

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: 1/28/25

Check all that apply:

Bill Number: SB95

Original Correction
Amendment Substitute

Sponsor: Sen. Crystal Brantley

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

Person Writing

Short Title: Fentanyl Dealing with Death as a Capital Crime

Analysis: Van Snow

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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:
 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:

SB95 would create the new crime of distribution of fentanyl resulting in death. The crime would consist of the intentional and unlawful distribution of fentanyl (or a fentanyl-related substance) to another when that person dies by consuming the distributed fentanyl. It would not be a defense to liability to argue that the other person chose to consume the fentanyl. The crime would be a capital offense, meaning that it would be punished by either life in prison or life in prison without the possibility of parole.

SB95 defines “fentanyl-related substance” to include various chemical modifications of fentanyl, regardless of whether those substances have been defined or prohibited by federal law.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

It is unclear what the term “intentional” modifies within Section 1(A). Accordingly, it is unclear precisely what the State must prove to establish the crime. For example, one possible reading would confine “intentional” to refer only to the act of distribution. If this is the case, a defendant would be liable even if he or she did not know that the buyer would consume the drug. Alternatively, a defendant could argue that the State would have to prove that the defendant knew that death would result from consumption. New Mexico courts have previously read in mens rea requirements into criminal statutes to avoid imposing harsh consequences for unintentional conduct. *See State v. Consaul*, 2014-NMSC-030, ¶ 40 (reading recklessness requirement into child abuse statute); *State v. Ortega*, 1991-NMSC-084, ¶ 23, 112 N.M. 554 (noting the “general presumption in our Anglo–American jurisprudence that . . . serious, non-regulatory crimes are generally attended by moral culpability arising from or manifested in a mental state generally characterized as “an evil mind”).

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB25 and HB136.

TECHNICAL ISSUES

SB95 covers chemical variations of fentanyl, “not otherwise assigned a number pursuant to the federal Controlled Substances Act[.]” It is unclear if “number” in the preceding sentence refers to a Schedule or something else.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.