

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date January 30, 2020
Bill No: HB 267-264

Sponsor: Ely, Matthews, Hochman-Vigil
Short Title: Continuing Drug Enterprise Act

Agency Name and Code Number: Administrative Office of the District Attorneys
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	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

BILL SUMMARY

Synopsis:

HB 267 creates a new law to deal with persons who sell drugs on a continuous basis (commonly known as drug dealers). It is considered a continuing enterprise, when done with five or more people.

Establishes definitions and penalties for dealing with these offenders.

Amends the Racketeering Act by specifically adding trafficking in controlled substances pursuant to §30-31-20, distribution of controlled substances or controlled substances analogs pursuant to §30-31-21, and distribution of controlled substances or controlled substance analogs pursuant to §30-31-22. Makes it a first degree felony if the person engages in Racketeering and the conduct involves trafficking and distribution of controlled substances.

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.

New crimes may mean the need for more resources

SIGNIFICANT ISSUES

1. Serious felony drug offense means conduct punishable as felony trafficking in controlled substances or felony distribution of controlled substances.
2. It is illegal for and organizer of a continuing drug enterprise (CDE) to commit a serious felony drug offense.
3. Organizer is defined in page 2, lines 8-11.
4. It is unclear if the 3 serious drug offenses would have to be in “Linam” or in sequence of arrest and conviction.
5. A judge or jury make the determination whether a person is an “organizer” of a CDE based on criteria set forth in page 3, lines 7-25, and page 4, lines 1 and 2.
6. This act does not preclude any remedies provided by the Racketeering Act.
7. Grants enforcement authority to district attorneys and the attorney general.

8. Changes are made to the Racketeering Act to increase penalties where the conduct engaged in involves trafficking and distribution of controlled substances.
9. Marijuana, tetrahydrocannabinol (THC) or chemical derivatives of THC are exempt from prosecution under these provisions (Continuous Drug Enterprise Act and changes to the Racketeering Act). This is to account for the possible legalization of recreational marijuana. The proposed statutory structure for marijuana legalization will deal with the illegal trafficking and distribution of marijuana, THC, etc.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Section 4, page 4, lines 14-19, is not necessary. The present system in which district attorneys have primary prosecution authority, pursuant to the New Mexico Constitution, works well. Additionally, the Attorney General presently assists district attorneys with prosecutions upon request. The Attorney General also may prosecute a case upon referral by a district attorney or when a district attorney declines to prosecute or fails to prosecute.

Although the proposed enforcement authority language contained in page 4, lines 14-19, exists in the Racketeering Act (§30-42-1 et seq.), it does not change the argument made in the preceding paragraph. District Attorneys and the Attorney General's Office have always worked cooperatively in these cases and there is no reason to believe that will change.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS