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**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

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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 January 21, 2026
Bill No: HB 72-280

Sponsor: Andrea Reeb
Controlled Substance Minor
Short Title: Distribution

Agency Name and Code LOPD-280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Under current law, trafficking a controlled substance to a minor is a second degree felony (nine years) for a first offense, and a first degree felony (mandatory eighteen years) for a second or subsequent offense.

HB 72 proposes to add a third section -- subdivision (C) -- to Section 30-31-21 NMSA 1978, which prohibits distribution of drugs to a minor under current law. The proposed subdivision (C) would create a first-degree felony for *first and later* offenses (i.e., all offenses, removing the recidivist self-enhancement under current law) for selling a Schedule I or II “narcotic drug or controlled substance analog” to a minor.

Schedule I includes a list of 42 opiates, 22 opiate derivatives, and 22 hallucinogenic substances. § 30-31-6(A), (B) & (C).

Schedule II includes a list of some 30 natural and synthetic substances including opium poppy, coco leaves, methadone, oxycodone, fentanyl and amphetamines. § 30-31-7(A) (1), (2) & (3).

Both existing Schedules I & II already list controlled substances and, where applicable, “their isomers, esters, ethers, salts and salts of isomers, esters and ethers” (§ 30-31-6(A) NMSA) or “any salt, compound, derivative or preparation thereof” (*see* § 30-31-7(A)(1)(a), (b) & (d); § 30-31-7(A) (2); § 30-31-7(A)(3)(a) & (c)).

FISCAL IMPLICATIONS

Penalty increases, particularly an increase that could double punishment for a first offense from a second-degree felony (zero to nine years) to a first-degree felony (mandatory 18 years), means that more of these cases would proceed to trial rather than resolving with plea agreements, because the state’s bargaining power is substantially increased by the dramatically greater sentence.

Moreover, enactment of a higher criminal penalty for conduct that is already prosecuted as a high-level felony, is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. If more higher-penalty trials result from enactment, Law Offices of the Public Defender (hereinafter *LOPD*) may need to hire more trial attorneys with greater experience to address these additional trials and ensure compliance with constitutional

mandates of effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.)

A 2022 workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc-laid-moss-adams-nm-proj.pdf Barring some other way to reduce indigent defense workload, any increase in the number of serious, complex felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep the LOPD’s workload crisis from spreading.

Additionally, courts, DAs, the NMDOJ, and NMCD could anticipate increased costs.

SIGNIFICANT ISSUES

Duplicative language

The proposed legislation specifies Schedule I & II substances and their “analog . . . salts, isomers or salts of isomers” which, as noted above, are already listed as prohibited substances by Schedules I & II. The repeated language in proposed Subdivision (C) thus reads as clunky, somewhat confusing, and not in accord with existing Subdivisions (A) & (B) of Section 30-31-21.

More importantly, the proposed subdivision designates Schedule I & II *narcotic* substances as a first-degree felony, but existing Subdivision (B) includes *all* Schedule I & II substances. It would appear that the proposed subdivision seeks to elevate for greater punishment only those “narcotic drug or a controlled substance analog” from the approximate 116 substances listed by the existing Schedules I & II. This analyst suggests that without *also amending* those schedules to clarify *which* substances would be subject to the proposed greater penalty, the new law could cause significant confusion and litigation as to which subdivision applies to which controlled substance.

A strict liability offense?

The proposed legislation appears to aim to punish more harshly drug trafficking of *certain substances* to children. However, the proposed language may further entrench an issue already present in this section: it does not require a criminal defendant to *know* that a person to whom drugs are sold is a minor. The added language may therefore subject the section to litigation.

While courts have held that the government should have leeway in prosecuting crimes that target children, drug trafficking generally is not an offense that targets children. If the legislature intends higher punishment for trafficking that involves minors, this analyst recommends adding a mens rea element as to the age of the targeted person as a minor. *See United States v. Tyson*, 947 F.3d 139, 146-147 (noting “[c]riminal statutes aimed at protecting children from sexual offenses have long been considered exempt from the general scienter presumption” and discussing cases); *Perez v. State*, 1990-NMSC-115, ¶¶ 6-11, 111 N.M. 160 (while knowledge of the victim’s age was not an element of criminal sexual penetration of a minor, statutes show legislative intent to

treat defendants differently depending on age of child; for children aged 13 to 16, mistake of fact as to age may present a valid defense).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. The proposed penalty would exacerbate concerns that already exist with the trafficking statute. The definition of trafficking includes possession with intent to distribute, which is often over-prosecuted against users, rather than truly culpable traffickers because there is no quantity requirement and relatively small amounts will meet the criteria for trafficking if the charging officer testifies that it does.

As a result, persons suffering from substance abuse disorder who possess relatively small amounts may nonetheless find themselves facing ever-harsher penalties for having a problem that is likely best addressed not through incarceration but through public health programs that target prevention and the root of addiction. *See* <https://www.ncbi.nlm.nih.gov/books/NBK424861/> (National Library of Medicine's discussion of the Surgeon General's Report on Alcohol, Drugs, and Health and a vision for a public health approach). Analyst further notes that anyone convicted of trafficking who has a prior felony (for theft, simple drug possession, or other common addiction-adjacent offenses) already faces sentencing enhancements under the Habitual Offender Act, NMSA 1978, Section 31-18-17.

Many people who "traffic" drugs in New Mexico may themselves be experiencing substance use disorder. While incarcerated, individuals are often denied care. In fact, many people do not receive any sort of treatment or counseling during incarceration. *See* Prison Policy Initiative, *Addicted to Punishment: Jails and Prisons Punish Drug Use Far More than They Treat It*, Prisonpolicy.org (2024), available at <https://www.prisonpolicy.org/blog/2024/01/30/punishing-drug-use/>; Prison Policy Initiative, *Chronic Punishment: The Unmet Health Needs of People in State Prisons*, Prisonpolicy.org (2022), available at <https://www.prisonpolicy.org/reports/chronicpunishment.html>. Indeed, the NM Corrections Department is not required to establish and operate a medication-assisted treatment program for all people in state correctional facilities in need of medication until the end of fiscal year 2026. Lack of treatment actively contributes to the staggering rates of drug overdose in jails and prisons.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Prosecution for distribution to minors remains available under existing law.

AMENDMENTS