

LFC Requester: _____

**AGENCY BILL ANALYSIS
2026 REGULAR 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}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date 2/5/2026

Bill No: SB 255-280

Sponsor: Senator Jay C. Block
Fentanyl Trafficking as Murder

Agency Name
and Code LOPD-280
Number:

Person Writing Mark A. Peralta-Silva

Short
Title: _____

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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: This bill creates the crime of trafficking of fentanyl resulting in death. The crime is defined as “the intentional and unlawful trafficking or distribution of any amount of fentanyl to another person that results in the death of that person by cause of injecting, inhaling, absorbing or ingesting the fentanyl.” The bill specifies that whoever commits this crime is guilty of first-degree murder and “shall serve a mandatory thirty-year sentence.”

The bill also provides that an individual cannot claim as a defense that the deceased “purposefully, knowingly, recklessly or negligently injected, inhaled, absorbed or ingested any amount of fentanyl.”

FISCAL IMPLICATIONS

If passed, this bill has the potential to greatly affect the resources the LOPD would have to put forward in defending any drug case where the State could allege trafficking of fentanyl and there is a death, by overdose or otherwise. The substantive issues with the bill are described below, but they illustrate the likely litigation that would ensue in the prosecution of this proposed crime. Further, because the crime specifies that a defendant convicted of this crime is also guilty of first degree murder, the potential penalty of life imprisonment necessitates careful and robust representation that may include several, experienced LOPD or contract defense attorneys, possible experts, and mitigation staff assistance.

Cases carrying a life sentence require representation by our most experienced attorneys. The LOPD cost for experienced defense attorneys, including salary, benefits, operational costs, and support staff is \$292,080.16 annually in the Albuquerque/Santa Fe areas, and \$300,569.45 in outlying geographic areas. 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/ls-sclaid-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.

SIGNIFICANT ISSUES

Confusion over the penalty, possible amendment by reference, and issue with mandatory minimum sentencing

There are many potential issues with this bill. First, there is a concern that the bill specifies that conviction of this crime *also* constitutes a conviction for first-degree murder, a capital felony under NMSA 1978, Section 30-2-1. The analyst is skeptical of the exact penalty because as written the statute specifies "Whoever commits trafficking of fentanyl resulting in death is guilty of first degree murder and shall serve a mandatory thirty-year sentence." However, first degree murder itself is designated in Section 30-2-1 as "a capital felony" without specifying the basic sentence. *See* § 30-2-1(A).

Critically, the sentencing for a "capital felony" is set as follows: "When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without the possibility of release or parole." NMSA 1978, § 31-18-14. Moreover, NMSA 1978, Section 31-21-10(A) specifies that a person "who was sentenced to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence."

There is confusion over whether this proposed crime is a form of first-degree murder, or if, instead, the bill is stating the penalty for a violation of this crime is a capital felony, like first degree murder, or whether it is creating a form of first degree murder subject to *different* sentencing procedures than the crime defined in Section 30-2-1(A). The language employed in SB 255 describing this crime as "first degree murder" but imposing a novel "mandatory thirty-year sentence" is completely inconsistent with the current statutory scheme, which *classifies* felonies in Chapter 30 (Criminal Offenses) and sets sentences and parole eligibility in Chapter 31 (Criminal Procedure).

If this bill is creating a new form of first-degree murder, which it seems it does by specifying a violation of this bill is first-degree murder, then there is a serious constitutional challenge because the bill would be amending Section 30-2-1, our murder statute, by reference. Article IV, Section 18 of the New Mexican Constitution specifies that "No law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full." This provision is also called as the "blind legislation" provision. There is an exception to this requirement for tax laws and procedural changes. *See* N.M. Const. art. IV, § 18. However, these exceptions do not apply to substantive changes like the definition for first-degree murder. This statute enlarges the scope of first-degree murder from willful and deliberate, felony, and depraved mind murder to also include trafficking fentanyl resulting in death. Doing so in this way may be unconstitutional and likely to lead to litigation.

Adding to this confusion is the bill's proposal of something of a mandatory-minimum, specifying "a mandatory thirty-year sentence." Under Section 31-18-14 and Section 31-21-10, a first-degree murder is, in effect, a mandatory-minimum 30-year sentence, with a defendant being *eligible* for (but not entitled to) parole after serving 30 years for first-degree murder. What is unclear with this proposed crime is whether a defendant only serves 30 mandatory years with

automatic parole at 30 years, or like first-degree murder, serves a life sentence with the possibility of parole after 30 years. This is a meaningful distinction and one that would likely lead to litigation before district courts and on appeal.

Mandatory sentences should be enacted extremely sparingly. See Ashley Nellis, Ph.D., *How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It*, The Sentencing Project (Feb. 14, 2024) (“Widespread evidence shows that mandatory minimum sentences produce substantial harm with no overall benefit to crime control.”), available at <https://www.sentencingproject.org/fact-sheet/how-mandatory-minimums-perpetuate-mass-incarceration-and-what-to-do-about-it/>; Alison Siegler, *End Mandatory Minimums*, Brennan Center for Justice (Oct. 18, 2021) (noting that “mandatory minimums shackle judges” while giving prosecutors unfettered power, this results in pervasive racial disparities), available at <https://www.brennancenter.org/our-work/analysis-opinion/end-mandatory-minimums>; Jonathan P. Caulkins, *Are Mandatory Minimum Drug Sentences Cost Effective?*, Santa Monica, CA: RAND Corporation (1997) (to reduce substance consumption and the violence and theft that accompany the black market for controlled substances, “more can be achieved by spending additional money arresting, prosecuting, and sentencing dealers to **standard** prison terms than by spending it sentencing fewer dealers to longer, **mandatory** terms.”) (emphasis added), available at https://www.rand.org/pubs/research_briefs/RB6003.html; Tanya Golash-Boza, *5 charts show why mandatory minimum sentences don’t work*, PBS News (June 1, 2017) (noting that “even after crime rates began to decline, legislators continued passing punitive laws,” even while “[i]ncarceration has had a limited impact on crime rates”), available at <https://www.pbs.org/newshour/politics/5-charts-show-mandatory-minimum-sentences-dont-work>.

The proposed mandatory sentence in this legislation would not only be egregiously draconian under the circumstances of most cases, but would create a complete outlier in New Mexico’s overall criminal statutory scheme. Even if the thirty-year mandatory sentence for fentanyl trafficking resulting in death is intended as a “mandatory thirty years” (and not an indeterminate “minimum” of nine, with the potential for more, *see assumption, noted in bill synopsis*), it would be unprecedented in New Mexico’s sentencing scheme for a second-degree felony. No second degree felony has a fully mandatory sentence. Second degree criminal sexual penetration of a child carries fifteen years, but only has a *mandatory minimum of three years*. To punish distribution – of potentially a single dose quantity of cocaine or similar drug – more harshly than rape of a child would be an egregious incongruity in the law.

Relatedly, it is unclear what type of felony this crime is. The crime specifies anyone who commits this crime is guilty of first-degree murder, which as noted above, is a capital felony. If so, then original appellate jurisdiction lies with the New Mexico Supreme Court. However, if this statute is construed as creating a felony that is not a capital felony then direct, appellate jurisdiction lies with the New Mexico Court of Appeals.

New Crime of “trafficking of fentanyl resulting in death”

The bill would create a new crime for trafficking fentanyl “resulting in death” with a mandatory 30-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. For example, second-degree murder, which has a *non-mandatory* 18-year penalty, a

person must know that their acts created a strong probability of death or great bodily harm, and their acts must be the proximate cause of death. *See State v. Suazo*, 2017-NMSC-011, ¶¶ 22-25, 390 P.3d 674 (rejecting a “should have known” standard for culpability); UJI 14-134 NMRA (defining proximate cause to require the death was foreseeable and that the defendant's conduct was a “significant cause” of the death “uninterrupted by an outside event”). When distribution of a drug results in an accidental overdose by the user, the trafficker has neither the mental culpability nor the causal culpability for a penalty akin to second-degree murder.

These concerns are even more pronounced when one considers that it is unclear under this language whether trafficking under this statute includes possession with intent to distribute. Under this proposed bill, the crime “consists of the intentional and unlawful trafficking or distribution of any amount of fentanyl to another person.” This language seems to differ from the general trafficking statute, NMSA 1978, Section 30-31-20(A), which includes manufacture, distribution, and possession with intent to distribute. Like the issue with the penalty above, this confusion is created by poor drafting that relies on vague language, specifically, “intentional and unlawful trafficking,” which is not defined in the bill. Still, a court may reach this reading because the proposed bill states “any amount” of fentanyl qualifies so long as the trafficking or distribution results in someone’s death. Litigation over whether this bill includes possession with intent to distribute is likely.

If a court were to hold that trafficking under this statute includes possession with intent to distribute, then there are greater issues regarding the mental culpability generally required for homicide as explained above. Unlike manufacture and distribution (the two other forms of trafficking under Section 30-31-20), possession with intent to distribute requires no finding of volition on the part of the possessor, other than simple possession with some inference that they may distribute some amount in the future. These cases are typically litigated with the assistance of law enforcement “experts” who consistently testify that relatively small amounts of a substance meet the threshold of possession with intent to distribute (or trafficking) rather than an amount used for defendant’s own personal use. Put simply, including possession with intent to distribute within a crime associated with “resulting in” another person’s death creates the likelihood that an addict with a small, not obviously trafficking amount of a controlled substance could be considered a murderer a friend consumes part of their recreational stash.

