

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS – 2026 SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(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}

Date Prepared: 31 JAN 2026 *Check all that apply:*
Bill Number: HB234 Original X Correction
 Amendment Substitute

Sponsor: A Reeb **Agency Name and Code:** 790 – Department of Public Safety
Short: Definition of Fentanyl **Number:** 790 – Department of Public Safety
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
NFI	NFI	N/A	N/A
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
NFI	NFI	NFI	N/A	N/A
NFI	NFI	NFI	N/A	N/A

(Parentheses () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	NFI

(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

House Bill 234 allows courts to extend or “enhance” a potential prison sentence when someone is convicted of selling or convincing another person to sell an illicit substance that is chemically similar to fentanyl. The bill defines “fentanyl” to include fentanyl and “fentanyl-related substances, including analogs and chemically similar substances that are produced illegally,” and specifically enumerates three substances: para-bromofentanyl, para-fluoroacetyl fentanyl, and para-methyl acetyl fentanyl. The bill also reorganizes the existing enhancement provisions from lettered subsections (A, B, C) to numbered paragraphs (1, 2, 3) under a new Subsection A, with the definition placed in new Subsection B

FISCAL IMPLICATIONS

No fiscal implications to DPS

SIGNIFICANT ISSUES

The importance of the addition of parafluorofentanyl to the language of the bill is that parafluorofentanyl is commonly detected in M/30 tablets instead of fentanyl. Including parafluorofentanyl provides clarity for courts/juries, prosecutors, law enforcement, forensic labs and provides future-proofing: traffickers are known to change small parts of the fentanyl molecule to stay ahead of statutes.

New Mexico law already defines “controlled substance analog” at Section 30-31-2(U) NMSA 1978 as “a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances.” The new fentanyl-specific definition in HB 234 uses different terminology (“chemically similar substances”) but appears consistent in purpose. The bill’s enumeration of specific analogs provides clarity that benefits both law enforcement and defendants.

The bill's approach is consistent with federal law. Congress enacted the HALT Fentanyl Act in July 2025, permanently classifying fentanyl-related substances (FRS) as Schedule I controlled substances. HB 234 complements this federal framework by providing New Mexico-specific sentence enhancements for fentanyl analog trafficking.

PERFORMANCE IMPLICATIONS

No performance implications to DPS

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related statutes include Section 30-31-2 NMSA 1978 (definitions, including “controlled substance analog”); Section 30-31-20 NMSA 1978 (trafficking controlled substances); Section 31-18-15 NMSA 1978 (basic sentences); and Section 30-28-2 NMSA 1978 (conspiracy). The bill expressly states that the enhancement is “in addition to, not a replacement of, charging conspiracy to commit trafficking.”

TECHNICAL ISSUES

(1) Definition Scope: The phrase “chemically similar substances that are produced illegally” could benefit from additional specificity. Unlike the federal Controlled Substances Act, which uses “substantially similar” and has generated extensive litigation over its meaning, HB 234 does not specify who determines chemical similarity or by what criteria. However, the enumeration of three specific analogs (para-bromofentanyl, para-fluoroacetyl fentanyl, para-methyl acetyl fentanyl) provides concrete guidance for the most common fentanyl analogs encountered in trafficking cases, which may satisfy constitutional notice requirements. Courts have generally upheld analog definitions against vagueness challenges when defendants had fair warning. *See Johnson v.*

United States, 576 U.S. 591 (2015) (striking residual clause but not the underlying analog concept).

(2) Proof Requirements: The existing statute requires “a separate finding of fact by a court or jury” that the defendant possessed fentanyl “in relation to” trafficking. For analogs not specifically enumerated, prosecution may require expert testimony to establish that a substance is “chemically similar” to fentanyl, which could increase litigation costs but also provides appropriate procedural protections for defendants.

Suggestion: The New Mexico Department of Public Safety Forensic Laboratory suggests that the bill add parafluorofentanyl to the bill.

Option: The New Mexico Department of Public Safety Forensic Laboratory adds that the bill *could* add from 16.19.20.65 SCHEDULE 1: A. NMAC, that is already in our existing New Mexico law.

(This is copied and pasted from 16.19.20.65 A. NMAC)

A. Section 30-31-6 NMSA 1978, schedule I shall consist of the following drugs and other substances, by whatever name, common or usual name, chemical name or brand name designated, listed in this section; OPIOIDS, unless specifically exempt or unless listed in another schedule, any of the following opioids, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.

