substance that can lead to death. By categorizing this exposure as child abuse, the law would provide greater protection for vulnerable children and enhance efforts to address the dangers associated with fentanyl.

In 2019, the Legislature amended the Children’s Code in response to the federal Comprehensive Addiction and Recovery Act (CARA), which mandated health providers create plans of care for drug-exposed newborns. CARA attempts to ensure the safety and well-being of substance-exposed infants by addressing the treatment needs of the infant and family members or caregivers. Under CARA, states are required to report the number of substance-exposed infants identified, the number for whom a plan of safe care was developed, and the number for whom a referral was made for appropriate services. The passage of HB136 would not amend the Children’s Code related to CARA.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This is a duplication of 2024 House Bill 106, with the exception that that bill, which was not passed, included an appropriation to the Department of Public Safety for enhanced investigation of suspected child abuse and neglect, including that related to fentanyl.

House Bill 205 and House Bill 173 would amend the state’s approach to CARA within the Children’s Code, Section 32A NMSA 1978.

TECHNICAL ISSUES

The statute states that “exposure to the use of methamphetamine [and now fentanyl would be added] shall be deemed prima facie evidence of abuse of the child.” It is not clear how “exposure” is defined.

OFRA and the New Mexico Attorney General both note that “The bill has no enumerated exception for lawful use of fentanyl, a drug which is commonly used in medical settings and may be prescribed legally.”

LAC/hj/RT