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FISCAL IMPACT REPORT

ORIGINAL DATE
LAST UPDATED _____

SPONSOR King _____ HB 191 _____

SHORT TITLE Penalty for Possession of Certain Substances SB _____

ANALYST Esquibel _____

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Administrative Office of the Courts (AOC)

Regulation and Licensing Department (RLD)

Corrections Department (CD)

Responses Not Received From

Department of Public Safety

SUMMARY

Synopsis of Bill

House Bill 191 creates a new crime for the possession of designated drug precursors such as pseudoephedrine, when the person possessing those substances intends to use them to manufacture a controlled substance or the analog of a controlled substance.

HB191 provides for the lawful use of drug precursors which includes, consumers who use (buy or possess) the product for the intended purpose, pharmacies, health care practitioners, common carriers and their agents, and the agents or employees of a licensed [by the Board of Pharmacy] retail establishment.

Possession of a substance, compound, mixture or preparation, specifically excluded from the definition of a drug precursor, defined in NMSA 1978, Section 30-31B-2, would be a fourth degree felony.

FISCAL IMPLICATIONS

House Bill 191 does not contain an appropriation.

The New Mexico Corrections Department (NMCD) indicates HB191 is unlikely to result in a substantial number of new fourth degree felony convictions. NMCD assumes that one person will be convicted of this felony in each of the relevant three fiscal years, and that each person will serve prison time (one year only due to pre-sentence confinement credit, etc.) rather than receive probation. Even without a substantial number of convictions, this bill would still cost NMCD \$93,600 for the relevant three year period. NMCD's assumption or estimate could be wrong, and no or many more felony offenders could be sentenced to prison for this new crime. NMCD cannot control who is convicted and sent to its custody. In any event, the bill appropriates no money to NMCD to cover any resultant incarceration or probation/parole supervision costs.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned/ operated prison to \$31,239 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,521 per year. The cost per client in Intensive Supervision programs is \$3,445 per year. The cost per client in Community Corrections is \$3,475 per year. The cost per client per year for female residential Community Corrections programs is \$41,653 and for males is \$24,803.

The Administrative Office of the Courts indicates implementation of the bill would result in a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The costs of an increase in caseload are being analyzed and are pending at this time.

SIGNIFICANT ISSUES

The number of illicit "meth" labs appears to be on the increase again in the U.S. as a result of Mexico's ban on the importation of pseudoephedrine. Mexico has been and continues to be the

primary source of illicit methamphetamine in New Mexico. Illicit manufacturers of “meth” in Mexico are now using other substances to manufacture “meth.” These other forms are not as active a compound as the formulations manufactured with pseudoephedrine. Person in this country are turning back to the use of pseudoephedrine to manufacture the more active formulation of “meth.”

Sources of Pseudoephedrine:

Pseudoephedrine, which is a schedule 5 controlled substance in New Mexico, may only be purchased from a licensed pharmacy after showing a valid government photo I.D. and stays within the 9 grams per 30 days limits set forth by the NM Controlled Substances Act and the Federal Combat Meth Act. It is well documented in New Mexico and elsewhere in the U.S. that persons acquire excessive quantities of pseudoephedrine by purchasing the products from multiple pharmacies in order to manufacture illicit methamphetamine.

Pseudoephedrine may be acquired in neighboring states from retailers who must comply with the Federal requirements for the identification, log of sales, and limits of no more than 3.6 grams purchased by an individual or no more than 9 grams in any 30 day period.

Black market sources include the illegal importation from foreign sources of pseudoephedrine in bulk or as a dosage form.

The Problem:

Law enforcement frequently encounters persons who are in possession of pseudoephedrine quantities intended for the illicit manufacture of “meth.” Possession of that amount is currently legal. The costs for “meth” lab clean up are a tremendous cost to society. Costs typically range from \$5,000 up to \$20,000 for the cleanup of one “meth” lab. Pseudoephedrine is easily converted into methamphetamine on a one to one basis. Nine grams of pseudoephedrine can produce roughly 9 grams of methamphetamine.

TECHNICAL ISSUES

The AODA indicates it might be helpful in understanding the impact of this proposed amendment to §30-31B-12 if the sponsor could provide a list of substances, materials, etc. that are specifically excluded from the definition of a drug precursor by § 30-31B-2, but the possession of which would be a crime if possessed with the intent to manufacture a controlled substance.

OTHER SUBSTANTIVE ISSUES

If numerous new crime bills such as this one are passed, NMCD will eventually reach its rated capacity for its prison population. At that point, NMCD and/or the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All of these options have negative consequences. Early release of inmates jeopardizes public safety, and housing inmates out of state or building new prisons is expensive.

RAE/mew