(6) Alpha-methyl fentanylfentanyl;

(51) Beta-Hydroxy-3-Methylfentanyl;

(52) 3-Methylthiofentanyl;

(53) Acetyl-Alpha-Methyl fentanyl;

(54) Alpha-Methylthiofentanyl;

(55) Beta-hydroxfentanyl;

(56) Para-Fluoro fentanyl;

(57) Thiofentanyl;

(58) Acetyl fentanyl;

(59) Butyryl fentanyl;

(60) Betahydroxythiofentanyl;

(61) Furanyl fentanyl;

(69) Fentanyl-related substances, their isomers, esters, ethers, salts, and salts of isomers, esters and ethers. Fentanyl-related substance means any substance, unless specifically exempted or unless listed in another schedule, that is structurally related to fentanyl by one or more of the following modifications:

(a) replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

- (b) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (c) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (d) replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or
- (e) replacement of the N-propionyl group by another acyl group; or
- (f) any combination of the above substances include, but are not limited to, the following substances: (reserved)
- (70) Acryl Fentanyl;
- (71) 4F-butyrfentanyl;
- (72) 4-methoxybutyrfentanyl;
- (73) Fluorobutyrfentanyl;
- (74) Fluorofentanyl;
- (75) FIBF; (Para Fluoro Isobutyryl Fentanyl);
- (76) Cyclopropyl fentanyl;
- (77) Thiofuranyl fentanyl (Thiophene fentanyl);
- (78) 3-methylfentanyl (N-3-methyl-1-(2-phenyl-ethyl)-4-Piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts and salts of isomers;
- (79) crotonyl fentanyl ((E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2- enamide);
- (80) valeryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide);
- (81) N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide (2'-fluoro ortho-fluorofentanyl; 2'-fluoro 2-fluorofentanyl);
- (82) N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide (4'-methyl acetyl fentanyl);
- (83) beta-phenyl fentanyl or N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide (β' -phenyl fentanyl; beta'-Phenyl fentanyl; 3-phenylpropanoyl fentanyl);
- (84) beta-methyl fentanyl or N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide (β -methyl fentanyl);
- (85) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide (ortho-fluorobutyryl fentanyl; 2-fluorobutyryl fentanyl);

- (86) (N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (ortho-methyl acetylfentanyl; 2-methyl acetylfentanyl);
- (87) 2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide (ortho-methyl methoxyacetylfentanyl; 2-methyl methoxyacetyl fentanyl);
- (88) N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (para-methylfentanyl; 4-methylfentanyl);
- (89) N-(1-phenethylpiperidin-4-yl)-N-phenylbenzamide (phenyl fentanyl; benzoyl fentanyl);
- (90) N-(1-phenethylpiperidin-4-yl)-N-phenylthiophene-2-carboxamide (thiofuranyl fentanyl; 2-thiofuranyl fentanyl; thiophene fentanyl)
- (91) Ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate (fentanyl carbamate);
- (92) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide (ortho-fluoroacryl fentanyl);
- (93) N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (ortho-fluoroisobutyryl fentanyl);
- (94) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide (para-fluoro furanyl fentanyl);
- (95) cyclopentyl fentanyl;
- (96) isobutyryl fentanyl;
- (97) para-chloroisobutyryl fentanyl;
- (98) para-methoxybutyryl fentanyl;
- (99) para-fluorobutyryl fentanyl;
- (100) ocfentanil;
- (101) Ortho-Fluorofentanyl;
- (102) Tetrahydrofuranyl Fentanyl;
- (103) Methoxyacetyl Fentanyl;
- (104) 4-Fluoroisobutyryl Fentanyl;

OTHER SUBSTANTIVE ISSUES

No substantive issues to DPS

ALTERNATIVES

No alternative to DPS

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo will Remain. Without enactment, the fentanyl trafficking enhancement statute (Section 31-18-27 NMSA 1978) would continue to apply only to “fentanyl” without a statutory definition.

AMENDMENTS

DPS does not propose amendments, but notes that a technical amendment could add language specifying the criteria for determining chemical similarity. The New Mexico Department of Public Safety Forensic Laboratory adds that the bill could add from 16.19.20.65 SCHEDULE 1: A NMAC, that is already in our existing New Mexico law.