

LFC Requestor: Self Assigned

**2025 LEGISLATIVE SESSION  
AGENCY BILL ANALYSIS**

**Section I: General**

**Chamber:** Senate **Category:** Bill  
**Number:** 95 **Type:** Introduced

**Date (of THIS analysis):** 01/27/2025  
**Sponsor(s):** Crystal Brantley  
**Short Title:** FENTANYL DEALING WITH DEATH AS A CAPITAL CRIME

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**Section II: Fiscal Impact**

**APPROPRIATION (dollars in thousands)**

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	N/A	N/A	N/A

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

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
<b>Total</b>	\$0	\$0	\$0	\$0	N/A	N/A

### Section III: Relationship to other legislation

Duplicates:

Conflicts with: None

Companion to: None

Relates to: HB107, SB25

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

### Section IV: Narrative

#### 1. BILL SUMMARY

a) Synopsis

Senate Bill 95 (SB95) amends the Controlled Substances Act to make distribution of fentanyl that results in death of a person a capital felony. SB 95 would nullify any defense that the deceased person purposefully or recklessly consumed fentanyl. The bill also defines fentanyl related substances including different modifications to substances.

Is this an amendment or substitution?  Yes  No

Is there an emergency clause?  Yes  No

b) Significant Issues

Senate Bill 95 (SB95) amends the Controlled Substances Act to make distribution of fentanyl that results in death of a person a capital felony. This responds to the issue that drug use can result in overdose death and is associated with other societal problems including crime, violence, homelessness, loss of productivity, and spread of blood-borne disease such as HIV and hepatitis.

Nationally overdose mortality related to fentanyl increased from 57,834 persons to 71,238 from 2020 to 2021. In New Mexico, there was an 84% increase of overdose deaths in just one year from December 2020 to December 2021, with a peak rate in March 2022 (<https://www.nmhealth.org/data/view/substance/2889/>.) There were 997 overdose deaths in NM in 2022, and 948 in 2023. Fentanyl was involved in 65% of overdose deaths in 2023. In 2023, most overdose deaths (84%) occurred among New Mexicans aged 25-64 years (working age population), with 26% of overdose deaths occurring in the 35-44 years age group. Counties that had both a high number of overdose deaths (>20 deaths) and an overdose death rate greater than the statewide age-adjusted rate (46.3 deaths per 100,000 population) in 2023 include Bernalillo, Santa Fe, Rio Arriba, and San Miguel.

In NM, drug overdose related emergency department (ED) visits increased overall by 11% from 1,857 visits in 2019 to 2,063 visits in 2023 with a peak in 2021 (2,343 visits). Opioid

overdose related ED visits accounted for 72% of the total drug overdose related visits in 2023. Fentanyl overdose related ED visits have increased from 241 visits in 2021 to 590 visits in 2023. In 2023, Bernalillo County had the highest number of fentanyl overdose related visits (248 visits) followed by Dona Ana County (59 visits). Fentanyl overdose related visits were more common among men than women and were more common among adults ages 25-44 years.

There has been a change in the trend of the drug overdose death rate since the peak in March 2022. After years of consistent annual increases of New Mexico's drug overdose death rates, New Mexico is now observing a decrease in deaths attributed to drug overdose. When comparing the first quarter (Q1, January-March) of 2023 with the Q1 of 2024, data showed a 22.1% decrease in total drug deaths and a 32.6% decrease in fentanyl-involved overdose deaths. Emergency department visits for the same period show a similar trend with a 13.2% decrease in drug-related visits. While this improvement probably relates to several factors, changes in drug use patterns and supply of illicit substances have likely had a large impact. It is hoped that these positive trends will continue. <https://www.nmhealth.org/data/view/substance/2889/>.

Drug-induced homicide legislation has been introduced in 25 jurisdictions since the 1980s ([From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide Statutes with Due Process](#)). Research on the public health impacts of this legislation show that it often is associated with unintended increased overdose mortality, as people at the scene of an overdose may not contact first responders due to fear of criminal penalty for homicide ([FJP-Drug-Induced-Homicide-Brief.pdf](#)). Analyses of drug-induced homicide practices in jurisdictions in New Jersey, Tennessee, North Carolina, Illinois, Louisiana, and New York, found that despite dramatic growth in drug-induced homicide prosecutions, all of the jurisdictions also experienced significant increases in overdose deaths, ranging from 7.6% to 20.1% in a single year ([FJP-Drug-Induced-Homicide-Brief.pdf](#)).

While increased penalties for substance use related crimes have widely been used at both federal and state levels, there is no evidence that increased sentencing will decrease rates of substance use, fentanyl related overdose mortality, or drug related criminal activity. According to a report by Pew Charitable Trust, there is no correlation between increased imprisonment for drug related crimes and substance use rates (<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

Increased sentencing and incarceration have also been shown to have a substantial negative impact on health and social disparities, including obtaining employment, education and other services (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9302017/>). There has also been little evidence of decreases in use, prevalence, or frequency of use according to a 2001 report from the National Research Council.

