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FISCAL IMPACT REPORT

SPONSOR <u>Reeb/Lord</u>	LAST UPDATED <u>01/29/2024</u>
	ORIGINAL DATE <u>01/21/2024</u>
SHORT TITLE <u>Fentanyl Exposure as Child Abuse</u>	BILL NUMBER <u>House Bill 106</u>
	ANALYST <u>Chilton</u>

APPROPRIATION* (dollars in thousands)

FY24	FY25	Recurring or Nonrecurring	Fund Affected
	\$500.0	Recurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$100.0-500.0	\$100.0-500.0	\$200.0-1,000.0	Recurring	General Fund

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

Relates to House Bill 97, House Memorial 3

Sources of Information

LFC Files

Agency Analysis Received From

Sentencing Commission
Department of Public Safety (DPS)
Children, Youth and Families Department (CYFD)
Department of Health (DOH)
Public Defender's Office (LOPD)

Agency Analysis was solicited but Not Received From

Office of the Attorney General (NMAG)
Administrative Office of the Courts (AOC)
Early Childhood Education and Care Department (ECECD)

SUMMARY

Synopsis of House Bill 106

House Bill 106 (HB106) 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 bill appropriates \$500 thousand from the general fund to the Department of Public Safety for the purpose of expanding that agency’s investigation of “child and abuse and neglect cases to include those cases involving fentanyl.”

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

The appropriation of \$500 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY25 shall revert to the general fund.

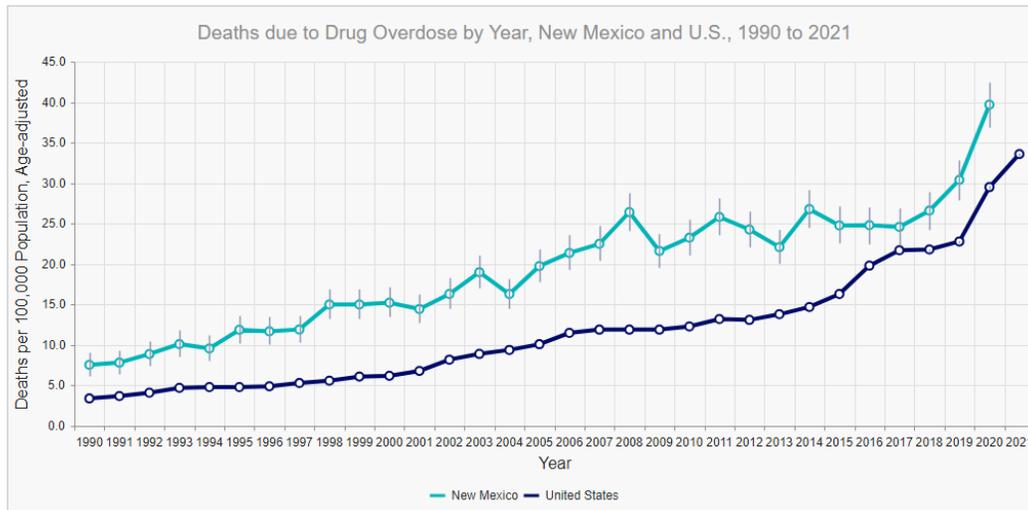
The costs of incarcerating those found to have knowingly exposed a child to fentanyl and providing foster care to children from a household as a result is difficult to estimate. CYFD states, “There is no appropriation contained in this bill for CYFD. At this time, CYFD cannot predict the potential fiscal implication to CYFD. However, an increase in criminal prosecution will have a concomitant increase in CFYD caseworker involvement in court cases and will likely increase the number of investigations needed to follow up on increased law enforcement investigations.”

Similarly, LOPD indicates that “If more trials result, LOPD may need to hire more trial attorneys with greater experience. Accurate prediction of the fiscal impact would be impossible to speculate. However, an entry-level Assistant Trial Attorney’s mid-point salary *including benefits* is \$121,723.30 in Albuquerque/Santa Fe and \$130,212.59 in the outlying areas (due to salary differential required to maintain qualified employees).

The number of additional investigations that would occur is unknown; therefore, the range of possible costs to CYFD is broad in the above table, at \$100,000-\$500,000 per year.

SIGNIFICANT ISSUES

Fentanyl continues to be a major problem for the United States in general and New Mexico in particular. As shown in the graph below, the rate of drug overdose deaths in this state have increased rapidly over the last 30 years, with fentanyl becoming the most likely cause. New Mexico ranks among the top six states in drug overdose deaths.



Source: NM Health Indicator Data and Statistics website, ibis.doh.nm.gov.

