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FISCAL IMPACT REPORT

SPONSOR Reps. Reeb, Chavez, Terrazas, and Cortez/
Sen. Ramos **LAST UPDATED** _____
ORIGINAL DATE 2/6/2025
BILL
SHORT TITLE Penalty For Drug Trafficking & Death **NUMBER** House Bill 107
ANALYST Dinces

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
LOPD	No fiscal impact	At least \$275.0	At least \$275.0	At least \$550.0	Recurring	General Fund
NMCD	No fiscal impact	At least \$397.6	At least \$397.6	At least \$795.2	Recurring	General Fund
Total	No fiscal impact	At least \$672.6	At least \$672.6	At least \$1,070.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 25.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 New Mexico Office of the Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Department of Health (DOH)
 State Parole Board
 Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 107

House Bill 107 (HB107) amends statutory sections within the Controlled Substances Act, Section 30-31-1 NMSA 1978 et. seq., as follows:

Within Section 30-31-20 NMSA 1978, governing the trafficking of controlled substances, the bill expands the definition of “traffic” to include:

- Distribution, sale, barter, or giving away of a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug;
- Distribution, sale, barter, or giving away of a counterfeit substance of a

controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug;

- Possession with intent to distribute a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or
- Possession with intent to distribute a counterfeit substance of a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug.

The HB107 amendments to Section 30-31-20 provide the following penalties:

- For a first offense not resulting in the death of a human being, a second-degree felony for trafficking a controlled substance and sentenced pursuant to Section 31-18-15 NMSA 1978, with a minimum term of imprisonment of nine years.
- For a first offense resulting in the death of a human being, a second-degree felony for trafficking a controlled substance resulting in the death of a human being and sentenced pursuant to Section 31-18-15 NMSA 1978, with a minimum term of imprisonment of twelve years.
- For a second and subsequent offense, a first-degree felony and sentenced pursuant to Section 31-18-15 NMSA 1978.
- For the second and subsequent offenses, if the offense results in the death of a human being, a first-degree felony for trafficking a controlled substance resulting in the death of a human being and sentenced pursuant to Section 31- 18-15 NMSA 1978.

The bill also amends Section 30-31-21 NMSA 1978, governing distribution to a minor by providing that a person who violates this section with respect to a controlled substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, methamphetamine, its salts, isomers, or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers, or salts of isomers is guilty of a first-degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

Further, the bill amends Section 30-31-22 NMSA 1978, governing controlled or counterfeit substances and prohibiting distribution, providing that:

- Except as authorized by the Controlled Substances Act, it is unlawful for a person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance, and that a person who violates this subsection C with respect to a counterfeit substance enumerated in Schedule I, II, III or IV, except a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug or a counterfeit substance of a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is guilty of a fourth-degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.
- A person who knowingly violates Subsection A or C of this section while within a drug-free school zone with respect to the intentional creation, delivery or possession with the intent to deliver a counterfeit substance enumerated in Schedule I, II, III or IV, except a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug or a counterfeit substance of a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is guilty of a third-degree felony and shall be sentence pursuant to Section 31-18-15 NMSA 1978.

HB107 also amends Section 31-18-15 NMSA 1978, governing sentencing for noncapital felonies, to provide the following:

- A penalty of a basic sentence of life imprisonment for a first-degree felony for trafficking a controlled substance resulting in the death of a human being, with a discretionary imposition of a fine of up to \$17,500.
- A penalty of a basic sentence of eighteen years imprisonment for a second-degree felony for trafficking a controlled substance resulting in the death of a human being, with a discretionary imposition of a fine of up to \$12,500.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The New Mexico Sentencing Commission (NMSC) highlights that it is difficult to determine this bill's exact effect on the prison population, but it would likely increase. According to NMSC the current average prison sentence for trafficking a controlled substance is 1.77 years. If we assume that sentences will increase seven years, and the average cost is \$155.63/day then the state will be paying an additional estimated \$397.6 thousand per individual incarcerated for drug trafficking.

The Law Office of the Public Defender (LOPD) states that there would likely be a need for increased assignment of higher-level attorneys and that the office would likely need to hire more expert witnesses. Assuming hiring one more attorney and providing support staff for that additional attorney, LOPD is likely to see an increase of at least \$275 thousand per year.

SIGNIFICANT ISSUES

In 2021, the New Mexico Sentencing Commission (NMSC) engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the state's Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has several special statutes that fall out of the normal penalty structure in the state. HB107 would add further special penalties into the Criminal Code.

According to the Law Office of the Public Defender (LOPD), judicial distraction is a necessary aspect of the sentencing proceedings as a judge must be empowered to consider the specific circumstances of a case. LOPD states:

the law treats possession of a few grams of individually wrapped baggies of substances as trafficking by possession with intent to distribute, the same crime as a person who possesses kilos of the same substance in a high level operation. A judge needs to be able to differentiate between these two entirely distinct offenders and their relative impacts on the community. Mandatory sentences paint all defendants with the same cloth.

LOPD also points out that research highlights mandatory sentences should be enacted sparingly. Additionally, LOPD notes:

By continuing to include possession with intent to distribute as a qualifying trafficking offense, there is a serious risk that individuals who are not cartel-affiliated traffickers, but instead drug users addicted to controlled substances, will be less likely to call law enforcement and first-responders for help in overdoses because of the risk that this bill **dramatically increases**: that they could be prosecuted now as murderers. These concerns

obviously do not apply to individuals trafficking large amounts of drugs, (although the causation concerns outlined above are heightened when traffickers are strangers completely divorced from the consumption process).

PERFORMANCE IMPLICATIONS

LOPD highlights that the creation of mandatory minimums sentences would significantly impact plea bargaining, stating:

When penalties are high and remove sentencing discretion from the judges, defendants who have viable defenses, including actual innocence, are likely to accept a non-beneficial plea agreement solely to avoid the danger of a mandatory sentence if convicted at trial. Public defenders would have to place more resources into these cases to avoid injustices, or risk violating our constitutional mandates.

ADMINISTRATIVE IMPLICATIONS

The parole board states they would likely need additional training to understand the new sentencing guidelines, particularly regarding serious trafficking offenses and those resulting in death. The training may also involve ongoing professional development to ensure members are well-versed in applying the new laws and making informed decisions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB107 relates to SB25. SB25 is more limited in scope and seeks only to increase the penalty on individuals who sell or traffic fentanyl which results in death.

TECHNICAL ISSUES

The office of the New Mexico Attorney General highlights two potential issues:

1. The amendment's term trafficking "resulting in the death of a human being" is undefined, leaving the statute open to challenges for vagueness. It would support the purpose of the amendment to include a definition of the term, perhaps in § 30-31-20 Trafficking in Controlled Substances, Section 1 (A) where "traffic" is defined.
2. In Section 1 at page 3, § 30-31-20(B)(3) (formerly (B)(2)), the amendment should read "guilty of a first-degree felony for trafficking a controlled substance" so that this subsection parallels and is in harmony with the other subsections within this section.

DPS highlights:

A counterfeit substance can be any substance that is misrepresented to resemble or be a controlled substance. It might look identical to the real drug in terms of appearance (color, shape, packaging), but it either contains no active ingredient or a different substance than what it purports to be. Counterfeit drugs might be made to look like the real drugs but could contain anything from harmless substances to other dangerous drugs that are controlled substances themselves. The language of the bill refers to "a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug," but it should make it clear that the counterfeit substance being penalized contains a harmful, undisclosed to the user, alternative narcotic drug rather than a harmless substance with regards to the severity of the penalties imposed.

LOPD states:

The bill would create a new crime for trafficking “resulting in death” with a mandatory 12-year prison sentence but provides little guidance on the requirements for such a crime. Where trafficking conduct might “result in” a person consuming a drug and then dying from an overdose, treating this as a heightened offense that punishes the trafficker for the death itself is inconsistent with New Mexico’s culpability requirements for homicide. For crimes designated as “resulting in death,” the law imposes both a high mental culpability *and* a “proximate cause” requirement.

OTHER SUBSTANTIVE ISSUES

LOPD states:

Unlike other states, New Mexico does not have set thresholds as criteria for trafficking and distribution. This means street level sellers who may give away, share or sell minor amounts of drugs will be subject to the same extreme mandatory minimums as someone who sells copious amounts. People with minor roles in the drug supply chain are most likely to be prosecuted.

SD/rl/SR