

LFC Requester:

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AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://agencyanalysis.nmlegis.gov) and email to billanalysis@dfa.nm.gov*****(Analysis must be uploaded as a PDF)*****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** 1/22/26*Check all that apply:***Bill Number:** HB 84Original ☒ Correction ☐Amendment ☐ Substitute ☐**Agency Name
and Code**AOC
218**Number:****Sponsor:** Rep. Gail Armstrong**Short** Exposure to Certain Drugs as**Person Writing** Alison B. Pauk**Title:** Child Abuse**Phone:** 505-470-6558 **Email** aocabp@nmcourts.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 84 amends Section 30-6-1 NMSA 1978, to expand the definition of abuse of a child to include introducing a Schedule I or Schedule II controlled substance into a person's body if: (a) the person knows that the person is pregnant; and (b) upon the birth following that pregnancy, the newborn tests positive for that substance. The law provides that the provisions of this section do not apply to a person who lawfully uses a Schedule II controlled substance and subsequently births a child that tests positive for that substance. The Section 30-6-1 amendment also provides that evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of fentanyl shall be deemed prima facie evidence of abuse of the child.

HB 84 amends Section 32A-3A-2 NMSA 1978 to add definitions for "newborn" (a child who is less than 72 hours old, and "substance exposed newborn" (newborn 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).

HB 84 amends Section 32A-3A-13(H) NMSA 1978 to provide that if a health care provider or other person involved in creating a substance-exposed newborn's plan of safe care has concerns about the continued safety of the newborn prior to or after the newborn's discharge from a hospital or birthing facility, the health care provider or person shall make a report regarding the concerns to the department's statewide central intake. Upon receiving the report, the department shall review the plan of safe care for the newborn who is the subject of the report and shall:

- (1) perform an assessment to determine whether the newborn's plan of safe care:
 - (a) is complete and has been provided to the persons or entities required pursuant to Paragraph (1) of the Subsection B of this section;
 - (b) adequately addresses the newborns' health, safety and well-being; and
 - (c) adequately addresses any substance use disorder treatment needs of the newborn's family and caregivers; and
- (2) determine whether the newborn's needs are being met given the results of the assessment, and if the newborn's needs are not being met, the department shall:
 - (a) initiate an investigation; and
 - (b) update the newborn's plan of safe care based on the findings in the investigation and include in the plan copies of any reports regarding the newborn that are received by the department's statewide central intake.

The HB 84 amendments to Section 32A-3A-13 NMSA 1978 remove all references to "child" or "children" and replace them with "newborn" or "newborns".

HB 84 amends Section 32A-3A-14 NMSA 1978 to add to the definition of "family assessment," an assessment of any past or potential relevant involvement with the protective services division of the department.

HB 84 also amends Sections within the Abuse and Neglect Act, as follows:

- Section 32A-4-2 NMSA 1978 to add to the definition of “neglected child” a child whose parent, guardian or custodian has failed to comply with a plan of safe care, pursuant to Section 32A-3A-13 NMSA 1978, and to add a definition of “newborn” to mean a child who is less than seventy-two hours old.
- Section 32A-4-3 NMSA 1978 to provide that unless a toxicology screen of a newborn is positive for methamphetamine, fentanyl, cocaine or heroin, a finding that a newborn was exposed to a substance other than those or is being affected by substance abuse shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Section A of this section. Also provides a definition for “substance-exposed newborn” to mean 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.

Finally, HB 84 adds a new section of the Abuse and Neglect Act, governing taking newborns into temporary protective custody. Under Section 7, Subsection A, a newborn who is in a hospital setting shall not be taken into temporary protective custody without a court order that includes findings that an emergency situation exists and that the newborn is seriously endangered. Under Subsection B, a newborn who is not in a hospital setting shall not be taken into temporary protective custody for a period of longer than 24 hours without a court order that includes findings that an emergency situation exists and that the newborn is seriously endangered. Subsection C provides the circumstances under which a newborn may be taken into temporary protective custody without a court order. HB 84 provides that the taking of a newborn into temporary custody in accordance with this section shall not be deemed an arrest of the newborn, nor shall it be an event that results in the creation of any law enforcement report or record.

The Act contains an emergency clause.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and appeals from convictions, as well as the filing of petitions alleging neglect or abuse, and proceedings seeking a court order for temporary protective custody. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

1) In July of 2025, the governor and the Children, Youth and Families Department (CYFD) released a new directive for drug-exposed newborns, providing that children born exposed to methamphetamines, fentanyl, poly-substance or diagnosed with fetal alcohol syndrome must be taken into state custody, and an abuse/neglect petition must be filed. Under the directive, children are also put on a 72-hour hold to determine whether they will go back home with their parents or remain in state custody. Advocates were supportive of the directive, but expressed concerns about whether the state had enough foster homes to support the newborns coming into state custody. See [*New CYFD directive will hold infants who were born exposed to illegal substances*](#), KOAT, July 15, 2025.

HB 84 creates procedures for the taking of a newborn into temporary custody, including providing direction as to when a newborn may be taken into protective custody without a court order and when a court order is needed.

2) The HB 84 amendment to the Section 32A-4-2 NMSA 1978 definition of “neglected child” to include a child whose parent, guardian or custodian has failed to comply with a plan of safe care, pursuant to Section 32A-3A-13 NMSA 1978, will result in an increase of petitions being filed for neglect, under the Abuse and Neglect Act, Section 32A-4-1 NMSA 1978, et. seq.

3) HB 84’s new Subsection K of Section 32A-3A-2 and new Subsection I(3) of Section 32A-4-3 define “substance-exposed newborn” to include prenatal exposure to both prescribed and non-prescribed drugs. Additionally, the proposed amendments to criminal law Section 30-6-1, new Subsection E, carves out an exception to the crime of child abuse when a person lawfully uses a Schedule II controlled substance and subsequently births a child that tests positive for that substance. Sections 32A-3A-2 and 32A-4-3 do not provide that exception, leaving the door open for the possibility of a newborn testing positive, and removed, for a controlled substance lawfully used by the parent during birth or otherwise.

Additionally, the proposed definition of “substance-exposed newborn” may be overly broad and unintentionally encompass newborns whose mothers were taking medications prescribed during pregnancy.

The single biggest challenge in identifying prescription drug abuse in pregnancy by drug testing is separating out misuse from other causes such as dietary poppy seeds, legitimate maternal prescriptions, or medications given to mother or infant in the peripartum period.

See “The Challenge of Detecting Prescription Opioid Abuse in Pregnancy,” Matthew D. Krasowski, page 2, <https://www.iowaepsdt.org/wp-content/uploads/2015/03/Fall13.pdf>

Even common medications prescribed by physicians during pregnancy, such as antidepressants, can cause a newborn to suffer from short-term symptoms of quitting the medication. (See *Antidepressants: Safe During Pregnancy*, Mayo Clinic, <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/antidepressants/art-20046420>. See also *Antidepressants and Pregnancy: What to Know*, John Hopkins Medicine, <https://www.hopkinsmedicine.org/health/wellness-and-prevention/antidepressants-and-pregnancy-tips-from-an-expert> “About 30 percent of babies whose mothers take SSRIs will experience neonatal adaptation syndrome, which can cause increased jitteriness, irritability and respiratory distress (difficulty breathing), among other symptoms.”)

4) HB 84 may result in the plan of care being viewed as a punitive tool by those it is meant to help, discouraging pregnant persons from seeking prenatal care and treatment for substance use disorders. This could result in greater risks for pregnant persons and their child[ren] and lessen opportunities for treatment for pregnant persons as well as appropriate therapy for exposed infants. “Early identification and treatment of women with substance use disorders and/or dependence is a critical component of preconception and prenatal care and is important for supporting healthy birth outcomes.” See *Criminalization of Pregnant Women with Substance Use Disorders*, AWHONN Position Statement, [https://www.jognn.org/article/S0884-2175\(15\)31770-6/fulltext](https://www.jognn.org/article/S0884-2175(15)31770-6/fulltext)

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Drug testing can be costly and time consuming, and some tests must be sent out of state for the actual lab testing. Additional costs may be incurred for paying experts to testify at court hearings about drug testing.

The National Center on Substance Abuse and Child Welfare (NCSACW) developed two briefs to help child welfare agencies develop policy and practice protocols regarding the use of drug testing, while offering general considerations for their agencies and staff. In NCSACW’s first brief, called, “Brief 1 - Considerations for Developing a Child Welfare Drug Testing Policy and Protocol” and found at <https://ncsacw.acf.gov/files/drug-testing-brief-1-508.pdf> , they state:

Drug testing is just one part of a comprehensive approach to identify, assess, and support parents in the child welfare system affected by substance use. It is also important to recognize that not all substance use leads to child safety concerns, and not all parents brought to the attention of the child welfare system—with substance use identified as a contributing factor—will meet the criteria for a SUD diagnosis. Still, parents referred to the child welfare system often have problematic substance use that may go undetected. In these cases, drug testing is simply one tool to detect use at a certain level and point in time. Drug testing cannot provide information on the nature or severity of someone’s substance use or determine whether a child is safe.

In child welfare, drug testing should be part of a comprehensive approach that includes evidence-based screening, comprehensive assessment, and collaboration with SUD treatment providers to determine if a parent has a SUD and the need for further treatment.

In their second brief entitled, “Brief 2 - Drug Testing for Parents Involved in Child Welfare: Three Key Practice Points,” and found at <https://ncsacw.acf.gov/files/drug-testing-brief-2-508.pdf> NCSACW states:

Drug testing is costly and limited in terms of determining child risk and safety. Agencies risk relying too much on drug test results to inform decisions on child removal, parent-child family time, reunification, and termination of parental rights. When administered inappropriately or inconsistently (e.g., punitively), drug tests can perpetuate stigma about substance use disorders.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS