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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11
 LAST UPDATED 03/11/11

SPONSOR HCPAC HB 336 & 606/HCPACS

SHORT TITLE Prohibit Synthetic Cannabinoids & Salvia SB _____

ANALYST Sanchez, C.

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		Minimal	Minimal	+\$1.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Department of Corrections (NMDC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

The House Consumer and Public Affairs Committee substitute merges House Bill 336 and House Bill 606, in effect combining the prohibition against synthetic cannabinoids contained in the original HB 336 (while adding three more synthetic cannabinoid molecular compounds not in the original bill) with the prohibition against the specific psychoactive synthetic compounds contained in the original HB 606. The psychoactive synthetic compounds added from HB 606 are found in commercially available “bath salts,” and are used as power stimulants as alternatives to the illegal compounds of cocaine, ecstasy, and amphetamines. The generic term for such synthetic cannabinoids and psychoactive compounds is “designer drugs,” as they are legally

available synthetic chemical compounds designed to allow users to mimic the effects of illegal drugs.

The substitute like HB 336 adds “synthetic cannabinoids” to the list of hallucinogenic controlled substances under Schedule I of the Controlled Substances Act; and criminalizes its intentional distribution, possession with intent to distribute and simple intentional possession, with increased penalties for knowingly doing so within a drug-free school zone.

The substitute drops the prohibition against Salvia that was part of the original HB 336. In addition, the committee substitute inserts a new subsection, making it a petty misdemeanor, punishable by a fine not to exceed \$100 or forty-eight hours of community service, for a minor to possess a synthetic cannabinoid; any of the substances listed in Paragraphs (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978; or a substance added after the effective date of this act to Schedule I by a rule of the board if the board determines that the pharmacological effect, risk to public health, and the potential for dependence of the substance is similar to that for synthetic cannabinoids or the substances listed in Paragraphs (20) through (25) of Subsection C of Section 30-31-6.

The bill includes an emergency clause that it take effect immediately.

FISCAL IMPLICATIONS

According to the Administrative Office of District Attorneys (AODA), these amendments could increase the number of people who are arrested and convicted under the Controlled Substances Act. It will cost the State to have these defendants on probation or serving a sentence in prison or jail.

There will be 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.

According to the Public Defender Department (PDD), while any criminalization of hitherto legal substances is going to bring about an increase in the workload of the PDD, DAs, and courts, the slight increase will likely be absorbed by the Public Defender Department in the ordinary course of business.

According to the Department of Corrections (NMDC) the additional minimal to moderate number of felony convictions resulting from this expanded crime bill would increase the Department’s costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department’s inmate population or probation/parole caseloads. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty. As is almost always the case, there is no appropriation in the bill to the Department to cover any of the Department’s increased costs associated with the creation of this expanded crime.

SIGNIFICANT ISSUES

Synthetic cannabinoids are currently legal and readily available at smoke shops and over the internet under a variety of brand names, such as “Spice,” “K2,” “Blaze,” and “Red X Dawn,” among many others. These products consist of plant material that has been coated with research chemicals that mimic THC, the active ingredient in marijuana, and when smoked they produce a marijuana-like high.

Many of the chemical compounds that are now in use as synthetic cannabinoids were derived as part of standard medical research into therapeutic agents for pain treatment. They have not been approved by the FDA for human consumption and there is no oversight of the manufacturing process. Since 2009, the federal Drug Enforcement Agency (DEA) has received an increasing number of reports from poison centers, hospitals, and law enforcement regarding these products. The New Mexico Drug Court Programs have also reported on the increasing number of their participants who are turning to the use of synthetic cannabinoids for a marijuana-like high. The products are legal, and until very recently there weren’t any drug tests available that would show the program participant was ingesting a synthetic cannabinoid.

The Administrative Office of the Courts (AOC) reports the state’s juvenile drug court programs (as well as the adult programs, to a lesser degree) are seeing a significant increase in the use of synthetic cannabinoids (and the beginnings of use of “bath salt” substances) by program participants who are seeking a legal alternative to marijuana, alcohol, and the other drugs they are prohibited from using by the program. The penalties defined in this substitute bill will probably deter minors from procuring and using these “designer” drugs, which will help the juvenile drug court programs in their work with substance-abusing juveniles.

According to the (AOC), a number of labs do offer tests at this point, but they lack standardization as to which of the many synthetic cannabinoids they test for and what they use for a cutoff level to determine a positive drug test. The Drug Court Programs have told their participants that synthetic cannabinoids are prohibited while they are in the program, and the tests available are allowing them to monitor compliance to some degree. The DEA recently used its emergency scheduling authority to temporarily control five of the chemical compounds used in synthetic cannabinoids. This action by the DEA effectively makes the sale or possession of products containing those compounds illegal for at least one year while the DEA and the US Dept of Health and Human Services study whether these chemicals and products should be permanently controlled.

ADMINISTRATIVE IMPLICATIONS

The AOC believes any prohibition of the use of synthetic cannabinoids (be it a program prohibition, as with drug courts, or a legal prohibition) is difficult to enforce given the lack of a comprehensive drug test for such compounds, and the lack of standardization in the tests that are currently available.

TECHNICAL ISSUES

The original version of HB 606 (on page 5, line 23) referred to 3-methoxymethcathinone, while the committee substitute (on page 6, line 22) refers to 4-methoxymethcathinone. Though both compounds qualify as psychoactive compounds, it is not clear why the change was made. Also,

the committee substitute drops all references to Salvia that were in the original HB 336, yet the title to the bill still refers to Salvia.

According to the Attorney General (AGO), a “controlled substance analog” under the Act includes “a substance...that has a chemical structure substantially similar” to a controlled substance “or that was specifically designed to produce effects substantially similar” to a controlled substance. The implication then becomes that synthetic cannabinoids do not qualify as a controlled substance analog of marijuana, which the Act already seems to criminalize. If synthetic cannabinoids do not qualify as a “controlled substance analog”, would a definition of synthetic cannabinoids in Sec 30-31-2 help clarify?

OTHER SUBSTANTIVE ISSUES

The NMDC reports that the Probation and Parole Division has dealt with a significant number of offenders, including many sex offenders, who use synthetic marijuana. Since it is not currently illegal, its use cannot be prohibited as a condition of probation or parole. A law criminalizing it will probably deter use and possession by probationers and parolees who could then have their supervision revoked for using or possessing it. Synthetic marijuana appears to have similar effects on the body and mind as marijuana, and is readily accessible.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The use of synthetic marijuana is likely to increase if it is not criminalized. The use of synthetic marijuana is already increasing throughout New Mexico communities. Probation and Parole Officers are already dealing with a substantial number of offenders on probation or parole that are using synthetic marijuana.

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