

HOUSE BILL 84

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

Gail Armstrong

AN ACT

RELATING TO CHILDREN; PROVIDING THAT EXPOSURE OF A CHILD TO A SCHEDULE I OR SCHEDULE II CONTROLLED SUBSTANCE CONSTITUTES ABUSE OF A CHILD; ADDING EXPOSURE TO THE USE OF FENTANYL AS EVIDENCE OF ABUSE OF A CHILD; AMENDING AND UPDATING SECTIONS OF THE CHILDREN'S CODE TO PROVIDE FOR PLANS OF SAFE CARE FOR A SUBSTANCE-EXPOSED NEWBORN; PROVIDING FOR REPORTS TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT CENTRAL INTAKE SYSTEM REGARDING CERTAIN NEWBORNS WHO MAY BE AT RISK; AMENDING THE DEFINITION OF "NEGLECTED CHILD" IN THE ABUSE AND NEGLECT ACT; PROVIDING FOR TAKING A NEWBORN INTO TEMPORARY PROTECTIVE CUSTODY UNDER CERTAIN CIRCUMSTANCES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:

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1 "30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

2 A. As used in this section:

3 (1) "child" means a person who is less than
4 eighteen years of age;

5 (2) "neglect" means that a child is without
6 proper parental care and control of subsistence, education,
7 medical or other care or control necessary for the child's
8 well-being because of the faults or habits of the child's
9 parents, guardian or custodian or their neglect or refusal,
10 when able to do so, to provide them; [and]

11 (3) "negligently" refers to criminal
12 negligence and means that a person knew or should have known of
13 the danger involved and acted with a reckless disregard for the
14 safety or health of the child; and

15 (4) "newborn" means a child who is less than
16 seventy-two hours old.

17 B. Abandonment of a child consists of the parent,
18 guardian or custodian of a child intentionally leaving or
19 abandoning the child under circumstances whereby the child may
20 or does suffer neglect. A person who commits abandonment of a
21 child is guilty of a misdemeanor, unless the abandonment
22 results in the child's death or great bodily harm, in which
23 case the person is guilty of a second degree felony.

24 C. A parent, guardian or custodian who leaves an
25 infant less than ninety days old in compliance with the Safe

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1 Haven for Infants Act shall not be prosecuted for abandonment
2 of a child.

3 D. Abuse of a child consists of a person knowingly,
4 intentionally or negligently, and without justifiable cause:

5 (1) causing or permitting a child to be:

6 [←1] (a) placed in a situation that may
7 endanger the child's life or health;

8 [←2] (b) tortured, cruelly confined or
9 cruelly punished; or

10 [←3] (c) exposed to the inclemency of
11 the weather; or

12 (2) introducing a Schedule I or Schedule II
13 controlled substance as provided in the Controlled Substances
14 Act into the person's body if:

15 (a) the person knows that the person is
16 pregnant; and

17 (b) upon the birth following that
18 pregnancy, the newborn tests positive for that substance.

19 E. The provisions of Paragraph (2) of Subsection D
20 of this section do not apply to a person who lawfully uses a
21 Schedule II controlled substance and subsequently births a
22 child that tests positive for that substance.

23 [E.] F. A person who commits abuse of a child that
24 does not result in the child's death or great bodily harm is,
25 for a first offense, guilty of a third degree felony and for

1 second and subsequent offenses is guilty of a second degree
2 felony. If the abuse results in great bodily harm to the
3 child, the person is guilty of a first degree felony.

4 [F.] G. A person who commits negligent abuse of a
5 child that results in the death of the child is guilty of a
6 first degree felony.

7 [G.] H. A person who commits intentional abuse of a
8 child twelve to eighteen years of age that results in the death
9 of the child is guilty of a first degree felony.

10 [H.] I. A person who commits intentional abuse of a
11 child less than twelve years of age that results in the death
12 of the child is guilty of a first degree felony resulting in
13 the death of a child.

14 [I.] J. Evidence that demonstrates that a child has
15 been knowingly, intentionally or negligently allowed to enter
16 or remain in a motor vehicle, building or any other premises
17 that contains chemicals and equipment used or intended for use
18 in the manufacture of a controlled substance shall be deemed
19 prima facie evidence of abuse of the child.

