

**LFC Requester:** \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2025 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**   x    
**Correction** \_\_\_\_\_ **Substitute** \_\_\_\_\_

**Date**   2/6/25    
**Bill No:**   HB 274-280  

**Sponsor:**   Elaine Sena Cortez, Jay C. Block, Rod Montoya, John Block, Alan T. Martinez    
**Short Title:**   Trafficking Fentanyl as 1st Degree Felony  

**Agency Name and Code**   LOPD-280    
**Number:** \_\_\_\_\_  
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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)**

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

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB 95** (Fentanyl Dealing with Death as a Capital Crime); **SB 25** (Penalties for 1kg or greater of Fentanyl); **HB 107** (Penalty for Drug Trafficking & Death); **HB 16** (Alteration of Basic Sentence for Trafficking Certain Amounts of Fentanyl)

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

Under current law, trafficking a controlled substance is a second degree felony (nine years) for a first offense, and a first degree felony (mandatory eighteen years) for a second or subsequent offense. “Trafficking” means (1) manufacture of a controlled substance, (2) distribution, sale, barter, or giving away of a controlled substance (or analog thereof), and (3) possession with intent to distribute a controlled substance (or analog thereof).

HB 274 proposes to amend existing Section 30-31-20 NMSA 1978, which defines trafficking of controlled substances and sets related penalties, and Section 31-18-15 NMSA 1978, which describes penalties, to provide that trafficking of fentanyl in particular, *including for the first time*, shall result in a noncapital first degree felony resulting in a sentence of “life imprisonment” (defined by law as a term of 30 years). Where first degree felonies ordinarily have an 18-year sentence, HB 274 would create a new type of “first degree felony” to provide a life sentence instead.

**FISCAL IMPLICATIONS**

Penalty increases, particularly an increase that could put someone in prison for life, means that more of these cases would proceed to trial rather than resolving with plea agreements, because the state’s bargaining power is substantially increased by the dramatically greater sentence.

Should such cases proceed to trial, this type of case would necessitate assignment to higher level felony capable attorneys (Trial Attorneys). A Trial Attorney’s mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in outlying areas (due to a salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909 with start-up costs of \$5,210; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. Associate.

In “possession with intent to distribute” trafficking prosecutions, the State typically relies on law enforcement witnesses to provide expert opinions that certain amounts (often relatively small

amounts) are more consistent with trafficking than personal use (simple possession). Because of the *dramatic* increase in penalty for even first-offense trafficking, it may become necessary to hire defense experts to rebut those opinions in cases, should HB 274 become law.

Increase in the number of prosecutions, trial, and litigation expenses brought about by changes to criminal laws necessarily results in a need for an increase in indigent defense funding to maintain compliance with constitutional mandates for effective representation. Presently, LOPD workload is already so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide constitutionally mandated effective assistance to existing clients. Drug prosecutions already constitute a high percentage of the caseloads in our geographically outlying districts. Increase in prosecutions brings about an increase in need for indigent defense funding. In any event, accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after implementation of the proposed statutory change.

Additionally, courts, DAs, the NMDOJ, and NMCD could anticipate increased costs.

## SIGNIFICANT ISSUES

### Dramatic Mandatory Penalty

This proposed amendment to Section 30-31-20 NMSA 1978 provides for a truly remarkable increase in penalty to a *life sentence* for those convicted of trafficking in fentanyl, including for the first time. Currently, a first offense trafficking conviction carries a nine-year basic sentence that can be suspended in whole or in part in favor of probation. Subsequent offenses are first-degree felonies, which already carry a mandatory 18-year sentence (which can be mitigated to 12 years in exceptional cases, but cannot be suspended for probation).

As a noncapital life sentence, the 30 years is considered “mandatory.” The judge can mitigate the life sentence proposed by HB 274, but only by up to one-third (ten years) and only based on compelling individualized circumstances, which is extremely rare. Otherwise, a life sentence means a *mandatory* 30 years in prison that cannot be suspended in favor of probation. See NMSA 1978, § 31-18-15.1; *State v. Juan*, 2010-NMSC-041, ¶¶ 40-41, 148 N.M. 747.

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](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 sentences in this legislation would be egregiously draconian under the circumstances of most cases, as explained below.

### **The Most Likely Target: Addicts**

The law treats possession of a few grams of individually wrapped baggies of substances as trafficking by possession with intent to distribute, the same crime as a person who possesses kilos of the same substance in a high level operation. As law enforcement expert witnesses regularly acknowledge, it is not uncommon for drug addicts to sell some portion of their stash in order to fund their own habit. Under this legislation, a user sharing a single fentanyl pill with a fellow drug user would face a life sentence. This penalty scheme fails to differentiate between entirely distinct types of offenders and their relative impacts on the community.

The proposed penalty would exacerbate concerns that already exist with the trafficking statute. The definition of trafficking includes possession with intent to distribute, which is often over-prosecuted against users, rather than truly culpable traffickers because there is no quantity requirement and relatively small amounts will meet the criteria for trafficking if the charging officer testifies that it does. As a result, persons suffering from substance abuse disorder who possess relatively small amounts may nonetheless find themselves facing ever-harsher penalties for having a problem that is likely best addressed not through incarceration but through public health programs that target prevention and the root of addiction. *See* <https://www.ncbi.nlm.nih.gov/books/NBK424861/> (National Library of Medicine’s discussion of the Surgeon General’s Report on Alcohol, Drugs, and Health and a vision for a public health approach).

Analyst further notes that anyone convicted of trafficking who has a prior felony (for theft, simple drug possession, or other common addiction-adjacent offenses) already faces sentencing enhancements under the Habitual Offender Act, NMSA 1978, Section 31-18-17.

### **PERFORMANCE IMPLICATIONS**

It is difficult to predict the implications on criminal defense when such a harsh penalty is introduced. Because of the enhanced bargaining power made available to the prosecution, criminal defendants may accept non-beneficial plea agreements solely to avoid such a harsh sentence. Public defenders would have to place exponentially more resources into these cases to avoid injustices.

### **ADMINISTRATIVE IMPLICATIONS**

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

See above.

### **TECHNICAL ISSUES**

The Short Title “Trafficking Fentanyl as 1st Degree Felony” is misleading. A “first degree felony” has an 18-year sentence. This bill proposes a *life sentence*.

## **OTHER SUBSTANTIVE ISSUES**

Many people who “traffic” drugs in New Mexico may themselves be experiencing substance use disorder. While incarcerated, individuals are often denied care. In fact, many people do not receive any sort of treatment or counseling during incarceration. See Prison Policy Initiative, *Addicted to Punishment: Jails and Prisons Punish Drug Use Far More than They Treat It*, Prisonpolicy.org (2024), available at <https://www.prisonpolicy.org/blog/2024/01/30/punishing-drug-use/>; Prison Policy Initiative, *Chronic Punishment: The Unmet Health Needs of People in State Prisons*, Prisonpolicy.org (2022), available at <https://www.prisonpolicy.org/reports/chronicpunishment.html>. Indeed, the NM Corrections Department is not required to establish and operate a medication-assisted treatment program for all people in state correctional facilities in need of medication until the end of fiscal year 2026. Lack of treatment actively contributes to the staggering rates of drug overdose in jails and prisons.

## **ALTERNATIVES**

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

Prosecutions will continue through the existing statute.

## **AMENDMENTS**