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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 72

SHORT TITLE: Controlled Substance Minor Distribution

SPONSOR: Reeb/Sena Cortez/Terrazas

LAST UPDATE: _____ **ORIGINAL DATE:** 02/01/2026 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the Courts
Administrative Office of the District Attorneys
Law Offices of the Public Defender
New Mexico Sentencing Commission
Department of Health
Corrections Department
Department of Public Safety

SUMMARY

Synopsis of House Bill 72

House Bill 72 (HB72) seeks to amend Section 30-31-21 NMSA 1978 of the Controlled Substances Act to establish enhanced penalties for certain unlawful drug distributions involving minors. Specifically, the bill creates a new subsection within Section 30-31-21 to reclassify the distribution of specific controlled substances—those listed in schedule I or schedule II, or their controlled substance analogs—as a first-degree felony when the distribution is carried out by an individual who is 18 years of age or older to a person under the age of 18. Under existing law, Section 30-31-21 makes it a second-degree felony for an adult to intentionally distribute any controlled substance in schedules I through IV to a minor, unless authorized by law, and enhances the penalty to a first-degree felony for second or subsequent offenses. House Bill 72 departs from this graduated structure by designating a first-degree felony penalty for any offense involving schedule I or II narcotic drugs or methamphetamine, regardless of whether it is a first or subsequent offense.

The bill retains the current penalty structure for other controlled substances outside the specified

categories. The amended statute would continue to rely on definitions already provided in Section 30-31-2 NMSA 1978, including the terms “narcotic drug,” “controlled substance,” “controlled substance analog,” and “distribute.” The bill does not make any changes to procedural rules, regulatory definitions, or enforcement authorities under the Controlled Substances Act but rather modifies the penalty classification applicable to a narrower subset of offenses involving minors and high-risk substances.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Incarceration drives the cost of the criminal justice system. While the average cost to incarcerate an individual in New Mexico is approximately \$55.8 thousand per year, the marginal cost, the additional cost incurred by housing one more inmate, is estimated at \$27.2 thousand per year, according to LFC estimates. House Bill 72 increases the penalty for adults who distribute schedule I or II narcotic drugs or methamphetamine to minors by creating a new first-degree felony category for such offenses, including first-time convictions. This change is expected to increase sentence lengths for individuals convicted under the new provision, thereby increasing the average length of stay in state correctional facilities and contributing to long-term cost growth.

Although the targeted offense is currently rare—with only a small number of cases filed annually—the New Mexico Corrections Department notes that longer sentences, even for a limited population, may gradually increase the overall incarcerated population and associated healthcare and supervision costs. In addition, the New Mexico Sentencing Commission points out that in FY24, only six cases involving distribution to a minor under Section 30-31-21 resulted in a disposition, with two convictions. However, if the new felony classification increases the frequency with which the charge is filed or pursued at trial, the long-term fiscal impact could be higher than historical case data suggests.

Agencies also report that increased penalties may affect plea bargaining practices and lead to more cases proceeding to trial. The Administrative Office of the Courts, the Law Offices of the Public Defender (LOPD), and the Administrative Office of the District Attorneys indicate that first-degree felony trials generally require more attorney time, court resources, and staff support. LOPD notes that the state faces a critical shortage of public defenders, and an increase in serious felony litigation could intensify existing workload pressures. While no specific appropriations are included in the bill and immediate fiscal impacts are expected to be minimal, the bill could contribute to rising costs across the criminal justice system over time, depending on enforcement patterns and charging practices.

SIGNIFICANT ISSUES

HB72 introduces a new penalty tier within Section 30-31-21 NMSA 1978 that distinguishes certain high-risk controlled substances—specifically schedule I or II narcotic drugs and methamphetamine—from other substances for the purposes of sentencing in cases involving distribution to minors. While the Controlled Substances Act already prohibits the distribution of any schedule I–IV drug to a minor, the bill applies a uniform first-degree felony classification to

certain drugs regardless of whether the offense is a first or subsequent violation. This diverges from the existing structure, which applies escalating penalties based on prior convictions.

LOPD and other agencies note potential legal ambiguity in the bill's language concerning the defendant's knowledge of the minor's age. Section 30-31-21 uses the phrase "intentionally distribute," but the bill does not specify whether knowledge that the recipient is under 18 is required to support a conviction under the new first-degree felony provision. Courts in New Mexico have previously required proof of specific knowledge for sentencing enhancements in related contexts, such as school zone enhancements under the Controlled Substances Act. Absent clarifying language, the proposed amendment may raise questions about whether a strict liability standard applies or whether prosecutors must prove the defendant knew the recipient's age.

Additionally, agency analysis notes that the bill's wording may overlap with existing statutory language. The Controlled Substances Act already defines controlled substances in schedule I and II to include analogs, salts, isomers, and derivatives, and this language is repeated in the bill's new subsection. Some agencies observe this repetition may create internal inconsistency or redundancy within the statute and could complicate interpretation, particularly regarding which subsection applies to a given offense.

Finally, analysis from the Department of Health references broader public health and equity considerations related to enforcement practices under the Controlled Substances Act. Research shows that enforcement of drug laws often disproportionately impacts certain demographic groups, including low-income and minority youth.

TECHNICAL ISSUES

LOPD raised concerns about potential redundancy and ambiguity in the bill's drafting. Specifically, the proposed new Subsection (C) in Section 30-31-21 NMSA 1978 references schedule I and II substances, along with their "analogs, salts, isomers, or salts of isomers"—terms that are already defined and incorporated within the Controlled Substances Schedules themselves. LOPD suggests this repetition may result in "clunky" statutory language that is inconsistent with the structure of subsections (A) and (B), potentially creating interpretive confusion about which subsection governs a particular offense.

LOPD also flags an issue related to mens rea, or the mental state required to violate the statute. The proposed language does not clarify whether the defendant must know the recipient is a minor. Current statutory language uses the phrase "intentionally distribute" but does not explicitly require knowledge of the recipient's age. This omission could lead to litigation over whether strict liability applies to the offense's age element. The Department of Public Safety (DPS) similarly notes this ambiguity and cites relevant case law (e.g., *State v. Wilson*, 2010-NMCA-018), suggesting that courts in New Mexico have previously required specific knowledge for similar sentencing enhancements.