

LFC Requester:

Carlie Malone

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 1/22/2026

Check all that apply:

Bill Number: HB 84

Original Correction
Amendment Substitute

Sponsor: Rep. Gail Armstrong

Agency Name and 305 – New Mexico

Code Number: Department of Justice

Person Writing

Short Title: Exposure to Certain Drugs as
Child Abuse

Analysis: Nick Nuñez

Phone: 505-607-7145

Email: Fir.request@nmdoj.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

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 84 aims to reverse portions of the Plan of Safe Care Bill enacted by the legislature in 2019 and updated in 2025. It provides for legislative amendments to the Criminal Code, the Voluntary Placement and Family Services Act, and the Abuse and Neglect Act to redefine prenatal drug exposure to Scheduled I and II Controlled Substances as criminal child abuse. Further, any parent, guardian or custodian of a child who was born prenatally exposed to drugs and who does not comply with a Plan of Safe Care is considered to have neglected the child.

Section 1 of HB 84 amends definitions within the criminal code, including:

Section 1(A)(4) defines “newborn” as a child who is less than seventy-two hours old.

Section 1(D) provides another definition of criminal child abuse to be “introducing a Schedule I or Schedule II controlled substance as provided in the Controlled Substance Act into the person’s body” if they know they are pregnant and upon birth following the pregnancy, the newborn tests positive for that substance. Subsection (E) provides that if a person lawfully uses a Schedule II controlled substance, it is not criminal child abuse if the newborn child tests positive at birth.

Section 1(K) adds fentanyl as a drug that if a newborn child has been knowingly and intentionally exposed to the use of, the evidence of such will be prima facie evidence of child abuse.

Section 2 of HB 84 amends definitions within the Voluntary Placement and Family Services Act, including:

Section 2(I) defines “newborn” as a child who is less than seventy-two hours old.

Section 2(K) defines “substance-exposed newborn” as a newborn who is affected by prenatal exposure to a controlled substance, including a prescribed or non-prescribed drug, or alcohol ingested by the newborn’s mother while the newborn was in utero.

Section 3 of HB 84 amends NMSA 1978 § 32A-3A-13.

Section 3 substitutes the word “newborn” for the words “child” or “infant.” The drafter of the bill redefines “child” as a newborn under the new definition proposed in Section 2(I).

Section 3(H) allows a health care provider (other than the person involved in creating a CARA Plan for a substance-exposed newborn) to make an abuse and neglect report to CYFD’s Statewide Central Intake division. Upon receiving the report, CYFD is obligated to then review the substance-exposed infant’s CARA Plan and determine whether the substance-exposed infant’s needs are being met. If the assessment results show that the substance-exposed infant’s needs are not being met, CYFD is required to initiate an investigation and update the newborn’s CARA Plan based on the findings of the investigation.

Section 4 of HB 84 amends NMSA 1978 § 32A-3A-14.

Section 4(B)(4) adds a new provision that requires any family assessment done by CYFD to include further inquiry into whether a child's parents, relatives, guardians, custodians or caretakers have had any past or potential relevant involvement with CYFD's Protective Services Division.

Section 5 of HB 84 amends NMSA 1978 § 32A-4-2.

Section 5(G)(6) presents a definitional change for "neglected child" to include a child of any parent, guardian or custodian who has failed to comply with a Plan of Safe Care, and adds the same definitional change to "newborn child."

Section 6 of HB 84 amends NMSA 1978 § 32A-4-3.

Section 6(G) mandates reporting of abuse and neglect for parents, guardians, or custodians if a newborn tests positive for methamphetamine, fentanyl, cocaine, or heroin. This section removes previous language from the 2019 Plan of Safe Care Bill, which indicated that drug exposure alone did not require a report. Now, a mandatory report must be filed if a newborn's toxicology screen is positive for any of these substances.

Section 6(I)(3) includes the same definition of substance-exposed newborn defined in Section 2(K).

Section 7 of HB 84 adds a new section to the Abuse and Neglect Act.

Section 7(A) provides that CYFD is required to get a court order to take a newborn into temporary protective custody, but that a newborn may be held in a hospital by law enforcement while a court order is being pursued upon a recommendation of the health care authority, or a medical professional.

Section 7(B) provides that a newborn who is not in a hospital setting cannot be taken into temporary protective custody for more than 24 hours without a court order that includes appropriate findings.

Section 7(C) adds a new section to the Abuse and Neglect Act which allows CYFD to take temporary protective custody of newborns without a court order if a physician, registered nurse, licensed practical nurse, or physician assistant identifies the newborn as being affected by substance abuse or demonstrating withdrawal symptoms from prenatal drug exposure. CYFD can also take temporary protective custody if it is found that a newborn is subject to an environment exposing the newborn to a laboratory for the unlawful manufacture of controlled substances.

Section 8 of HB 84 includes an emergency clause.

FISCAL IMPLICATIONS

None for the NMDOJ.

SIGNIFICANT ISSUES

Section 1(D)(2) includes only Schedule I and Schedule II controlled substances as substances that will trigger child abuse. The definition of "substance-exposed newborn" (Section 2(K)) includes exposure to controlled substances *or* alcohol. It is unclear if the drafter intended for alcohol to be another substance for which, if a newborn tests positive at birth, the mother could face charges for child abuse. If so, then Section 1(D)(2) would require inclusion of alcohol as another substance.

Generally, HB 84's definition of "newborn" may need to be revisited. "Newborn" is defined as a child who is less than 72 hours old. The toxicology tests performed by medical providers in the hospital to test for substance exposure may not yield results within 72 hours of a newborn's birth. This could affect some of the practical implications of the bill.

- According to the World Health Organization, the newborn period extends up to 28 days after birth. [Newborn health WPRO](#).

HB 84 Section 6's inclusion of a newborn's positive test for methamphetamine, heroin, fentanyl, and/or cocaine as triggering a mandatory report may be underinclusive in terms of the amount of substances that should trigger a report. For example, oxycodone is still a fairly commonly-used Controlled Substance, and a positive screen for oxycodone when it has not been prescribed would not trigger a mandatory report. For purposes of consistency, it may be desirable to mirror Section 6 with Section 1's reference to non-prescribed Schedule I or Schedule II Controlled Substances.

PERFORMANCE IMPLICATIONS

Expansion of child abuse/neglect grounds may impact investigative and prosecutorial decision-making of NMDOJ special agents and prosecutors.

ADMINISTRATIVE IMPLICATIONS

None for the NMDOJ.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

The drafter may consider placing Section 3(H) in NMSA 1978 § 32A-3A-14 rather than in § 32A-3A-13, where it is currently placed. Section 32-A-14 already deals with notification to the department when there is noncompliance with a Plan of Care. Section 3(H) of HB 84 also addresses noncompliance with a CARA plan, but instead has a medical provider making a SCI referral to CYFD. Section 32A-3A-14 as written currently requires the Health Care Authority, an MCO insurance provider or a care coordinator to advise CYFD if there is noncompliance with a CARA Plan. Under the current version of Section 32A-3A-14 and the proposed HB 84 Section 3(H), CYFD will likely be required to perform an assessment that analyzes the efficacy of the CARA Plan, and they direct CYFD to strengthen the CARA plan if it is not working. It seems as if these sections could be combined into one section rather than having them in two separate sections with slightly different outcomes depending on who makes the report.

OTHER SUBSTANTIVE ISSUES

The definition of "substance-exposed newborn" in Section 2(K) includes the term "affected by prenatal exposure" which may be considered vague. Does affected mean tests positive for a controlled substance in a toxicology test? Does it mean is born with medical condition that stems directly from prenatal substance use? The drafter may consider clarifying the scope of "affected by prenatal exposure."

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.