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 3 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 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 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-engage-albuquerque>.) 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>.)

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-nations-fentanyl-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...

The 2019 legislation creating that language, a response to the federal Comprehensive Addiction and Recovery Act, also 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.

DOH comments on studies done regarding the effectiveness of legal action in deterring fentanyl use in the context of parenthood:

Criminal laws that penalize substance use have not been proven to result in reductions of substance use. While increased penalties for substance use-related crimes have widely been used at both federal and state levels, there is no evidence that increased sentencing results in decreases rates of substance use, overdose mortality, or drug-related criminal activity. According to a report by Pew Charitable Trust, there is no correlation between increased imprisonment for drug related crimes and substance use rates (<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>).

The most recent national report from the Children’s Bureau, *Child Maltreatment 2021*, suggests that drug abuse by a child’s caregiver is a common risk factor in over a quarter (26 percent) of nationally reported cases of child maltreatment (Children’s Bureau, Administration on Children, Youth, and Families <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf>). A recent study, notes that child maltreatment and parental substance use are issues of “significant concern” (Gandhi KD, et al. *Child Abuse & Neglect*, 2021), but harms from parental substance use primarily derive from behavioral changes that negatively impact the family (Daley, D, Smith E., Balogh, D., and Toscaloni J. 2018 [Commonwealth: A Journal of Pennsylvania Politics and Policy. 20: 2-3](#)).

A recent survey of state statutes related to substance use indicates that in at least 32 other states, as in NM, exposure to illegal drug activity (e.g. manufacturing, distribution) or physical, mental, or emotional harms caused to a child while a parent or caregiver is under the influence of substances is considered child abuse (Child Welfare Information Gateway (2020). <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/parentalsubstanceuse/>). A caregiver’s use of a controlled substance that impairs their “ability to adequately care for” a child is considered child abuse in at least 13 states (California, Delaware, Florida, Iowa, Kentucky, Minnesota, New York, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, and West Virginia).

CYFD “anticipates that this bill will result in an increased rate of criminal prosecution of parents, guardians, or legal custodians for whom evidence exists that they have knowingly and intentionally exposed their child(ren) to fentanyl, which is likely to result in additional obstacles to family reunification,” and, as noted by DOH, increased CYFD caseloads.

LOPD emphasizes the differences between methamphetamine and fentanyl: “Unlike methamphetamine—the only other controlled substance included in Subsection J that can establish a prima facie case of child abuse when there is evidence that a child has been knowingly or intentionally exposed—pharmaceutical fentanyl is an opioid that can be prescribed by doctors to treat severe pain. *See Fentanyl Facts*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Sept. 2023) <https://www.cdc.gov/stopoverdose/fentanyl/index.html>. Children can be prescribed fentanyl in various forms to treat moderate to severe pain resulting from acute and chronic pain symptoms as well as post-surgical pain. *See* Frederick T. O’Donnell, MD and Kathleen R. Rosen, MD, *Pediatric Pain Management: A Review*, 111 MO. MED. 231-237 (2014) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6179554/>. As written, HB 106 does not account for legitimate medical reasons that a child may be knowingly and intentionally exposed to fentanyl for pain management. This could theoretically result in charges of child abuse against parents, doctors, or pharmacists who facilitate a child’s medical use of fentanyl.”

RELATIONSHIP

House Bill 106 relates to House Bill 97 and House Memorial 3, which each set up a taskforce to study prevention, detection, and treatment of intrauterine drug exposure.

TECHNICAL ISSUES

The Sentencing Commission notes, “As written, HB106 does not distinguish between exposure to the illicit use of fentanyl and exposure to the legal use of prescribed fentanyl. It is also unclear what would constitute exposure for the purposes of the statute.”

The phrase “child and abuse and neglect cases to include those cases involving fentanyl” would appear to give the Department of Public Safety the ability to use the appropriation to investigate all cases of child abuse and neglect rather than just those involving fentanyl and methamphetamine.

DOH notes that, “Section 30-6-1 para. I. NMSA 1978 already states that evidence of a child being in a vehicle, building, or other premises where chemicals related to manufacturing of controlled substances is prima facie evidence of abuse. However, in both the current language and the proposed addition to 30-6-1 para. J. only use is specified and there is no distinction made between use of fentanyl or methamphetamine as prescribed (both substances may be prescribed) or illicit use of these substances.”

The word “child” in this section of statute neither explicitly includes nor excludes unborn children; thus, it is unclear whether the exposure of an unborn child to fentanyl would be considered prima facie evidence of child abuse according to this statute.

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