Finally, imposing exceedingly harsh penalties for traffickers specifically to address overdose deaths is not the solution. Overdose is a public health issue that requires a public health response; they are not a criminal issue requiring a punitive response. The most effective ways to reduce overdose deaths are to expand access to overdose rescue medications, expand the “Good Samaritan” law to incentivize seeking emergency assistance without fear of prosecution (*see below*), and expand substance abuse treatment more generally. Analyst also notes that overdose deaths have declined 8% statewide since 2021, according to the New Mexico Department of Health. *See*

<https://www.nmhealth.org/news/awareness/2025/1/?view=2169#:~:text=Overdose%20deaths%20have%20declined%208,948%20overdose%20deaths%20in%202023>.

Chilling effect on users calling for help with overdoses

Recently, this State has taken several steps forward in the fight against overdoses. This bill would be taking us several steps back. With the passage of our Good Samaritan Law, NMSA 1978, Section 30-31-27.1 (2007, amended 2019), our State (the first in the Nation to do so), made the decision to treat the overdose epidemic with humanity. This statute was passed during an effort in

many states to combat an epidemic of overdose deaths through the proliferation of naloxone and enactment of 911 immunity laws. See Kelsey Bissonnette, *Anti-Death Legislation: Fighting Overdose Mortality from a Public Health Perspective*, 23 Temp. Pol. & Civ. Rts. L. Rev. 451, 451-59 (2014) (noting “[r]ecently, ‘911 immunity laws’ have been a popular method of legislating against drug deaths”); Valena E. Beety, *Prosecuting Opioid Use, Punishing Rurality*, 80 OHSLJ 741, 763-63 (2019) (“Good Samaritan laws were created to shield eyewitnesses from prosecution for drug-related crimes when they called for help.”); Nicole Schill, *The Fatal Shortcomings of Our Good Samaritan Overdose Statutes and Proposed Model Statute*, Cardozo J. Equal Rts. & Soc. Just. 123, 123-27 (2018) (noting Good Samaritan laws were a response to ever-rising overdose deaths, starting with New Mexico’s enactment of its Good Samaritan law in 2007). These policies came about because of the recognition “that sometimes people do not call 911 when they observe an overdose because they are afraid that they will be taken to jail, or face other legal consequences as a result.” Bissonnette, *supra*, at 451; see also *id.* at 453-54 (“Bystanders do not always call 911 when an overdose occurs. Overdose witnesses may hesitate to call for emergency assistance for any number of reasons, including fear of prosecution. These fears are not without justification. Persons found to have provided overdose victims with drugs may be subject to prosecution for drug-induced homicide.”).

In fact, 2002 data of Albuquerque drug users showed that of 101 heroin users, 95 of whom had personally witnessed an overdose, only six immediately called 911, 36 others only called “after an average delay of 18.7 minutes,” and 49 individuals said they did not call or delayed calling 911 because of “police.” Bissonnette, *supra*, at 455-56. Put another way, over half of these surveyed individuals reported hesitancy, if not outright failure to call 911 because of the fear of prosecution. Section 30-31-27.1 was our state’s public health response to the ever-growing tragedy of overdoses.

While trafficking is not included in the immunity provisions, if a court were to consider possession with intent to distribute fentanyl as trafficking resulting in death, 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).

Because our trafficking statute does not set a per se limit of what constitutes possession with intent to distribute, there is a serious concern that an individual who only meant to share a single dose of a drug with a fellow user, which then “results in” another’s overdose and subsequent death, can now be prosecuted as a murderer. Such concerns can have chilling effects. Put simply, while this bill ostensibly exists as a recognition that drugs are dangerous and life is precious, it could have significant chilling effects on a population already skeptical of law enforcement and in turn lead to more preventable deaths.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

If this bill is technically creating a new form of first-degree murder, then there is a technical issue because the bill effectively amends Section 30-2-1, the first- and -second, degree murder statute by reference. *See* Legislative Drafting Manual 5, 26 (Sept. 22, 2015).

OTHER SUBSTANTIVE ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

ALTERNATIVES

There are better uses of taxpayer money than prosecuting overdose deaths as first-degree murder. There is no question that drug-related deaths are tragedies. But the possibility of prosecuting individuals addicted to drugs who share those drugs as first-degree murders risks diverting resources to more useful and humane purposes.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS