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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 234/aHJC

SHORT TITLE: Definition of Fentanyl

SPONSOR: Reeb/Murphy

LAST ORIGINAL
UPDATE: 2/15/2026 **DATE:** 2/9/26 **ANALYST:** Gygi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$28.2	At least \$28.2	At least \$56.4	Recurring	General Fund
Cost to Counties	No fiscal impact	At least \$19.2	At least \$19.2	At least \$38.4	Recurring	County General Funds

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

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

- Administrative Office of the Courts
- Administrative Office of the District Attorneys
- Corrections Department
- Department of Public Safety
- New Mexico Sentencing Commission

SUMMARY

Synopsis of the HJC Amendment to Senate Bill 234

The House Judiciary Committee (HJC) amendment to Senate Bill 234 (SB234) replaces the definition of fentanyl and fentanyl analog used in the original bill and instead refers to the definition used in the Criminal Code under the definitions of controlled substances (Section 30-31-2 NMSA 1978).

Synopsis of House Bill 234

House Bill 234 (HB234) proposes amendments to the Criminal Sentencing Act to enhance penalties for trafficking an illicit substance that is chemically similar to fentanyl. Existing law specifies enhancements to the basic prison sentence (see Section 31-18-15 NMSA 1978) for someone convicted of trafficking a controlled substance (under Section 30-31-20 NMSA 1978) when they also are found to possess fentanyl, by up to three or five years depending on how much of the drug they possess; or by up to five years if they convince someone else to sell the drug.

The bill adds a definition of “fentanyl” to include analogs and chemically similar substances:

For the purpose of this section, “fentanyl” means fentanyl and fentanyl-related substances, including analogs and chemically similar substances that are produced illegally, and including para-bromofentanyl, para-fluoroacetyl fentanyl and para-methyl fentanyl.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

The substitute for HB234 allows courts to extend or “enhance” a potential prison sentence when someone is convicted of selling or convincing another person to sell something chemically similar to fentanyl. The potential fiscal impacts of HB234 must be considered together with the impacts of the enhancements for fentanyl-trafficking sentences enacted by the in 2025. The overall financial impact on the Corrections Department (NMCD) will depend on the number of new cases resulting from these enhancements. Still, even a modest increase in convictions could lead to significant expenditures over time. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations.

NMCD states that any fiscal impact from HB234 is expected to be incremental and gradual. In its 2025 analysis for the new enhancements, the department estimated the average cost to incarcerate a single inmate in FY24 was \$59.3 thousand. Due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities. LFC staff estimate the cost to counties to hold an individual in jail prior to incarceration is \$19.2 thousand per year.

Increased prosecution and adjudication of enhanced sentencing cases may require additional resources for district attorneys, public defenders, and the judiciary, potentially leading to higher operational costs for the criminal justice system. Conversely, the bill could have a deterrent effect on fentanyl trafficking, potentially reducing future law enforcement and public health expenditures associated with drug-related crimes and overdoses. However, without investments in prevention, treatment, and harm reduction programs, the long-term fiscal impact may lean more toward increased incarceration costs rather than reduced crime rates.

SIGNIFICANT ISSUES

The Legislature in 2025 amended the Sentencing Act to include a new section (Section 31-18-27 NMSA 1978) mandating sentencing enhancements when a person is in possession of fentanyl in relation to a crime of trafficking a controlled substance. These enhancements addressed growing concerns about the public health and safety risks associated with the drug’s potency and its role in the state’s overdose crisis. HB234 would mandate those same enhancements for related controlled substances, providing clarity for sentencing and closing a loophole in current statute.

As the Department of Public Safety (DPS) explains:

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.

DPS also states:

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.

In its 2025 analysis for a similar bill, the New Mexico Sentencing Commission (NMSC) reported, based on prison admission data for fiscal years 2023 and 2024, fentanyl was implicated in about 18 percent of drug trafficking cases that resulted in a prison sentence during those years.

Although potentially serving as a deterrent, mandatory enhancements could contribute to higher incarceration rates (see “Fiscal Implications”), raising questions about the long-term effectiveness of punitive measures versus treatment-focused approaches to addressing substance abuse. Additionally, the bill’s implementation could have implications for judicial discretion because judges may have less flexibility in sentencing individuals based on the circumstances of their cases. Law enforcement and prosecutorial resources could also be impacted because cases involving fentanyl may require more extensive investigations and court proceedings. Finally, the potential for unintended consequences, such as an increase in plea bargains to avoid enhanced sentencing or shifting trafficking patterns, should be considered in the broader discussion of drug policy and criminal justice in New Mexico.

PERFORMANCE IMPLICATIONS

According to the Administrative Office of the Courts (AOC):

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB234 relates to the House Judiciary substitute for House Bill 8, an omnibus public safety measure enacted by the Legislature in 2025 that created a new section of the statute mandating sentencing enhancements for fentanyl-related drug trafficking. At least five other bills did not pass that proposed the same or stricter penalties; for example, House Bill 274 proposed classifying fentanyl-related trafficking as a first-degree felony with a punishment of life imprisonment.

TECHNICAL ISSUES

The substitute addresses a concern raised by DPS on the original bill that the original HB234 unnecessarily created a new definition for fentanyl:

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.”

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