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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/09

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE Consumption of Controlled Substance Crime SB 111

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General & County Costs

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Court (AOC)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 111 creates the petty misdemeanor crime of “consumption of a controlled substance,” consisting of taking into the body a controlled substance or a controlled substance analog that was not obtained pursuant to a valid prescription or order of a practitioner acting in the course of professional practice or as otherwise authorized by the Controlled Substances Act. Under the bill, a blood, urine or other test indicating that a person has consumed a controlled substance or analog is *prima facie* evidence of consumption of a controlled substance. SB 111 provides an affirmative defense of involuntarily or unknowingly consuming the controlled substance or analog.

Whoever commits consumptions of a controlled substance is guilty of a petty misdemeanor.

Prima Facie evidence is evidence that (unless rebutted) would be sufficient to prove a particular proposition or fact.

The effective date of the Act is July 1, 2009.

FISCAL IMPLICATIONS

It is uncertain how many convictions there would be under this new law. However, the a petty misdemeanor is punishable by up to six months in jail of imprisonment for six months or less is authorized. This would increase the jail population with the subsequent costs borne by counties.

The New Mexico Corrections Department does not anticipate additional costs for the prison population.

SIGNIFICANT ISSUES

The Administrative Office of the Courts supplies the following comment.

There is no definition of “taking into the body.” Is it the same as ingesting a substance or is there some broader meaning?

Section 30-31-23 NMSA 1978 provides that it is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by the Controlled Substances Act. May an individual be charged with both possession and consumption after consuming a controlled substance? (There is no definition of “possession” within the Controlled Substances Act, Section 30-31-1 NMSA 1978 et seq.) The New Mexico Supreme Court has held that a positive drug test is insufficient evidence to prove the crime of possession of a controlled substance, as that crime is currently defined. *State v. McCoy*, 116 N.M. 491, 496 (1993), *reversed on other grounds*, *State v. Hodge*, 118 N.M. 410 (1994). *See also State v. Twayne H.*, 123 N.M. 42, 47 (Ct. App.), *cert. denied*, 123 N.M. 83 (1997). Previous legislation has attempted to address these holdings by making a positive drug test by urine, blood or other medical test *prima facie* evidence of knowing possession of a controlled substance. SB 111 instead creates a new crime of consumption of a controlled substance.

The Public Defenders Office offers similar information.

POSSIBLE QUESTIONS

What would be a likely circumstance when such a sample would become available?

MW/mt