

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date 1-18-24

Bill No: HB 106-280

Sponsor: Andrea Reeb and Stefani Lord
Short Title: Fentanyl Exposure as Child Abuse

Agency Name and Code LOPD-280
Number: _____
Person Writing Melanie McNett
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None known.
Duplicates/Relates to Appropriation in the General Appropriation Act: None known.

SECTION III: NARRATIVE

BILL SUMMARY

HB 106 is somewhat similar to prior proposed bill: 2023 HB 221

Synopsis: HB 106 proposes to amend Subsection J of the child abuse statute, NMSA 1978, § 30-6-1, to include evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of fentanyl as establishing a prima facie case of child abuse.

The bill also includes an appropriation of \$500,000 from the general fund to the department of public safety to expand its investigation of child abuse and neglect cases to include cases involving fentanyl.

FISCAL IMPLICATIONS

This bill proposes to create a presumption of guilt based on particular facts within the statutory definition of child abuse, which would theoretically result in more felony prosecutions. Analyst does not have access to data that would inform an estimate of how many new prosecutions this bill might generate, but anecdotally presumes that—without any threshold quantity of drugs detected or requirement that the amount be medically harmful—the number could be exceedingly high.

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). A mid-level felony capable Associate Trial Attorney’s mid-point salary *including benefits* is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary *including benefits* is \$149,063.13 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126,722.33.

SIGNIFICANT ISSUES

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.

PERFORMANCE IMPLICATIONS

See Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.