

LFC Requester:

Scott Sanchez

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** February 6, 2025

*Check all that apply:*

**Bill Number:** HB 248

Original  Correction   
Amendment  Substitute

**Sponsor:** Rep. Randall T. Pettigrew  
Rep. Joseph L. Sanchez  
Rep. Art De La Cruz

**Agency Name and Code Number:** 305 – New Mexico  
Department of Justice

**Person Writing**

**Analysis:** Bryan Nickerson

**Short Title:** CARRYING A FIREARM  
WHILE TRAFFICKING

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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 revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: House Bill 248 would create a new third-degree felony offense for carrying a firearm while trafficking controlled substances in violation of NMSA § 30-31-20. A third-degree felony offense is punishable by up to 3 years in prison and a fine of up to \$5,000.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

No significant issues noted.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

None noted.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**Double Jeopardy:** There are currently firearm enhancements in relation to drug transactions.

- NMSA § 31-18-16(A): “When a separate finding of fact by the court or jury shows that a firearm was used in relation to a drug transaction...the basic sentence of imprisonment prescribed for the offense shall be increased by one year.”
- NMSA § 31-18-16(D): “For a second or subsequent offense, when a separate finding of fact by the court or jury shows that a firearm was used, brandished, or discharged in relation to a drug transaction...the sentence shall be increased by five years.”
- HB 248 could create double jeopardy issues, particularly with NMSA § 31-18-16(A), since the carrying of a firearm and the use of a firearm could constitute unitary conduct depending on the facts of a particular case.

**HB16 Fentanyl Trafficking Sentences**

- Proposes sentencing enhancements for possession of certain amounts of fentanyl

pills, capsules, tablets, or powder.

- Proposes a sentencing enhancement for recruiting, coordinating, organizing, supervising, directing, managing, or financing another to commit trafficking fentanyl which shall be in addition to charging conspiracy to commit trafficking.

#### **SB25 Penalties for 1 KG Fentanyl**

- Proposes a sentencing enhancement for possession of fentanyl that amounts to one kilogram or more.
- SB25 proposes to enhance sentencing for individuals whose trafficking convictions are for possession with intent to distribute one kilogram or more of fentanyl.

#### **SB95 Fentanyl Dealing with Death as Capital Crime**

- Proposes to make distribution of fentanyl resulting in death a capital felony.

#### **HB274 Trafficking Fentanyl as 1<sup>st</sup> Degree Felony**

- Proposes to make trafficking fentanyl a first-degree felony with a sentence of life imprisonment.

### **TECHNICAL ISSUES**

None noted.

### **OTHER SUBSTANTIVE ISSUES**

**Definition of “Carry”:** The term “carry” is not defined in HB 248. Incorporating the definition of “carrying a deadly weapon” as outlined in NMSA 1978, § 30-7-1 could be beneficial to avoid litigation over this issue. NMSA 1978, § 30-7-1 states, “‘Carrying a deadly weapon’ means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.” Replacing the words “deadly weapon / weapon” with the word “firearm” derived from NMSA 1978, § 30-7-1 could be beneficial for HB 248 by properly defining the action of “carrying” a firearm.

**Definition of “Firearm”:** The definition of “firearm” in HB 248 states: “‘firearm’ means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon. Uniform Jury Instruction (“UJI”) 14-704 defines a firearm as follows: “A firearm means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion the frame or receiver if a firearm, any firearm muffler or firearm silencer. Firearm includes any handgun, rifle, or shotgun.” Using the exact definition for a firearm as written in UJI 14-704 may help keep uniformity in the law.

### **ALTERNATIVES**

None.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo.

### **AMENDMENTS**

N/A