Furthermore, successful incarceration of entry level drug sellers/dealers does not decrease supply given the relative ease of replacing street dealers ([5 The Crime Prevention Effects of Incarceration | The Growth of Incarceration in the United States: Exploring Causes and Consequences | The National Academies Press](#)). It is likely the impact of increased penalties for drug distribution related crimes has little impact on supply as functionally, these laws are most likely to primarily incarcerate persons at the lowest levels of drug syndicates ([5 The Crime Prevention Effects of Incarceration | The Growth of Incarceration in the United States: Exploring Causes and Consequences | The National Academies Press](#)).

Though ostensibly the intended target of these laws are high-level substance distributors, studies and reviews of drug-induced homicide legislation show that the people most frequently prosecuted under these statutes are the persons who are present at the scene of the overdose ( [From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide Statutes with Due Process](#)). A New Jersey analysis of drug-induced homicide law found that 25 out of 32 drug-induced homicide prosecutions were friends of the overdose victim and did not regularly sell drugs ([FJP-Drug-Induced-Homicide-Brief.pdf](#).) An analysis of 100 drug-induced homicide prosecutions in Wisconsin found that close to 90% of the defendants were either friends or relatives of the decedent or low-level dealers selling to support their own drug use ([High-level drug dealers rarely charged with drug-related homicides as Wisconsin death toll reaches 10K | FOX6 Milwaukee](#)). And, an Illinois review of every drug-induced homicide prosecution in the state between 2009 and 2012 indicated that the person most frequently charged was the last person who was with the decedent before their death and was often a friend, family member, or lover, rather than a drug supplier by trade ([State drug policy reflects opposing sides – Chicago Tribune](#)).

Another issue of concern is that legislation focused on a single illicit substance, such as fentanyl, typically does not address the overall issue of polysubstance, or multiple substance, use. Many epidemiological studies have confirmed that persons with substance use disorders are likely polysubstance users. Nationwide, a general population study found that more than 90% of individuals with an opioid use disorder used more than two other substances within the same year and over 25% had at least two other substance use disorders. In New Mexico, roughly 65% of overdose deaths were found to be polysubstance related in years 2017 – 2021. Substances identified at the time of death due to overdose include combinations of methamphetamine, fentanyl, heroin, prescription pain opioids, benzodiazepines and ethanol (alcohol).” In that time period, Bernalillo County had the largest percentage of opioid overdose related emergency department visits (44% of the state total) followed by Santa Fe County (10.6%). (<https://www.nmhealth.org/data/view/substance/2889/>.) It can be difficult to determine the exacerbating drug leading to a fatal overdose when drug users have many substances in their system at the time of fatal overdose.

In 2009, the death penalty in New Mexico was eliminated, replacing all capital punishment sentences with life imprisonment without the possibility of parole. ([Chapter 31 - Criminal Procedure - NMSources.com](#)). Senate Bill 95’s establishment of new capital punishment penalties conflicts with the standing state system of laws.

## 2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?  
 Yes  No

Additional penalties related to fentanyl may serve as a disincentive for substance users to enroll and engage in harm reduction services operated by NMDOH and its contract partners, including overdose prevention education and Naloxone distribution.

- Is this proposal related to the NMDOH Strategic Plan?  Yes  No
  - Goal 1:** We expand equitable access to services for all New Mexicans
  - Goal 2:** We ensure safety in New Mexico healthcare environments

- Goal 3:** We improve health status for all New Mexicans
- Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

### 3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?  
 Yes  No  N/A
- If there is an appropriation, is it included in the LFC Budget Request?  
 Yes  No  N/A
- Does this bill have a fiscal impact on NMDOH?  Yes  No

### 4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH?  Yes  No

### 5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

SB95 is related to SB25, Penalties for 1 KG Fentanyl, which would increase sentences by three years for charges pressed over the distribution of fentanyl over 1 kilogram in volume.

SB95 is also related to HB107, which would establish a tiered set of penalties for persons trafficking controlled substance analogues, also known as “counterfeit substances”, in the case that use of those substances results in the death of a human being.

### 6. TECHNICAL ISSUES

Are there technical issues with the bill?  Yes  No

The use of prepositions in the short title of the bill “Fentanyl Dealing with Death as a Capital Crime” is unclear. Revision to “Capital Sentencing for Fentanyl Distribution Resulting in Death” might be considered for clarity

### 7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written?  Yes  No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)?  Yes  No
- Does this bill conflict with federal grant requirements or associated regulations?  
 Yes  No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs?  Yes  No

This law may conflict with the standing Good Samaritan law (NM Stat § 24-10-3 (2023) [New Mexico Statutes Section 24-10-3 \(2023\) - Persons coming to aid or rescue of another rendering emergency care; release from liability. :: 2023 New Mexico Statutes :: U.S. Codes and Statutes :: U.S. Law :: Justia](#)), which releases from liability those persons in possession of a substance at the scene of an overdose. If judges deem the substances on hand may have led to an accidental death, persons on the scene may face capital charges for possession of substance analogues, rather than be released from liability.

**8. DISPARITIES ISSUES**

**9. HEALTH IMPACT(S)**

Social determinants of health and adverse childhood experiences are directly impacted by having a parent incarcerated, (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4897769/>) possibly contributing to multi-generational reduced health related quality of life.

**10. ALTERNATIVES**

None.

**11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

If Senate Bill 95 is not enacted, the Controlled Substances Act would not be amended to make distribution of fentanyl that results in death of a person a capital felony.

**12. AMENDMENTS**

None.