

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: 22 Jan 2025

Check all that apply:

Bill Number: HB 107

Original Correction
Amendment Substitute

Sponsor: Andrea Reeb

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

Person Writing

Short Title: PENALTY FOR DRUG
TRAFFICKING & DEATH

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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
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **None found.**
 Duplicates/Relates to Appropriation in the General Appropriation Act **Unknown.**

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 107 seeks to amend NMSA 1978 § 30-31-20 Trafficking Controlled Substances; Violation, § 30-31-21 Distribution to A Minor, § 30-31-22 Controlled Or Counterfeit Substances; Distribution Prohibited, and § 30-18-15 Sentencing Authority - - by adding to these statutory sections a new offense and increased penalties for the trafficking of counterfeit substances of controlled substances and their derivatives (a subset of Schedule I and II controlled substances).

Modifications to § 30-31-20 Trafficking Controlled Substances.

The amendment would modify the definition by adding to manufacture, distribution or possession of a substance that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers. This amendment language segregates a subset of Schedule I and II substances and assigns heightened penalties to offenses that include them.

For instance, the amendment changes the penalty by providing language for a minimum term of imprisonment, i.e., first offense, *without* the death of a human being, a second-degree felony (unchanged from the extant language) but with a minimum nine years in prison.

The amendment also adds a heightened penalty when the first offense results in the death of a human being, leaving it as a second-degree felony but adding a minimum of twelve years in prison.

For second and subsequent violations when there is the death of a human being, the amendment makes such offenses a first-degree felony (the amendment adds life imprisonment by modifying § 30-18-15 Sentencing Authority, *infra*).

Modifications to § 30-31-21 Distribution to a Minor.

The amendment adds a new section C. that makes it a first-degree felony for an adult to distribute to a minor a substance of the subset of Schedule I or II substances.

Modifications to § 30-31-22 Controlled Or Counterfeit Substances.

This section provides an exclusion for “a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug or a counterfeit substance of a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug,” distinguishing it from “a counterfeit substance enumerated in Schedule I, II, III or IV.”

Modifications to § 30-18-15 Sentencing Authority.

The amendment adds to the sentencing authority sentencing amendment language correlative to the offenses sections. This section adds the following:

- “trafficking a controlled substance resulting in the death of a human being” - life imprisonment

and

- “second degree felony for trafficking a controlled substance resulting in the death of a human being” - eighteen years imprisonment

The amendment also adds pecuniary penalties to the offenses. For a second-degree felony of trafficking resulting in death the penalty is \$12,500. For a first-degree felony of trafficking resulting in death the penalty is \$17,500.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The amendment’s term trafficking “resulting in the death of a human being” is undefined, leaving the statute open to challenges for vagueness. It would support the purpose of the amendment to include a definition of the term, perhaps in § 30-31-20 Trafficking in Controlled Substances, Section 1 (A) where “traffic” is defined.

For example, it is unclear if the amendment seeks heightened punishment for the death of a human being as a result of *ingesting* the trafficked substance, for an end user who *behaves dangerously after ingesting* the trafficked substance and kills another, if the act of trafficking itself results in the death of another, or any possible resulting death of a human being. The amendment also fails to include any mens rea element. It is unclear if the intent is for this crime to be a crime of general intent. Relatedly, if this is intended as a general intent crime, the amendment does not indicate how far attenuated “resulting in the death of a human being” is.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The amendment's Section 1 at page 3, § 30-31-20(B)(3) (formerly (B)(2)), the amendment should read "guilty of a first-degree felony for trafficking a controlled substance" so that this subsection parallels and is in harmony with the other subsections within this section.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS