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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/10  
 LAST UPDATED 02/10/10

SPONSOR HJC HB 200/HJCS/aHJC

SHORT TITLE Possession of Certain Drug Precursors SB \_\_\_\_\_

ANALYST Sanchez, C.

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Corrections Department (CD)  
 Public Defender (PD)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 200 deletes the section that reads, “Any person who violates [any] a provision of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA”.

The HJC amendment deletes the penalty for violating the provisions Section 30-31B-12.

#### Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 200 amends Section 30-31B-12 relating to Criminal Offenses, Drug Precursors, to add the new crime of possession of a substance, material, compound, mixture or preparation specifically excluded from the definitions of Drug Precursors in current law (Sec. 30-31B-2, NMSA 1978) and prepared for dispensing pursuant to prescription or over-the-counter distribution, with the intent to unlawfully manufacture a controlled substance or controlled substance analog in violation of the Controlled Substances Act.

The legislation also clarifies Subsection (A)(8), the provision requiring an appropriate license to

manufacture, possess, transfer or transport drug precursors, to reference the pertinent section of the current law, Subsection D, Sec. 30-31B-6 (NMSA 1978).

The bill makes minor technical clarifications to the current law's provisions regarding an affirmative defense to prosecution for owners/operators of retail establishments where drug precursors are sold by an employee in violation of this section and for employees of such establishments.

### **FISCAL IMPLICATIONS**

There may be a slight increase in the number of trials, prosecutions, and incarcerations but the costs could likely be absorbed by current operations.

### **SIGNIFICANT ISSUES**

The new crime created by HB 200 relates to the possession of substances, materials, etc. that are specifically *excluded* in current law but used to prepare and dispense as a prescription or over-the-counter drug, if the intent is to make a controlled substance or product similar to a controlled substance. It is not known how many new cases would be prosecuted for the new crime created under HB 200.

### **OTHER SUBSTANTIVE ISSUES**

According to the Public Defender, HB 200 if enacted, would abrogate the Court of Appeals' holding in *State v. Vance*, 2009-NMCA-024, ¶ 8, 145 N.M. 706, 204 P.3d 31, which held, as an issue of first impression, that pseudoephedrine cold tablets could not support a conviction for possession of drug precursors.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mew