
Bill Analysis 2020 Regular Session

SPONSORS: Representatives Ely, Matthews, Hochman-Vigil

SHORT TITLE: Continuing Drug Enterprise Act

SYNOPSIS OF BILL: The [“Continuing Drug Enterprise Act” \(HB 267\)](#) creates a new crime for “continuing drug enterprises” punishing “organizers” for a course of drug trafficking conduct committed with co-conspirators, a first degree felony carrying 18 mandatory years in prison, and increasing the penalty for drug trafficking-related offenses under the racketeering statute from 9 discretionary years to 18 mandatory years in prison, *see* NMSA § 31-18-15 (2015), while explicitly authorizing punishment for both first-degree felony crimes for the same conduct.

STRENGTHS: Substance misuse is a problem in our communities. By focusing on “organizers” of the trafficking enterprise, HB 267 is presumably intended to target high level drug traffickers rather than mere users.

WEAKNESSES: As drafted, the “continuing drug enterprise” provisions contain no “knowledge” element and only vague, incomplete definitions. The definition of “organizer” is confusing and vague and provides no real clarity for determining who is an organizer as opposed to a low level dealer. It would potentially lead to the disproportionate charging, even where an individual may have little knowledge of the scope and activities of an operation. This poses a serious due process problem.

This bill would create a new, completely unnecessary section of the criminal code relating to controlled substances, which already allows prosecutors to charge racketeering, trafficking, and distribution. *See* NMSA §§ 30-31-20 (2018), 30-31-21 (2018), 30-42-4 (2014). Racketeering already punishes “engag[ing] in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.” § 30-42-4. This bill would exponentially increase the penalty for drug racketeering by creating a duplicate crime for the same conduct - all of which is already illegal – while doubling the racketeering penalty itself and making that penalty mandatory. The bill would *again* double that mandatory sentence by creating a new duplicate crime and authorizing duplicate punishment. Meanwhile, under established double jeopardy law, a person can be punished for racketeering *and* the underlying crimes; i.e., trafficking, a second-degree felony for a first offense and a first-degree felony for subsequent offenses. Because racketeering and the new “drug enterprise” crime both require multiple underlying trafficking offenses, one or more are likely to carry a mandatory 18 years. HB 267 all but guarantees that low level drug dealers will receive a mandatory 54-year sentence, nearly twice the mandatory sentence for first-degree murder.

ADDITIONAL INFO: One of the countless myths underlying the war on drugs is that people who sell drugs are violent. Researchⁱ shows that selling drugs is often a temporary venture, one that’s undertaken by individuals struggling to survive in order to supplement their income or their own drug use. Rather than being a cause of community decline, selling drugs is often a direct response to that decline and the disappearance of a sustainable employment market. The constant in the life of the average person who sells drugs is not violence, but poverty.

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
<p>Aggressive supply-side criminalization incentivizes the development of more potent, riskier drugs, making drug use more dangerous, increasing overdose deaths and leading to more violence in communities.</p> <p>Available research suggests that imprisoning people who work on the supply side of the drug economy does not result in any sustainable reduction in drug use or improve the safety of people who use drugs.ⁱⁱ</p>	<p>Extreme increases in penalties, such as this drastic increase, are certainly intended to send a message to voters. However, for public safety results, proactive, rather than reactive solutions are more effective.</p>	<p>At between \$30,000 and \$45,000 per year per inmate, HB 267 would multiply the existing one-year enhancement by four (from 0-9 years to 18 mandatory years, in duplicate), not including the trafficking penalties, at cost primarily borne by the Corrections budget. Those convictions would be subject to habitual offender enhancements of up to eight years per count depending on a person's felony history and aggravation by up to one-third (six years per count) based on surrounding conduct.</p>	<p>A growing body of evidence demonstrates that incarceration is an ineffective response to drug misuse and that treatment in the community produces better public safety results.ⁱⁱⁱ</p> <p>Policies should be focused to get people out of drug selling or distribution in a sustainable way, while further exploring the role that socioeconomic conditions play in contributing to people's participation in drug markets.</p> <p>If this bill is passed and cases prosecuted it could result in a significant increase in mandatory, multi-decade sentences with significant racial disparity. The federal system has moved in recent years away from these kinds of sentences. With this bill, New Mexico would be going against national trends and reported best practices.</p>	<p>F</p>

ⁱ <https://www.prisonpolicy.org/scans/sp/5049.pdf>

ⁱⁱ Rethinking the Drug Dealer. Drug Policy Alliance. http://www.drugpolicy.org/sites/default/files/dpa-rethinking-the-drug-dealer_0.pdf

ⁱⁱⁱ Reclassified. Urban Institute.

https://www.urban.org/sites/default/files/publication/99077/reclassified_state_drug_law_reforms_to_reduce_felony_convictions_and_increase_second_chances.pdf