

LFC Requester:	Rachel Mercer-Garcia
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.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}

Check all that apply:

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

Date 1-20-24
Bill No: HB103

Sponsor: S. Lord and H. Vincent
 Expanding crime of child abuse;
 protective custody for newborns

Agency Name and Code Number: Office of Family Representation and Advocacy, 680

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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: HB 121
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Makes it a crime (abuse of a child) for a person to knowingly, intentionally or negligently, and without justifiable cause, to cause or permit a child to be exposed to certain controlled substances to the extent that the child tests positive for those substances at birth (unless it is a Schedule II controlled substance used lawfully by the mother pursuant to a prescription).

Clarifies that it shall not be a defense to the crime of child abuse that the defendant did not know the child was present, a child could be found, a child resided on the premises, or the vehicle contained a child.

Adds a new section to the Abuse and Neglect Act concerning taking newborn children into Temporary Protective Custody. Under this Section:

- newborns in a hospital setting shall not be taken into temporary custody without a court order with findings that “an emergency situation exists and that the newborn is seriously endangered;”
- newborns *not* in a hospital setting may not be taken into protective custody for a period longer than 24 hours without a court order with the same required findings;
- a newborn child may be taken into protective custody by law enforcement without a court order under two circumstances:
(1) when certain medical professionals identify the newborn as “being affected by substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure”; or
(2) when the newborn is “subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances.”

Appropriates \$3M to CYFD, \$3M to the Administrative Office of the Courts, and \$1M to the Corrections Department to carry out the purposes of the Act.

FISCAL IMPLICATIONS

Although the bill appropriates significant additional funds to CYFD and the Courts to

carry out the provisions of the bill, it appropriates no additional funds to the entities that will prosecute the new crime or defend those accused of the new crime. Nor does the bill appropriate any additional funds to the Office of Family Representation and Advocacy (OFRA), which will be required to provide guardians ad litem for any newborn children and attorneys for the parents, guardians, or custodians whose newborns are taken into custody by CYFD under this provision. Increasing OFRA's caseload without increasing its appropriation may create a fiscal shortfall.

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Section 2 of the bill introduces new court-required findings (that “an emergency situation exists and that the newborn is seriously endangered”) **without providing definitions.** These are different standards than are used for removal under the Abuse and Neglect Act. See e.g., Section 32A-4-6. This creates uncertainty, subjectivity, and unclear standards; provides inadequate guidance to the courts about which newborns should be taken into custody; and could lead to inconsistent removals of newborns across the state.

“**Being affected by substance abuse**” is likewise undefined and vague. A newborn is incapable of abusing substances and a parent's substance misuse alone is insufficient under NM law to be considered child abuse or neglect. See e.g., State ex rel. CYFD v. Shawna C., 2005-NMCA-066, ¶30 (parent's unfavorable status, such as addiction, is relevant only to the extent that it causes abuse or neglect and court should focus on the parent's acts or omissions in their caretaking function).

“**Controlled substances**” as it is used in Section 2 of the bill is not defined and is unnecessarily vague.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS