

LFC Requester:	Sanchez, Scott
-----------------------	-----------------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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}

Date Prepared: 1/28/25 *Check all that apply:*
Bill Number: SB 95 Original Correction
 Amendment Substitute

Sponsor: Sen. Crystal Brantley **Agency Name and Code** AOC
Short Title: Fentanyl Dealing With Death as Capital Crime **Number:** 218
Person Writing Kathleen Sabo
Phone: 505-470-3214 **Email** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Related to SB 25, providing for an alteration to the basic sentence of selling or trafficking fentanyl to an adult or minor, and HB 136, adding the exposure to the use of fentanyl as evidence of abuse of a child under Section 30-6-1 NMSA 1978.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 95 enacts a new statutory section within the Controlled Substances Act, Section 30-31-1 NMSA 1978, et. seq, to create the capital felony of “Distribution of Fentanyl Resulting in Death,” defined as the intentional and unlawful distribution of any amount of fentanyl or a fentanyl-related substance to another person that results in the death of that person by cause of injecting, inhaling, absorbing or ingesting the fentanyl or fentanyl-related substance.

SB 95 provides that in a prosecution for distribution of fentanyl resulting in death, it is no defense that the deceased purposefully, knowingly, recklessly or negligently injected, inhaled, absorbed or ingested any amount of fentanyl or fentanyl-related substance.

SB 95 defines “fentanyl-related substance,” for purposes of this new statutory section, to mean a substance not otherwise assigned a number pursuant to the federal Controlled Substances Act and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act that is structurally related to fentanyl by one or more of the specified modifications.

FISCAL IMPLICATIONS

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.

Harsh 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. Indigent offenders are entitled to public defender services.

SIGNIFICANT ISSUES

- 1) SB 95 provides that a person convicted of distribution of fentanyl resulting in death is guilty of a capital felony and shall be sentenced pursuant to Section 31-18-14 NMSA 1978, which provides for a sentence of life imprisonment or life imprisonment without possibility of release or parole.
- 2) Harsh 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. Indigent offenders are entitled to public defender services.
- 3) Pursuant to 21 U.S.C. Section 841, the distribution of a controlled substance resulting in

death is an offense that upon conviction is punishable by a minimum sentence of twenty years imprisonment and a maximum sentence of life.

- 4) See *Drug Overdose Deaths: Facts and Figures*, National Institute on Drug Abuse, August 2024, <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates> .
- 5) Opponents of criminal penalties being instituted or enhanced or stiffened for illegal production, possession or distribution of fentanyl, including some public health officials, have warned of potential consequences such as worsening the opioid crisis and pushing users toward more dangerous synthetic alternatives, as suppliers seek to evade law enforcement scrutiny. Some criminal justice advocates say fentanyl should be treated as a public health issue rather than a law enforcement problem. See *States stiffen penalties for fentanyl, despite public health concerns*, Source NM (July 2023), <https://sourcenm.com/2023/07/21/states-stiffen-penalties-for-fentanyl-despite-public-health-concerns/> .

PERFORMANCE IMPLICATIONS

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

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB 25, providing for an alteration to the basic sentence of selling or trafficking fentanyl to an adult or minor, and HB 136, adding the exposure to the use of fentanyl as evidence of abuse of a child under Section 30-6-1 NMSA 1978.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS