

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR Reps. Sena Cortez/Montoya/Block/and Martinez/Sen. Block **LAST UPDATED** _____
ORIGINAL DATE 2/7/2025
BILL
SHORT TITLE Trafficking Fentanyl as 1st Degree Felony **NUMBER** House Bill 274
ANALYST Dinces

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD		\$23.4 to \$514.7	\$49.9 to \$1,099.6	\$73.3 to \$1,614.3	Recurring	General Fund
LOPD		At least \$275.0	At least \$275.0	At least \$550.0	Recurring	General Fund
Total		At least \$298.4	At least \$324.9	At least \$623.3	Recurring	General Fund

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

Conflicts with House Bills 107 and 166
 Relates to Senate Bills 25 and 95 and House Bill 16

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Sentencing Commission (NMSC)
 Corrections Department (NMCD)

Agency Analysis was Solicited but Not Received From
 Administrative Office of the District Attorneys (AODA)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 274

House Bill 274 (HB 274) amends Section 30-31-20 NMSA 1978 to provide a first-degree felony penalty for the first and subsequent offenses of intentionally trafficking fentanyl. HB274 also amends Section 31-18-15 NMSA 1978 to provide a basic sentence of life imprisonment for the first-degree felony crime of trafficking fentanyl.

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

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the length of time served in prison that might result from this bill. 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.

More severe penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. The above fiscal estimate assumes one additional attorney and additional support staff for LOPD. Indigent offenders are entitled to public defender services.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

NMSC points out that 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. If 18 percent of drug trafficking cases were first degree felonies, prison costs would increase up to \$514.7 thousand in the first year and would increase up to about \$1.1 million in the second year. These estimates are based on marginal increases in prison costs.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and although laws and policies designed to deter crime focus mainly on increasing the severity of the punishment, this does little to deter criminals because most know little about sanctions for specific crimes. These findings suggest increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful than increasing penalties. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than heightened penalties.

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

HB274 provides a first-degree felony penalty for the first offense (and subsequent offenses) of trafficking fentanyl, with a basic sentence of life imprisonment. For all other first offenses of trafficking controlled substances, Section 30-31-20 NMSA 1978

provides a second-degree felony penalty (basic sentence of nine years imprisonment), and a first degree felony penalty for all other subsequent offenses (basic sentence of 18 years imprisonment).

The National Conference of State Legislatures (NCSL) reports that during the 2023 legislative session, over 600 bills were introduced related to fentanyl, and at least 103 laws were enacted. Most bills intersect with the criminal justice and public health systems. States introduced bills to change the classification of fentanyl as a controlled substance, and they considered increasing penalties for possession and distribution, drug-induced homicide and drug delivery resulting in death. States also focused on increasing awareness about the risk associated with illicitly manufactured fentanyl and funded training programs for first responders.

The Department of Public Safety (DPS) states it is in favor of stronger penalties for trafficking fentanyl but has concerns about any fentanyl trafficking charge being a first-degree felony with a punishment of life imprisonment.

Both DPS and the New Mexico Sentencing Commission (NMSC) also highlight this bill does not differentiate between an individual who is trafficking only one or a few pills versus an individual who is trafficking thousands of pills or kilogram amounts of powder. NMSC states that in fentanyl trafficking cases, the number of pills ranged from 4 to 3,000 and the weight ranged from 2 grams to 5,219 grams.

NMCD states:

The amendment could positively impact a community by increasing the consequences for individuals involved in fentanyl trafficking, thereby deterring the distribution of fentanyl. The increase in sentencing signals a commitment to protecting public health and safety, potentially reducing overdose deaths. At the same time, the amendment highlights a commitment to rehabilitation, as extended incarceration offers offenders more time to engage in programs that can help them turn their lives around. NMCD provides a range of programs aimed at helping inmates reprogram their lives and pursue a drug-free future. Overall, this change strengthens efforts to protect public health, reduce overdose deaths, and gives inmates the opportunity for positive change.

ADMINISTRATIVE IMPLICATIONS

According to 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

HB274 conflicts with HB107 (also amending Section 30-31-20 NMSA 1978) and HB166 (also amending Section 31-18-15 NMSA 1978).

The bill relates to SB25, SB95, and HB16, all containing sentencing enhancements for fentanyl trafficking offenses under Section 30-31-20 NMSA 1978.

ALTERNATIVES

DPS states that consideration should be given to having sentencing differentiated by the amount of fentanyl being trafficked and to adding a specific pill or powder amount for sentencing along with details about the percentage of fentanyl content in the pills or powder.

SD/hj/hg/sgs