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FISCAL IMPACT REPORT



SPONSOR: Beam DATE TYPED: 01/22/02 HB 25

SHORT TITLE: Minor in Possession Penalties SB _____

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		See Narrative	\$0.1		

SOURCES OF INFORMATION

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 Attorney General's Office (AG)

SUMMARY

Synopsis of Bill

The bill amends the current statute prohibiting possession of controlled substances by making the criminal penalties for possession of one ounce or less of marijuana applicable only to persons under the age of eighteen. In addition to a fine or punishment imposed, a court may refer an offender to a drug counseling program administered by or approved by the Department of Health

The bill also amends the current statute, providing definitions as used in the Delinquency Act, to include possession of one ounce or less of marijuana by a person less than eighteen years of age in the definition of a "delinquent act."

The bill creates a "civil fine" to replace the criminal sanctions for adults who are found guilty of possessing one ounce or less of marijuana. The civil fine for a first offense is \$100.

The DPS will create a "citation" to be used for possession of one ounce or less of marijuana and a "warning" for instances in which the citation is not issued. Law enforcement officers will issue the citation, offering the alleged offender the option of "accepting" the citation (and agreeing to pay the applicable civil fine) or electing to contest the citation in metropolitan or magistrate court.

A signature on the citation constitutes an admission of guilt; however, a “record of payment of a civil fine” shall not be admissible as evidence in a separate civil or criminal action except to establish a prior offense for possession for application of the higher fine for second or subsequent offenses.

Persons accepting the citation will mail their payments to the metropolitan or magistrate court. Persons contesting the citation must appear in metropolitan or magistrate court to schedule a trial. At the trial, the police officer will act as plaintiff. If the judge finds by a preponderance of the evidence that the alleged offender did possess less than an ounce of marijuana, he or she will impose the appropriate civil fine, plus applicable court costs.

Civil fines will be deposited in the general fund. If a fine owed is not paid within 30 days, the offender may be found in contempt of court.

Significant Issues

HB 25 decriminalizes the possession of one ounce or less of marijuana for adults.

It creates a “civil fine” for these offenses.

The AOC notes that New Mexico law contains numerous references to “civil penalties.” Consequently, the courts are familiar with the concept of “civil penalties.” They have not found any existing references to “civil fines.” Existing civil penalties exist in relatively obscure areas of the law. They are enforced by specialized regulatory bodies.

The AOC further notes that it is not entirely clear, therefore, how the courts will handle “civil fines.” The cases will be initiated by citations – the process typically used to begin a traffic case, which is processed according to the Rules of Criminal Procedure. However, they will be civil cases, assigned civil case numbers, and processed according to the Rules of Civil Procedure. Judges, police officers, and lawyers will need to learn how to apply the civil process to these cases.

The bill itself contains language usually used in criminal proceedings. The bill speaks of the “offense,” the “alleged offender,” and an admission or finding of “guilty.” HB 25 is clear that a finding of guilt in one of these cases will have no implications for future civil or criminal cases. If a person required to pay a civil fine is charged with a more serious offense in the future, the civil fine does not constitute a prior offense. Nor can it serve to enhance the sentence in a subsequent case because it is not admissible in evidence.

One unusual consequence of the bill is that possession of an ounce or less of marijuana will be a crime only when committed by a juvenile. However, this is not unique. Statutes also make criminal a juvenile’s involvement with alcohol in ways that are legal for adults.

FISCAL IMPLICATIONS

The AOC believes that it is likely that the fiscal impact of HB 25 on the state general fund will be positive. A civil fine of \$100 is probably higher than the average criminal fine for misdemeanor marijuana possession

There is no appropriation with HB 25, but DPS believes that there will be a fiscal impact on the entire criminal justice system. The extent of that impact is unknown. Additionally, because possession of one ounce or less of marijuana will be defined as a delinquent act, it will have an impact on the juvenile justice system.

DPS notes that HB 25 will require the development, printing and distribution of citations.

ADMINISTRATIVE IMPLICATIONS

The AOC states that the creation of a new “civil fine” process will require metropolitan and magistrate courts, working with law enforcement, prosecutors, public defenders and the bar, to develop new administrative and judicial procedures. It is likely that the statewide automation system will need to establish a new case category. Judges and staff will need training on the new procedures. The cost of these processes is not determinable.

The staffs of metropolitan and magistrate courts will need to process mailed-in citations. They do this today for traffic cases. No major changes of procedure will be required. Nor is it likely that the workload associated with these cases will be any greater than the workload associated with the misdemeanor cases they replace. Because the consequences of pleading guilty will be reduced, it is likely that the number of trials in these cases will drop.

DPS anticipates that there will be a direct administrative impact because training will be required of all commissioned law enforcement officers in order to know how to proceed in dealing with individuals who possess marijuana. The department will also need to create a citation and a warning notice. DPS will have to assign employee(s) to develop, print, distribute and track citations for all law enforcement agencies.

TECHNICAL ISSUES

The AOC asks the legislature to consider whether the term “civil penalty” as used elsewhere in the code is preferable to “civil fine” and whether other language more commonly used in civil cases might be preferable to “offense,” “alleged offender,” and “guilty.”

DW/ar