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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/19

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Decrease Marijuana Penalties SB 323

ANALYST Torres

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Indeterminate but moderate savings		Indeterminate but moderate savings	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to, Conflicts with, HB 317, SB 204, and HB 356.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Department of Public Safety (DPS)
- Public Defender Department (PDD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- New Mexico Attorney General (NMAG)
- New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 323 amends Section 30-31-23 NMSA 1978, within the Controlled Substances Act, to provide the following penalties for possession of marijuana:

- Up to one-half ounce of marijuana: penalty assessment misdemeanor, up to \$50 fine
- More than one-half ounce but less than one ounce:
  - First offense: petty misdemeanor, fine of not less than \$50 or more than \$100, *and* imprisonment for not more than 15 days
  - Second or subsequent offense: misdemeanor, fine of not less than \$100 or more than \$1,000, or imprisonment for definite term of less than one year, or both
- More than one ounce but less than eight ounces: misdemeanor, fine of not less than \$100 or more than \$1,000, or imprisonment for definite term of less than one year, or both

- Eight ounces or more: fourth degree felony pursuant to Section 31-18-15 NMSA 1978

SB 323 also amends Section 30-31-25.1 NMSA 1978 to provide a \$50 penalty assessment misdemeanor for use of or possession with intent to use drug paraphernalia.

SB 323 enacts a new statutory section within Chapter 31, governing criminal procedure, to provide that payment of a fine pursuant to a penalty assessment citation shall not be considered a criminal conviction. The new Section 3 contains requirements upon and authority granted to an officer issuing a penalty assessment citation under the criminal code, requirements upon the person to whom the penalty assessment citation is issued, and requirements for the magistrate or metropolitan court to which the penalty assessment citation is submitted. SB 323 provides that penalty assessments collected by a magistrate court or metropolitan court pursuant to Section 3 shall be transferred to the Administrative Office of the Courts (AOC) for credit to the Magistrate Drug Court Fund.

### **FISCAL IMPLICATIONS**

SB 323 could have a positive fiscal impact on the courts, prosecutors, and public defenders; workloads could be lessened by reducing the charges of possession of marijuana up to one-half ounce and use or possession of drug paraphernalia to penalty assessments. These penalty assessments would not require court hearings, unless the charges are contested. Currently, these charges carry criminal penalties that require court hearings to be set automatically. Criminal charges, which carry the potential of jail time, require the defendant to be arraigned by a judge, and often require additional hearings to resolve the charges. For penalty assessment cases, the defendant may either choose to pay the penalty assessment without appearing in court, or if they choose to appear in court, may file an appearance plea and waiver, and pay the penalty assessment and court costs without having to see a judge. Processing of penalty assessments involves less court resources than criminal cases.

SB 323 would reduce the number of criminal cases that the courts would need to process. For example, in 2018 there were 2,165 possession of marijuana (one ounce or less) cases filed in the magistrate and metropolitan courts, which were not related to any DWI, domestic violence, or felony charges. There were 3,312 cases of use or possession of drug paraphernalia, which were not attached to DWI, domestic violence, or felony charges. These numbers reflect that a reduction in these types of criminal charges would have a significant impact on the workload of the justice system.

The Department of Public Safety also notes that the issuance of penalty citations for possession of one-half ounce or less of marijuana and for use or possession of drug paraphernalia could result in savings of officer time in the prosecution of these offenses. But, some retraining will be required to let officers know criminal prosecution and jail time are no longer options.

### **SIGNIFICANT ISSUES**

According to a December 2018 analysis by the National Conference of State Legislatures, ten states and the District of Columbia now have legalized small amounts of marijuana for adult recreational use, most recently Vermont, Michigan, and Maine in 2018. Twenty-two states and the District of Columbia have decriminalized small amounts of marijuana.

Under SB 323, the primary change in penalty for possession of marijuana is for up to one half ounce of marijuana, where the penalty is reduced from a petty misdemeanor to a penalty assessment misdemeanor.

According to the Administrative Office of the Courts:

Defendants have the right to counsel on any charges that carry the potential of jail time. "Uncounseled convictions that result in a sentence of imprisonment, whether actually served or suspended, violate the Sixth Amendment right to counsel as applied to the states through the Fourteenth Amendment." *State v. Aragon*, 1997-NMSC-062, Section 8; see also *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). Reducing these charges to penalty assessments would reduce the number of cases in which the court is required to appoint an attorney. Accordingly, it would also reduce the strain on the Law Offices of the Public Defender.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 323 is related to HB 317 Drugged Driving Penalties, which provides specific blood quantum requirements for criminal prosecutions of individuals for driving under the influence of drugs.

SB 323 conflicts with SB 204, which allows the possession, storage, and administration of medical marijuana in certain school settings.

SB 323 conflicts with HB 356, which enacts the Cannabis Regulation Act.

### **TECHNICAL ISSUES**

SB 323, Section 1 (B) provides a penalty for possession of "more than one-half ounce but less than one ounce of marijuana", and for "more than one ounce but less than eight ounces of marijuana." SB 323, however, does not provide a penalty for possession of an ounce of marijuana.

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