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FISCAL IMPACT REPORT

SPONSOR Brantley LAST UPDATED _____
ORIGINAL DATE 1/29/25
SHORT TITLE Fentanyl Dealing with Death as Capital Crime BILL NUMBER Senate Bill 95
ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$28.2	At least \$42.3	At least \$70.5	Recurring	General Fund
Total	No fiscal impact	At least \$28.2	At least \$42.3	At least \$70.5	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Sentencing Commission (NMSC)

New Mexico Corrections Department (NMCD)

Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Administrative Office of the Courts (AOC)

Law Office of the Public Defender (LOPD)

Administrative Office of the District Attorneys (AODA)

Healthcare Authority (HCA)

Office of the Attorney General (NMAG)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 95

Senate Bill 95 (SB95) proposes to amend the Controlled Substances Act (Section 31-18-14, NMSA 1978) to create the offense of distribution of fentanyl resulting in death. Under this bill, a person who intentionally and unlawfully distributes fentanyl or a fentanyl-related substance to another individual, leading to that person's death through injection, inhalation, absorption, or ingestion, would be guilty of a capital felony. SB95 explicitly states that it is not a defense if the deceased individual knowingly, recklessly, or negligently consumed the substance. If enacted,

SB95 would impose severe penalties, including life imprisonment or life imprisonment without the possibility of release or parole.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

SB95 is likely to have long-term fiscal implications for the state due to its classification of fentanyl distribution resulting in death as a capital felony. Because a conviction under this bill carries a sentence of life imprisonment or life imprisonment without the possibility of release or parole under Section 31-18-14 NMSA 1978, the state can expect an increase in incarceration costs. The New Mexico Sentencing Commission notes that individuals sentenced to life imprisonment become eligible for parole only after serving 30 years, and the average daily cost to incarcerate an individual in the state's prison system is approximately \$155.63. Over a 30-year period, the cost to incarcerate one individual would exceed \$1.7 million, and this figure could be higher for those sentenced to life without parole.

The New Mexico Corrections Department (NMCD) does not anticipate an immediate need for additional funding. Still, it acknowledges that, over time, the law could increase the number of individuals serving life sentences. While SB95 aims to deter fentanyl distribution, its fiscal impact will depend on the number of individuals convicted under this provision. If the deterrent effect is minimal and convictions increase, NMCD may need additional funding to support long-term incarceration costs.

Because capital felony cases are often more complex and require extensive legal proceedings, the bill could also result in higher costs for the judiciary and public defender services. Capital felony trials generally require more resources, including expert witnesses, forensic analysis, and extended court proceedings. This could lead to increased expenditures for the Law Office of the Public Defender (LOPD) and the Administrative Office of the Courts, though these costs are not yet quantified.

While SB95's immediate fiscal impact may be minimal, the long-term cost to the state's correctional system could be significant. Policymakers should consider the potential strain on correctional facilities and the state's budget for criminal justice expenditures, particularly if the law increases long-term incarceration rates without a corresponding decrease in fentanyl-related offenses.

SIGNIFICANT ISSUES

SB95 raises significant legal and policy considerations beyond its fiscal impact. One major issue is the potential for constitutional challenges, particularly regarding causation and due process. Establishing a direct link between the act of distribution and the resulting death could be complex, as other factors, such as preexisting medical conditions or polysubstance use, may contribute to the fatal outcome. This could lead to lengthy legal proceedings and appeals, increasing the burden on the judiciary. Additionally, SB95 eliminates the possibility of a defense based on the victim's voluntary use of fentanyl, which could raise concerns about fairness in prosecution and sentencing.

Another key issue is the disproportionate impact the law could have on low-level drug offenders rather than major traffickers. Given the nature of drug distribution networks, individuals at the street level—who may themselves be struggling with substance use disorders—could face the harshest penalties, including life imprisonment. In contrast, larger drug trafficking organizations may remain unaffected. This could strain efforts focused on harm reduction and treatment-based approaches to addressing the fentanyl crisis.

There is also uncertainty about the deterrent effect of the proposed law. While SB95 aims to reduce fentanyl-related deaths by imposing severe penalties, research on drug sentencing policies suggests that harsher punishments do not necessarily deter drug-related offenses. Instead, public health interventions, such as expanding access to treatment and overdose prevention programs, may be more effective in reducing fatalities. Legislators may need to weigh the bill's punitive approach against alternative strategies that focus on prevention and rehabilitation.

The concerns raised by LOPD on a similar bill (House Bill 107) highlight several issues that could be relevant to Senate Bill 95. One major issue is the lack of clarity on the required mental culpability for the crime. Under New Mexico law, homicide-related offenses typically require a high degree of culpability, including a "proximate cause" standard, meaning the defendant must have knowingly engaged in conduct that created a strong probability of death or great bodily harm. SB95, however, does not appear to require this level of intent, potentially leading to constitutional challenges regarding due process and fair sentencing. The absence of clear legal standards could result in inconsistent application across jurisdictions and may expose the law to litigation over its constitutionality.

Another concern is that the bill treats all forms of fentanyl distribution equally, including possession with intent to distribute. Unlike direct manufacturing or large-scale trafficking, possession with intent to distribute is often inferred from small amounts of a controlled substance, meaning an individual struggling with addiction could face a capital felony if a friend overdoses on a shared supply. LOPD's analysis suggests that this approach may lead to disproportionate sentencing, where individuals with minimal involvement in the drug trade face the same penalties as major traffickers. This could divert prosecutorial and correctional resources away from high-level distributors and instead disproportionately impact lower-level users.

Additionally, the argument that overdose deaths should be treated as a public health crisis rather than solely a criminal issue is relevant. While SB95 aims to deter fentanyl distribution through harsh penalties, evidence suggests that punitive measures alone are not the most effective means of reducing overdose deaths. Expanding access to overdose reversal medications, strengthening Good Samaritan protections to encourage emergency intervention, and investing in substance use treatment programs could offer more sustainable solutions.

Finally, data from the New Mexico Department of Health shows an 8 percent decline in overdose deaths since 2021, suggesting existing public health efforts are already making an impact. This raises the question of whether SB95 is necessary in its current form or if resources would be better directed toward strategies that have already shown success.