

Significant Issues

1. In Section 1, the bill changes penalties for possession of marijuana of 8 ounces or more, making it a misdemeanor for possession of 8 ounces of marijuana or more on the first and second offenses and a fourth degree felony on the third and subsequent offenses. Under the current law, possession of 8 ounces or more is a felony on the first offense.
2. Penalties for possession of other enumerated controlled substances are also changed, making it a misdemeanor for the possession of controlled substances on the first and second offenses and a fourth degree felony on the third and subsequent offenses. Under the current law, possession of these controlled substances is a felony on the first offense.

A misdemeanor is punishable by a fine of not less than \$500 or more than \$1,000, or punishable by imprisonment for a definite term of less than one year, or both. A fourth degree felony is punishable by a presumptive sentence of 18 months and/or a fine of \$5,000.

3. District courts are given exclusive jurisdiction for all offenses that fall under this amended statute. Under current law, misdemeanor drug offenses may be filed by magistrate or municipal courts.
4. Section 2 of the bill makes changes to the provisions of Conditional Discharge for Possession, a sentencing provision of the Controlled Substance Act under Section 30-31-28:
 - The first change in Section 2 amends who is eligible for the conditional discharge from only first time drug possession offenders to include second time drug possession offenders.
 - In addition, there is a change to the discretion provision of granting a conditional discharge. The bill changes the “may” to “shall,” thus making it mandatory that the courts impose a conditional discharge on first and second time drug possession offenders.
5. Senate Bill 331 makes the statute applicable to offenses committed on or after July 1, 2002.

FISCAL IMPLICATIONS

The appropriation of \$1,000.0 contained in this bill is a non-recurring expense to the Tobacco Settlement Program Fund to fund additional drug treatment services. Any unexpended or unencumbered balance remaining at the end of FY03 shall revert to the Tobacco Settlement Program Fund.

ADMINISTRATIVE IMPLICATIONS

- The Corrections Department states that the bill may result in minor to substantial cost savings to its agency. The prison population could be reduced since the penalty for possession of controlled substances would be a misdemeanor.

- The Public Defender Department believes that changes proposed in SB331 would reduce the caseload of those attorneys who handle minor drug cases. These more moderate penalties may encourage clients to enter pleas and seek treatment rather than insist on a trial.
- According to the AOC, approximately 2,000 cases would be transferred from metropolitan and magistrate courts to the district courts. Workload would increase, but the bill does not provide for additional staff or operating costs which AOC claims the district courts would need to handle the documents and increased caseload resulting from this bill.

In addition, the courts say that new procedures would need to be developed and implemented to process these cases through the district courts. Law enforcement agencies and legal services agencies would be financially impacted by these changes in court procedures although the AOC does not specifically outline how they would be impacted.

COMPANIONSHIP/RELATIONSHIP

Senate Bill 331 relates to:

HB25, Possession of One Ounce or Less of Marijuana
HB64, Women's Inpatient Substance Abuse Treatment
HB65, Women's Re-entry Drug Treatment
HB178 Substance Abuse Treatment Services
HB273 and SB35, Expand Drug Court Programs
SB08, Compassionate Use Medical Cannabis Act

TECHNICAL ISSUES

In deleting the language in Section 2, Paragraph C, page 5, it is unclear whether or not the Habitual Offender Act would still apply.

OTHER SUBSTANTIVE ISSUES

1. "Drug courts" already exist in several district and magistrate courts. It is unclear whether the magistrate level drug courts will need to continue their programs based on the provisions of this bill.
2. It has not been ascertained that drug courts are effective. The LFC has requested information from drug courts statewide and has received limited data. No cost-benefit analysis has been completed. AOC has engaged Paul Guerin at UNM's Institute for Social Research to conduct a study of drug courts and to assess its effectiveness and success rate, but his analysis has not yet been completed. As a result, actual performance of drug court and its treatment services is still unknown.
3. Both the Department of Health and Corrections Department currently have drug treatment funding. Neither has provided statistics to indicate whether or not their drug treatment services are effective or if prison costs have been reduced as a result of drug treatment. Yet, DOH provided the LFC with the following information:

“Based on data from the Arizona Supreme Court who recently issued a report on the progress of their law which found that a similar law to that proposed by SB 331 saved taxpayers more than six million seven hundred thousands dollars (\$6,700,000) during fiscal year 1999, and that 62% of probationers had successfully completed treatment. Similarly, state taxpayers in California are expected to save two hundred fifty million dollars (\$250,000,000) per year as a result of their law, according to the California State Legislative analyst’s Office.”

It is unfortunate that none of New Mexico’s agencies have compiled similar data.

4. With the advent of performance-based budgeting, it would be beneficial if all three entities—the courts, Corrections and DOH—identified their overarching interests and began working together on drug treatment programs. Right now, funding for drug treatment is going to various places and agencies, yet there appears to be no coordination among any of them.
5. The bill states “*the conditions of probation may include a referral by the court to a drug treatment program administered by or approved by the Department of Health.*” None of the drug court programs at the district courts are administered by or approved by DOH. As a result, this provision would impact drug courts who are using treatment providers who are not in DOH’s regional care coordinator’s consortium. Again, cooperative efforts are needed among all agencies involved in drug offenders and drug treatment.

POSSIBLE QUESTIONS

A question for the Legislature to pose is: What is the state getting in return for all the funding being provided for drug treatment? Have prison rates decreased? Have costs decreased? What is the recidivism rate? What is the cost per prisoner versus the cost per drug court/drug treatment participant? These are crucial questions for which answers should be provided. Millions of dollars are currently being directed to drug treatment among the three agencies, yet no performance data has been presented. What will the additional \$1 million provided for in SB331 do for drug offenders?

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