20 [J.] K. Evidence that demonstrates that a child has
21 been knowingly and intentionally exposed to the use of
22 methamphetamine or fentanyl shall be deemed prima facie
23 evidence of abuse of the child.

24 [K.] L. A person who leaves an infant less than
25 ninety days old at a hospital may be prosecuted for abuse of

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1 the infant for actions of the person occurring before the
2 infant was left at the hospital."

3 **SECTION 2.** Section 32A-3A-2 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 64, as amended) is amended to read:

5 "32A-3A-2. DEFINITIONS.--As used in the Voluntary
6 Placement and Family Services Act:

7 A. "child or family in need of family services"
8 means a family:

9 (1) whose child's behavior endangers the
10 child's health, safety, education or well-being;

11 (2) whose child is excessively absent from
12 public school as defined in the Attendance for Success Act;

13 (3) whose child is absent from the child's
14 place of residence for twenty-four hours or more without the
15 consent of the parent, guardian or custodian;

16 (4) in which the parent, guardian or custodian
17 of a child refuses to permit the child to live with the parent,
18 guardian or custodian; or

19 (5) in which the child refuses to live with
20 the child's parent, guardian or custodian;

21 B. "family services" means services that address
22 specific needs of the child or family;

23 C. "guardian" means a person appointed as a
24 guardian by a court or Indian tribal authority or a person
25 authorized to care for a child by a parental power of attorney

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1 as permitted by law;

2 D. "guardianship assistance agreement" means a
3 written agreement entered into by the prospective guardian and
4 the department or Indian tribe prior to the establishment of
5 the guardianship by a court;

6 E. "guardianship assistance payments" means
7 payments made by the department to a kinship guardian or
8 successor guardian on behalf of a child pursuant to the terms
9 of a guardianship assistance agreement;

10 F. "guardianship assistance program" means the
11 financial subsidy program provided for in the Voluntary
12 Placement and Family Services Act;

13 G. "kinship" means the relationship that exists
14 between a child and a relative of the child, a godparent, a
15 member of the child's tribe or clan or an adult with whom the
16 child has a significant bond;

17 H. "managed care organization" means a person or
18 entity eligible to enter into risk-based capitation agreements
19 with the health care authority to provide health care and
20 related services;

21 I. "newborn" means a child who is less than
22 seventy-two hours old;

23 [~~I.~~] J. "subsidized guardianship" means a
24 guardianship that meets subsidy eligibility criteria pursuant
25 to the Voluntary Placement and Family Services Act; [~~and~~]

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1 K. "substance-exposed newborn" means a newborn who
2 is affected by prenatal exposure to a controlled substance,
3 including a prescribed or non-prescribed drug, or alcohol
4 ingested by the newborn's mother while the newborn was in
5 utero; and

6 [J.] L. "voluntary placement agreement" means a
7 written agreement between the department and the parent or
8 guardian of a child."

9 SECTION 3. Section 32A-3A-13 NMSA 1978 (being Laws 2019,
10 Chapter 190, Section 3, as amended) is amended to read:

11 "32A-3A-13. PLAN OF SAFE CARE--SUBSTANCE-EXPOSED
12 NEWBORNS--GUIDELINES--CREATION--DATA SHARING--TRAINING.--

13 A. By July 1, 2026, the health care authority, in
14 consultation with medicaid managed care organizations, private
15 insurers, the office of superintendent of insurance, the
16 children, youth and families department and the department of
17 health, shall develop rules to guide hospitals, birthing
18 centers, medical providers, medicaid managed care organizations
19 and private insurers in the care of newborns who exhibit
20 physical, neurological or behavioral symptoms consistent with
21 prenatal drug exposure, withdrawal symptoms from prenatal drug
22 exposure or fetal alcohol spectrum disorder.

