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FISCAL IMPACT REPORT

SPONSOR Reeb/Rehm **LAST UPDATED** _____
ORIGINAL DATE 2/16/23
BILL
SHORT TITLE Cannabis Use as Child Delinquent Act **NUMBER** House Bill 154
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Department of Public Safety (DPS)
Law Office of the Public Defender (LOPD)
New Mexico Attorney General (NMAG)
New Mexico Corrections Department (NMCD)
New Mexico Sentencing Commission (NMSC)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of House Bill 154

House Bill 154 enhances the penalty for possession, purchase, production, distribution, or use of cannabis by a person under the age of 18 from a civil violation under the Cannabis Regulation Act (CRA) to a delinquent act.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

CYFD reports that in FY19, prior to the 2021 enactment of the Cannabis Regulatory Act (CRA), referrals for cannabis-related offenses to CYFD made up 10 percent of referrals. In FY22,

following the enactment of CRA, the percentage had dropped to 0.20 percent. CYFD comments that a return to FY19 levels, which may be anticipated under HB154, can be absorbed by existing resources. LOPD, however, reports HB154 will increase the potential for delinquency petitions against which it will need to defend. While stating it is impossible to predict how many new cases would be charged, it could result in an increase in its workload. It notes that the recurring agency cost of an LOPD “PD3” Associate Trial Attorney’s mid-point salary including benefits is \$104,860 in Albuquerque/Santa Fe and \$113,350 in the outlying areas (due to salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,780 with start-up costs of \$5,210; additionally, average support staff (secretarial, investigator, and social worker) costs per attorney would total \$102,226. Additional cases would also result in the need for additional judicial and prosecutorial resources. In light of the 10 percent referral rate reported by CYFD, these indeterminate expenses appear to be minimal.

SIGNIFICANT ISSUES

Under the Children’s Code, a finding of delinquency could result in a disposition ranging from probation to a long-term (two year) commitment in a facility for the care and rehabilitation of delinquent children. AODA believes:

Having a person under the age of 18 adjudicated a “delinquent offender” will allow CYFD to provide services to address potential addiction issues and to work with the child on counseling/treatment. See Section 32A-2-19, NMSA 1978 (Disposition of delinquent offender). Section 32A-2-22, NMSA 1978 (provides for the entry of a consent decree). Section 32A-2-7, NMSA 1978 (provides for the entry of a time waiver, which defers adjudication and allows for conditional dismissal). All these statutory provisions allow CYFD to assess potential addiction issues and to work with the child in ways that civil remedies do not account for.

In addition, NMAG notes HB154 does not address the sale (or attempted sale) of cannabis by a minor.

On the other hand, CYFD, the agency responsible for care and rehabilitation of delinquent children, see Section 32A-2-19(B), NMSA 1978, expresses concern that:

It is unclear what problem this legislation is intended to address. Imposing criminal penalties on youth under the age of 18 which are harsher than those imposed on young adults aged 18 to 21, and which are not criminal offenses for individuals 21 and older, seems disproportionate. Additionally, re-criminalizing cannabis-related activities will result in increased racial and ethnic disproportionate contact; new petitions filed; increased detention authorizations; and overall heightened interaction with CYFD.

Similarly, LOPD points out that a two-year commitment was:

A real possibility prior to changes accompanying enactment of the CRA. See *State v. Santiago V.*, A-1-CA-38362, mem. op. (N.M. Ct. App. Feb. 10, 2021) (“Child was found to have committed the delinquent act of possessing marijuana. Child was committed to the custody of Children, Youth and Families Department for *two years*.” (Emphasis added). Additionally, juvenile records are not sealed for all purposes and can follow a person throughout their lives.

LOPD goes on to warn:

Due to the nature of possession offenses, HB 154 could create litigation of a constitutional magnitude. Search and seizure litigation will be more necessary as a result of the proposed change. In addition, different jurisdictions around the State have different opinions regarding possession of marijuana. While a delinquent act of this nature in Albuquerque might receive probation or less, in other districts, children would be at greater risk of being dragged into a punitive system and potential years of juvenile detention with insufficient resources (*see* Corey Adams, *CYFD-JJS Juvenile Probation Process*, available at <https://www.nmlegis.gov/handouts/ALESC%20102319%20Item%206%20.3%20-%20CYFD%20Presentation.pdf>) (noting the lack of viable resources on p. 8).

Instead of resulting in detention of youth, LOPD notes that the existing provisions of the CRA provide for education and community services alternatives, measures that it believes aim to help youth learn from their mistakes.

PERFORMANCE IMPLICATIONS

CYFD reports that it has performance measures related to client/staff ratios that will be negatively affected by an increase in referrals due to HB154.

TECHNICAL ISSUES

As adjudicated delinquent acts involving marijuana may be considered similar to those involving alcohol, it may be appropriate to include the new subsection (D)(8) in the existing section of the Children’s Code addressing disposition for certain delinquent acts, including those involving alcohol. See Section 32A-2-19(B)(4), NMSA 1978.

NMAG notes that the definition of “cannabis” in HB154 does not include the full definition of the term as it is defined in the CRA. See Section 26-2C-2(B), NMSA 1978.

OTHER SUBSTANTIVE ISSUES

LOPD adds that it seems:

Difficult to say that a two-year commitment for possession of marijuana serves the community in a positive manner. It notes:

States can expand opportunity and build stronger, more prosperous, and inclusive communities by reducing the incarceration of children and young adults and increasing the use of sensible alternatives that advance equitable outcomes. The number of youth being arrested and incarcerated has fallen dramatically over the past two decades, giving states an opportunity to close youth prisons and invest the savings into community-based approaches that nurture children and young adults while building stronger communities. These policy improvements would particularly benefit communities of color since young people of color are still much more likely to be incarcerated than their white peers.

See Cortney Sanders, Center on Budget and Policy Priorities, *State Juvenile Justice Reforms Can Boost Opportunity, Particularly for Communities of Color* (July 27, 2021), available at <https://www.cbpp.org/research/state-budget-and-tax/state-juvenile-justice-reforms-can-boost-opportunity-particularly-for>.

AOC points out that in any delinquency proceeding, a parent of the alleged delinquent may be made a party, which can result in additional consequences for the parent. See Section 32A-2-28 NMSA 1978.

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