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FISCAL IMPACT REPORT

SPONSOR Sens. Brantley and Ramos/Reps. Jones and Terrazas **LAST UPDATED** _____
ORIGINAL DATE 1/28/25
BILL
SHORT TITLE Penalties for 1 Kg Fentanyl **NUMBER** Senate Bill 25
ANALYST Valdez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	At least \$291.1	At least \$291.1	At least \$582.2	Recurring	General Fund
Total	No fiscal impact	At least \$291.1	At least \$291.1	At least \$582.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 107

Sources of Information

LFC Files

Agency Analysis Received From

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

Agency Analysis was Solicited but Not Received From

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Choose an item.

Senate Bill 25 (SB25) enacts a new section of the Criminal Sentencing Act, Section 31-18-12 NMSA 1978 et. seq, to provide a sentencing enhancement of three years when a separate finding of fact by the court or jury shows that fentanyl in the amount of one kilogram or more was sold or trafficked pursuant to Section 30-31-20 or 30-31-21 NMSA 1978.

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 Administrative Office of the District Attorneys (AODA) notes that the minimum sentence for trafficking fentanyl, a second-degree felony, is nine years. While SB25 would undoubtedly increase costs for the criminal justice system by extending the period of incarceration for individuals convicted of trafficking fentanyl, the fiscal impact of the sentencing enhancement for an individual incarcerated at the beginning of FY26 under SB25 would not be felt until FY35.

The Law Office of the Public Defender (LOPD) points out that with increased punishment, more defendants are likely to go to trial requiring more public defenders. In analysis for a different bill this year, LOPD notes that the cost for experienced defense attorneys, including salary, benefits, operational costs, and support staff is \$291,144.66 annually in the Albuquerque/Santa Fe areas and slightly higher in outlying geographic areas. This analysis assumes LOPD will need to hire at least one additional attorney.

SIGNIFICANT ISSUES

AODA notes that most sentencing enhancements are mandatory time. In this case, it would add three years to the second-degree felony sentence of nine years.

LOPD highlights a potential issue of double jeopardy. They argue:

“The State will rely on the fact that “the fentanyl amounts to one kilogram or more” both to prove the requisite intent (elevating possession to trafficking) and to incur this sentencing enhancement. In those cases, double jeopardy litigation is likely because generally, the State is not permitted to rely on the same conduct to both elevate the underlying basic sentence and to enhance it. See *State v. Elmquist*, 1992-NMCA-119, 114 N.M. 551; *State v. Franklin*, 1993-NMCA-135, 116 N.M. 565; and *State v. Varela*, 1999-NMSC045, 128 N.M. 454.”

In addition, LOPD notes that offenders may not always know they are in possession of fentanyl as it is sometimes mixed with other drugs or made into pills that are not readily identifiable. As such, LOPD suggests requiring actual knowledge that the perpetrator is in possession of fentanyl. That would prevent a sentence enhancement for a perpetrator who was unknowingly in possession of fentanyl.

The New Mexico Sentencing Commission notes that most cases involving fentanyl trafficking report amounts in number of pills rather than weight, so it is difficult to estimate the impact, though they expect more people to be incarcerated by the New Mexico Corrections Department.

The Department of Public Safety notes several potential benefits including deterrence of others that might engage in fentanyl trafficking, an increase in public safety, the disruption of fentanyl distribution networks, a positive impact on public health, and a message of zero tolerance.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship to House Bill 107 (HB107). Both HB107 and SB25 increase the penalty for drug

trafficking offenses under Sections 30-31-20 and 30-31-21 NMSA 1978.

TECHNICAL ISSUES

The LOPD points out ambiguity in the sentence enhancement:

“While the court “shall” enhance the basic sentence, it does not indicate that the three-year enhancement is mandatory incarceration and thus would be subject to suspension or deferral. This is consistent with the basic sentence for first-offense trafficking, which carries a 9-year basic sentence subject to suspension or deferral. However, second-offense trafficking is a first-degree felony with a basic sentence of 18 mandatory years (that cannot be suspended or deferred). It is therefore somewhat unclear whether the enhancement’s ability to be suspended would track the basic sentence and thus be “mandatory” when enhancing a second or subsequent trafficking conviction. This ambiguity could be resolved by adding the language “which may be suspended or deferred” within SB25.”

The New Mexico Attorney General notes two potential technical issues:

- Sentencing for 30-31-20 NMSA 1978 is included in 30-31-20(B)(1) NMSA 1978 and based on the number of trafficking incidents, so it may be valuable to reference this section in the bill along with the basic sentencing found in Section 31-18-15 NMSA 1978.
- A prosecutor may charge multiple counts of distribution under 30-31-20(2) and try to aggregate the amount of fentanyl from each sale to reach the 1kg threshold and enhance the sentence. (Similar to aggregated shoplifting). It may be helpful to clarify whether the 1 kg threshold applies to a single charge of trafficking or if it may be aggregated.

JV/SL2