23 B. Rules shall include requirements and guidelines
24 [to] for hospitals, birthing centers, medical providers,
25 medicaid managed care organizations and private insurers

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regarding:

(1) participation in the plan of safe care development process, which may occur at a prenatal or perinatal medical visit and shall occur prior to a substance-exposed [child's] newborn's discharge from a hospital. The plan of safe care development process shall allow for the creation of a written plan of safe care that shall be sent to:

(a) the [child's] newborn's primary care physician;

(b) a medicaid managed care organization insurance plan care coordinator or a care coordinator employed by or contracted with the health care authority;

(c) the [child's] newborn's parent, relative, guardian, custodian or caretaker who is present at discharge who shall receive a copy upon discharge. The plan of safe care shall be signed by an appropriate representative of the discharging hospital and the [child's] newborn's parent, relative, guardian or caretaker who is present at discharge; and

(d) if the [child's] newborn's parent, relative, guardian, custodian or caretaker resides on tribal land, the respective Indian tribe shall be sent a copy of the plan of safe care within twenty-four hours of the [child's] newborn's discharge;

(2) definitions and evidence-based screening

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1 tools, based on standards of professional practice, to be used
2 by health care providers to identify a [child] newborn born
3 affected by substance use or withdrawal symptoms resulting from
4 prenatal drug exposure or a fetal alcohol spectrum disorder.

5 The rules shall include a requirement that all hospitals,
6 birthing centers and prenatal care providers use the screening,
7 brief intervention and referral to treatment program at all
8 prenatal or perinatal medical visits and live births;

9 (3) collection and reporting of data to meet
10 federal and state reporting requirements, including the
11 following:

12 (a) by hospitals and birthing centers to
13 the department when: 1) a plan of safe care has been
14 developed; and 2) a family has been referred for a plan of safe
15 care;

16 (b) information pertaining to a [child]
17 newborn born and diagnosed by a health care professional as
18 affected by substance abuse, withdrawal symptoms resulting from
19 prenatal drug exposure or a fetal alcohol spectrum disorder;
20 and

21 (c) data collected by hospitals and
22 birthing centers for use by the children's medical services of
23 the family health bureau of the public health division of the
24 department of health in epidemiological reports and to support
25 and monitor a plan of safe care. Information reported pursuant

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1 to this subparagraph shall be coordinated with communication to
2 insurance carrier care coordinators to facilitate access to
3 services for children and parents, relatives, guardians,
4 custodians or caretakers identified in a plan of safe care;

5 (4) requirements for the health care authority

6 to:

7 (a) ensure that there is at least one
8 care coordinator available in each birthing hospital in the
9 state;

10 (b) ensure that all substance-exposed
11 [children] newborns who have a plan of safe care receive care
12 coordination to implement the plan of safe care;

13 (c) provide training to hospital staff,
14 birthing center staff and prenatal care providers on the
15 screening, brief intervention and referral to treatment
16 program; and

17 (d) communicate, collaborate and consult
18 with an Indian child's tribe to ensure that plans of safe care
19 are developed in a culturally responsive manner for each child;

20 (5) identification of appropriate agencies to
21 be included as supports and services in the plan of safe care,
22 based on an assessment of the needs of the [child] newborn and
23 the [child's] newborn's relatives, parents, guardians,
24 custodians or caretakers, performed by a discharge planner
25 prior to the [child's] newborn's discharge from the hospital or

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birthing center, which:

(a) shall include: 1) home visitation programs or early intervention family infant toddler programs; and 2) substance use disorder prevention and treatment providers; and

(b) may include: 1) public health agencies; 2) maternal and child health agencies; 3) mental health providers; 4) infant mental health providers; 5) public and private children and youth agencies; 6) early intervention and developmental services; 7) courts; 8) local education agencies; 9) managed care organizations; or 10) hospitals and medical providers;

(6) information that shall be in a written plan of safe care, including:

(a) the [child's] newborn's name;

(b) an emergency contact for at least one of the [child's] newborn's parents, relatives, guardians, custodians or caretakers;

(c) the address for the parent, relative, guardian, custodian or caretaker who will be taking the [child] newborn home from the birthing facility; and

(d) the names of the parents, relatives, guardians, custodians or caretakers who will be living with the [child] newborn:

(7) engagement of the [child's] newborn's

relatives, parents, guardians, custodians or caretakers in order to identify the need for access to treatment for any substance use disorder or other physical or behavioral health condition that may impact the safety, early childhood development and well-being of the child; and

(8) implementation of plans of safe care that shall include requirements for care coordinators to:

(a) actively work with pregnant persons or a substance-exposed [child's] newborn's parents, relatives, guardians, family members or caretakers to refer and connect the pregnant person or substance-exposed [child's] newborn's parents, relatives, guardians, family members or caretakers to necessary services. Care coordinators shall use an evidence-based intensive care coordination model that is listed in the federal Title IV-E prevention services clearinghouse or another nationally recognized evidence-based clearinghouse for child welfare; and

(b) attempt to make contact with persons who are not following the plan of safe care using multiple methods, including in person, by mail, by phone call or by text message. If a pregnant person or a substance-exposed [child's] newborn's parents, relatives, guardians, family members or caretakers are not following the plan of safe care, care coordinators shall make attempts to contact and provide support services to persons who are not following the plan of safe

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1 care.

2 C. Reports made pursuant to Paragraph (3) of
3 Subsection B of this section shall be collected by the
4 department as distinct and separate from any child abuse report
5 as captured and held or investigated by the department, such
6 that the reporting of a plan of safe care shall not constitute
7 a report of suspected child abuse and neglect and shall not
8 initiate investigation by the department or a report to law
9 enforcement.

10 D. The department shall summarize and report data
11 received pursuant to Paragraph (3) of Subsection B of this
12 section at intervals as needed to meet federal regulations.

13 E. The health care authority shall provide an
14 annual report to the legislative finance committee, the interim
15 legislative health and human services committee and the
16 department of finance and administration on the status of the
17 plan of safe care system. The report shall include the
18 following aggregate statistical information related to the
19 creation of plans of safe care:

20 (1) the primary substances that [infants]
21 newborns were exposed to;

22 (2) the services that [infants] newborns and
23 families were referred to;

24 (3) the availability and uptake rate of
25 services;

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(4) whether [an infant] a newborn or [an infant's] a newborn's family was subsequently reported to the children, youth and families department; and

(5) disaggregated demographic and geographic data.

F. Reports made pursuant to the requirements in this section shall not be construed to relieve a person of the requirement to report to the department knowledge of or a reasonable suspicion that a child is an abused or neglected child based on criteria as defined by Section 32A-4-2 NMSA 1978.

G. The health care authority shall create and distribute training materials to support and educate discharge planners or social workers on [the following] how to:

(1) [how-to] assess whether to make a referral to the department pursuant to the Abuse and Neglect Act;

(2) [how to] assess whether to make a notification to the department pursuant to Subsection B of Section 32A-4-3 NMSA 1978 for a child who has been diagnosed as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder;

(3) [how to] assess whether to create a plan of safe care when a referral to the department is not required; and

(4) [the creation and deployment of] create

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1 and deploy a plan of safe care.

2 H. If a health care provider or other person
3 involved in creating a substance-exposed newborn's plan of safe
4 care has concerns about the continued safety of the newborn
5 prior to or after the newborn's discharge from a hospital or
6 birthing facility, the health care provider or person shall
7 make a report regarding the concerns to the department's
8 statewide central intake. Upon receiving the report, the
9 department shall review the plan of safe care for the newborn
10 who is the subject of the report and shall:

11 (1) perform an assessment to determine whether
12 the newborn's plan of safe care:

13 (a) is complete and has been provided to
14 the persons or entities required pursuant to Paragraph (1) of
15 Subsection B of this section;

16 (b) adequately addresses the newborn's
17 health, safety and well-being; and

18 (c) adequately addresses any substance
19 use disorder treatment needs of the newborn's family and
20 caregivers; and

21 (2) determine whether the newborn's needs are
22 being met given the results of the assessment, and if the
23 newborn's needs are not being met, the department shall:

24 (a) initiate an investigation; and

25 (b) update the newborn's plan of safe

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1 care based on the findings in the investigation and include in
2 the plan copies of any reports regarding the newborn that are
3 received by the department's statewide central intake.

4 [H.] I. A person shall not have a cause of action
5 for any loss or damage caused by any act or omission resulting
6 from the implementation of the provisions of Subsection G of
7 this section or resulting from any training, or lack thereof,
8 required by Subsection G of this section.

9 [I.] J. The training, or lack thereof, required by
10 the provisions of Subsection G of this section shall not be
11 construed to impose any specific duty of care."

12 **SECTION 4.** Section 32A-3A-14 NMSA 1978 (being Laws 2019,
13 Chapter 190, Section 4, as amended) is amended to read:

14 "32A-3A-14. NOTIFICATION TO THE DEPARTMENT OF
15 NONCOMPLIANCE WITH A PLAN OF SAFE CARE.--

16 A. If the parents, relatives, guardians, custodians
17 or caretakers of a child released from a hospital or
18 freestanding birthing center pursuant to a plan of safe care
19 fail to comply with that plan, the health care authority, a
20 medicaid managed care organization insurance plan care
21 coordinator or a care coordinator contracted with the health
22 care authority shall notify the department within twenty-four
23 hours of the failure to comply and the department shall conduct
24 a family assessment. Based on the results of the family
25 assessment, the department may offer or provide referrals for

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1 counseling, training or other services aimed at addressing the
2 underlying causative factors that may jeopardize the safety or
3 well-being of the child. The child's parents, relatives,
4 guardians, custodians or caretakers may choose to accept or
5 decline any service or program offered subsequent to the family
6 assessment; provided that if the child's parents, relatives,
7 guardians, custodians or caretakers decline those services or
8 programs, and the department determines that those services or
9 programs are necessary to address concerns of imminent harm to
10 the child, the department shall proceed with an investigation.

11 B. As used in this section, "family assessment"
12 means a comprehensive assessment prepared by the department at
13 the time the department receives notification of failure to
14 comply with the plan of safe care to determine the needs of a
15 child and the child's parents, relatives, guardians, custodians
16 or caretakers, including an assessment of ~~[the likelihood of]~~:

- 17 (1) the likelihood of imminent danger to a
18 child's well-being;
- 19 (2) the likelihood of the child becoming an
20 abused child or neglected child; ~~[and]~~
- 21 (3) the strengths and needs of the child's
22 family members, including parents, relatives, guardians,
23 custodians or caretakers, with respect to providing for the
24 health and safety of the child; ~~and~~
- 25 (4) any past or potential relevant involvement

1 with the protective services division of the department."

2 SECTION 5. Section 32A-4-2 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 96, as amended) is amended to read:

4 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
5 Act:

6 A. "abandonment" includes instances when the
7 parent, without justifiable cause:

8 (1) left the child without provision for the
9 child's identification for a period of fourteen days; or

10 (2) left the child with others, including the
11 other parent or an agency, without provision for support and
12 without communication for a period of:

13 (a) three months if the child was under
14 six years of age at the commencement of the three-month period;
15 or

16 (b) six months if the child was over six
17 years of age at the commencement of the six-month period;

18 B. "abused child" means a child:

19 (1) who has suffered or who is at risk of
20 suffering serious harm because of the action or inaction of the
21 child's parent, guardian or custodian;

22 (2) who has suffered physical abuse, emotional
23 abuse or psychological abuse inflicted or caused by the child's
24 parent, guardian or custodian;

25 (3) who has suffered sexual abuse or sexual

exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:

(1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(2) attempted or conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child:

(3) attempted or conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or

(4) had parental rights over a sibling of the child terminated involuntarily;

D. "educational decision maker" means an individual appointed by the children's court to attend school meetings and to make decisions about the child's education that a parent could make under law, including decisions about the child's

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1 educational setting and the development and implementation of
2 an individual education plan for the child;

3 E. "fictive kin" means a person not related by
4 birth, adoption or marriage with whom a child has an
5 emotionally significant relationship;

6 F. "great bodily harm" means an injury to a person
7 that creates a high probability of death, that causes serious
8 disfigurement or that results in permanent or protracted loss
9 or impairment of the function of a member or organ of the body;

10 G. "neglected child" means a child:

11 (1) who has been abandoned by the child's
12 parent, guardian or custodian;

13 (2) who is without proper parental care and
14 control or subsistence, education, medical or other care or
15 control necessary for the child's well-being because of the
16 faults or habits of the child's parent, guardian or custodian
17 or the failure or refusal of the parent, guardian or custodian,
18 when able to do so, to provide [them] such care and control;

19 (3) who has been physically or sexually
20 abused, when the child's parent, guardian or custodian knew or
21 should have known of the abuse and failed to take reasonable
22 steps to protect the child from further harm;

23 (4) whose parent, guardian or custodian is
24 unable to discharge that person's responsibilities to and for
25 the child because of incarceration, hospitalization or physical

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1 or mental disorder or incapacity; [or]

2 (5) who has been placed for care or adoption
3 in violation of the law; provided that nothing in the
4 Children's Code shall be construed to imply that a child who is
5 being provided with treatment by spiritual means alone through
6 prayer, in accordance with the tenets and practices of a
7 recognized church or religious denomination, by a duly
8 accredited practitioner thereof is for that reason alone a
9 neglected child within the meaning of the Children's Code; and
10 further provided that no child shall be denied the protection
11 afforded to all children under the Children's Code; or

12 (6) whose parent, guardian or custodian has
13 failed to comply with a plan of safe care, pursuant to Section
14 32A-3A-13 NMSA 1978;

15 H. "newborn" means a child who is less than
16 seventy-two hours old;

17 [H.] I. "personal identifier information" means a
18 person's name and contact information, including home or
19 business address, email address or phone number;

20 [I.] J. "physical abuse" includes any case in which
21 the child suffers strangulation or suffocation and any case in
22 which the child exhibits evidence of skin bruising, bleeding,
23 malnutrition, failure to thrive, burns, fracture of any bone,
24 subdural hematoma, soft tissue swelling or death and:

25 (1) there is not a justifiable explanation for

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1 the condition or death;

2 (2) the explanation given for the condition is
3 at variance with the degree or nature of the condition;

4 (3) the explanation given for the death is at
5 variance with the nature of the death; or

6 (4) circumstances indicate that the condition
7 or death may not be the product of an accidental occurrence;

8 [J.] K. "relative" means a person related to
9 another person by birth, adoption or marriage within the fifth
10 degree of consanguinity;

11 [K.] L. "sexual abuse" includes criminal sexual
12 contact, incest or criminal sexual penetration, as those acts
13 are defined by state law;

14 [L.] M. "sexual exploitation" includes:

15 (1) allowing, permitting or encouraging a
16 child to engage in prostitution;

17 (2) allowing, permitting, encouraging or
18 engaging a child in obscene or pornographic photographing; or

19 (3) filming or depicting a child for obscene
20 or pornographic commercial purposes, as those acts are defined
21 by state law;

22 [M.] N. "sibling" means a brother or sister having
23 one or both parents in common by birth or adoption;

24 [N.] O. "strangulation" has the same meaning as set
25 forth in Section 30-3-11 NMSA 1978;

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1 [θ.] P. "suffocation" has the same meaning as set
2 forth in Section 30-3-11 NMSA 1978; and

3 [P.] Q. "transition plan" means an individualized
4 written plan for a child, based on the unique needs of the
5 child, that outlines all appropriate services to be provided to
6 the child to increase independent living skills. The plan
7 shall also include responsibilities of the child, and any other
8 party as appropriate, to enable the child to be self-sufficient
9 upon emancipation."

10 SECTION 6. Section 32A-4-3 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 97, as amended) is amended to read:

12 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD
13 NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--
14 PENALTY--NOTIFICATION OF PLAN OF SAFE CARE--DEPARTMENT
15 ASSESSMENTS OF CERTAIN PLANS OF SAFE CARE.--

16 A. Every person, including a licensed physician; a
17 resident or an intern examining, attending or treating a child;
18 a law enforcement officer; a judge presiding during a
19 proceeding; a registered nurse; a visiting nurse; a school
20 employee; a social worker acting in an official capacity; or a
21 member of the clergy who has information that is not privileged
22 as a matter of law, who knows or has a reasonable suspicion
23 that a child is an abused or a neglected child shall report the
24 matter immediately to:

25 (1) a local law enforcement agency;

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- (2) the department; or
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.

B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

C. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure

1 that immediate steps are taken to protect the health or welfare
2 of the alleged abused or neglected child, as well as that of
3 any other child under the same care who may be in danger of
4 abuse or neglect. A local law enforcement officer trained in
5 the investigation of child abuse and neglect is responsible for
6 investigating reports of alleged child abuse or neglect at
7 schools, daycare facilities or child care facilities.

8 D. If the child alleged to be abused or neglected
9 is in the care or control of or in a facility administratively
10 connected to the department, the report shall be investigated
11 by a local law enforcement officer trained in the investigation
12 of child abuse and neglect. The investigation shall ensure
13 that immediate steps are taken to protect the health or welfare
14 of the alleged abused or neglected child, as well as that of
15 any other child under the same care who may be in danger of
16 abuse or neglect.

17 E. A law enforcement agency or the department shall
18 have access to any of the records pertaining to a child abuse
19 or neglect case maintained by any of the persons enumerated in
20 Subsection A of this section, except as otherwise provided in
21 the Abuse and Neglect Act.

22 F. A person who violates the provisions of
23 Subsection A of this section is guilty of a misdemeanor and
24 shall be sentenced pursuant to the provisions of Section
25 31-19-1 NMSA 1978.

underscored material = new
[bracketed material] = delete

1 G. Unless a toxicology screen of a newborn is
2 positive for methamphetamine, fentanyl, cocaine or heroin, a
3 ~~finding that a [pregnant woman is using or abusing drugs made~~
4 ~~pursuant to an interview, self-report, clinical observation or~~
5 ~~routine toxicology screen] newborn was exposed to a substance~~
6 ~~other than methamphetamine, fentanyl, cocaine or heroin or is~~
7 ~~being affected by substance abuse~~ shall not alone form a
8 sufficient basis to report child abuse or neglect to the
9 department pursuant to Subsection A of this section. [A
10 ~~volunteer, contractor or staff of a hospital or freestanding~~
11 ~~birthing center shall not make a report based solely on that~~
12 ~~finding and shall make a notification pursuant to Subsection H~~
13 ~~of this section.]~~ Nothing in this subsection shall be construed
14 to prevent a person from reporting to the department a
15 reasonable suspicion that a child is an abused or neglected
16 child based on other criteria as defined by Section 32A-4-2
17 NMSA 1978, or a combination of criteria that includes a finding
18 pursuant to this subsection.

19 H. A contractor or staff of a hospital,
20 freestanding birthing center or clinic that provides prenatal
21 or perinatal care shall:

22 (1) complete a written plan of safe care for a
23 substance-exposed newborn or a pregnant person who agrees to
24 creating a plan of safe care, as provided for by department
25 rule and the Children's Code; and

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(2) provide notification to the health care authority. Notification by a health care provider pursuant to this paragraph shall not be construed as a report of child abuse or neglect.

I. As used in this section:

(1) "notification" means informing the health care authority that a substance-exposed newborn was born and providing a copy of the plan of safe care that was created for the [child] newborn; provided that notification shall comply with federal guidelines and shall not constitute a report of child abuse or neglect. The health care authority shall be responsible for ensuring compliance with federal reporting requirements related to plans of safe care;

[J. As used in this section] (2) "school employee" includes employees of a school district or a public school; and

(3) "substance-exposed newborn" means 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 7. A new section of the Abuse and Neglect Act is enacted to read:

"NEW MATERIAL] TAKING NEWBORNS INTO TEMPORARY PROTECTIVE
CUSTODY.--

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1 A. A newborn who is in a hospital setting shall not
2 be taken into temporary protective custody without a court
3 order that includes findings that an emergency situation exists
4 and that the newborn is seriously endangered. A newborn may be
5 held in a hospital by a law enforcement officer upon the
6 recommendation of the health care authority, the department or
7 a physician, registered nurse, licensed practical nurse or
8 physician assistant while a court order is being pursued, but
9 the newborn must be released from temporary protective custody
10 if the court order is denied.

11 B. A newborn who is not in a hospital setting shall
12 not be taken into temporary protective custody for a period of
13 longer than twenty-four hours without a court order that
14 includes findings that an emergency situation exists and that
15 the newborn is seriously endangered.

16 C. A newborn may be taken into temporary protective
17 custody without a court order when the newborn is:

18 (1) identified by a physician, registered
19 nurse, licensed practical nurse or physician assistant engaged
20 in the admission, care or treatment of newborns as being
21 affected by substance abuse or demonstrating withdrawal
22 symptoms resulting from prenatal drug exposure; or

23 (2) subject to an environment exposing the
24 newborn to a laboratory for the unlawful manufacture of
25 controlled substances.

D. 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."

SECTION 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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