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## FISCAL IMPACT REPORT

SPONSOR Foley DATE TYPED 2/7/04 HB 485  
 SHORT TITLE Drug Manufacturing as Child Abuse SB \_\_\_\_\_  
 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)

Relates to HB 112 and SB 161.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of the Public Defender  
 Office of the Attorney General  
 Corrections Department  
 Children, Youth and Families Department

### SUMMARY

#### Synopsis of Bill

HB 485 amends NMSA 1978, § 30-6-1 (2001) (Abandonment or abuse of a child) to include a new subsection (F), and it re-names the old (F) as (G). The new section provides that a person who commits abuse of a child that does not result in the child's death or great bodily harm by allowing the child to enter or remain in a building or motor vehicle that contains chemicals or equipment used for the manufacture of a controlled substance is guilty of a second degree felony. Upon a second or subsequent conviction, the person would be guilty of a first degree felony.

#### Significant Issues:

#### **The Department of the Public Defender states:**

- According to an article in the Albuquerque Tribune, the New Mexico Department of Public Safety estimates that children are present at approximately 30% of the meth labs it investigates.

- HB 485 is effective and to-the-point. HB 485 does a much better job of addressing the problem of proximity of kids to drug manufacturing than do the companion bills SB 161/HB 112 that were introduced earlier in the session.
- HB 485 recognizes that 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 or facilities. Unlike SB 161/HB 112, HB 485 actually increases the ability of law enforcement to protect children (by seriously increasing the penalties for child abuse under these circumstances). Also unlike SB 161/HB 112, HB 485 would not lead to constitutional challenges in the courts. By tying the enhanced child abuse penalties to the already enacted child abuse statute, HB 485 avoids the due process pitfalls created by the unfortunately general language of SB 161/HB 112.
- Under the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the jury would have to make a specific determination that the child abuse resulted from allowing the child to remain in a place near drug manufacturing chemicals or equipment. This would require nothing more than one additional jury instruction and question, and would not be burdensome to the courts, the prosecutors, or defense attorneys.

**The Children, Youth and Families Department states:**

- The proposed language is problematic. The natural assumption is that a person could only be guilty of the crime if he/she knew that chemicals or equipment were in the building or motor vehicle, and then allowed the child to be present, but the amendment is worded in such a way that someone who does not know about the chemicals or equipment could arguably be accused of the crime.

**The Office of the Attorney General states:**

- This proposed provision requires a higher penalty than subsection (D)(1) of the same statute which defines basic child abuse as “of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be placed in a situation that may endanger the child’s life or health.” The penalty under this existing provision is a third degree felony, and a second degree felony for subsequent offenses.

With proposed new provision relating to the presence of chemicals, whether this separate category where there is no great bodily harm or death should be a higher classification of a felony than subsection (D) (1) should be questioned.

**FISCAL IMPLICATIONS**

House Bill 485 does not contain an appropriation. If enacted into law, there will, however, be additional fiscal and administrative costs for the Children, Youth and Families Department, law enforcement entities, corrections facilities, and legal agencies. Children deemed abused often are placed in state custody. The enhanced penalties will result in fewer plea bargains, more trials, more appeals, and lengthier periods of incarceration, probation and parole.

**The Corrections Department offers:**

- The contract/private prison annual costs of incarcerating an inmate based upon Fiscal Year 03 actual expenditures is \$20,720 per year for males. The cost per client to house a female inmate at a privately operated facility is \$26,313 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.
- The cost per client in Probation and Parole for a standard supervision program is \$1,452 per year. The cost per client in Intensive Supervision programs is \$2,852 per year. The cost per client in department-operated Community Corrections programs is \$4,371 per year. The cost per client in privately-operated Community Corrections programs is \$9,151 per year. The cost per year for male and female residential Community Corrections programs is \$20,725.
- This bill could result in a very minor increase in costs to the Corrections Department due to more offenders being convicted of this crime.

**The Children, Youth and Families Department offers:**

- CYFD could potentially experience an increase in child protective services reports, investigations and custody placements.

**OTHER SUBSTANTIVE ISSUES**

**The Children, Youth and Families Department notes:**

- The intent of the sponsor is probably to define a child abuse crime that is committed by persons who have knowledge of the presence of chemicals and equipment for the manufacture of a controlled substance. Perhaps the language could be amended to clarify that this type of child abuse crime would only be committed by persons having knowledge of the chemicals and equipment.
- Also, felony crimes usually require some level of criminal intent. In this case, the criminal intent would be in knowing that the child is in the presence of chemicals or equipment for the manufacture of controlled substances. Again, the language of the bill could be amended to clarify the requisite intent.

**AMENDMENTS**

**The Children, Youth and Families Department proposes:**

- The language could be changed to clarify whether knowledge of the presence of chemicals or equipment for the manufacture of controlled substances is a necessary element of the crime. For example: Notwithstanding the provisions of Subsection E of this section, “a person who commits abuse of a child that does not result in the child’s death or great bodily harm, by allowing the child to enter or remain in a building or motor vehicle that ~~contains~~ the person knows to contain chemicals or equipment used for the manufacture of a controlled substance. . .”