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FISCAL IMPACT REPORT

SPONSOR Candelaria / Romero **ORIGINAL DATE** 2/13/19
LAST UPDATED 3/3/19 **HB** _____

SHORT TITLE Drug Possession as Misdemeanor **SB** 408/aSJC

ANALYST Edwards

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Unknown, potentially significant	Unknown, potentially significant	Unknown, potentially significant	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 57, House Bill 356, and Senate Bill 323.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Office of the Public Defender (LOPD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 408 adds to the short title of the bill “decreasing the penalty for possession of drug paraphernalia.” It also adds to the short title “creating a penalty assessment for the criminal code.”

In Section 1 (B)(2), the amendment makes possession of more than one ounce of marijuana or synthetic cannabinoids a misdemeanor. The amendment also removes language making possession of eight ounces or more of marijuana or synthetic cannabinoids a fourth degree felony.

The amendment adds a Section 2 and Section 3 to the bill.

Section 2 governs the possession, delivery, or manufacture of drug paraphernalia. The section makes it unlawful to possess with intent to use drug paraphernalia in violation of the Controlled Substances Act, except if the person is in possession of syringes when a person is directly engaged in a harm reduction program, as provided in the Harm Reduction Act. Similarly, the section makes it unlawful to deliver or possess with intent to deliver drug paraphernalia in violation of the Controlled Substances Act with exceptions for Department of Health employees engaged in activities related to the Harm Reduction Act or distribution related to the Pharmacy Act. The bill establishes a penalty assessment for violation of possession provisions and makes violation of distribution provisions a fourth degree felony.

Section 3 establishes penalty assessments and rules. Payment of an assessment shall not be considered a criminal conviction. Penalty assessments shall be credited to the magistrate court fund.

Synopsis of Original Bill

Senate Bill 408 amends Section 30-31-23 NMSA 1978 to eliminate a felony penalty for possession of any controlled substance covered under the present statute. All controlled substance possession convictions would be punished as misdemeanors under Senate Bill 408.

FISCAL IMPLICATIONS

The SJC amendment creates a penalty assessment for offenders who commit the misdemeanor of possession with intent to use drug paraphernalia in violation of the Controlled Substances Act. Analysis from the AOC was not received in time for this analysis; however, it can be assumed assessments flowing into the magistrate court fund will be substantial.

In response to the original bill, the AOC explained this bill will shift costs from the district courts, who must hear felony cases, to metropolitan and magistrate courts. However, it is difficult to ascertain the savings and costs that could be realized by this bill especially since misdemeanor cases are less intensive than felony cases.

LOPD, in response to the original bill, believed the department would “likely see a reduction in its overall operating costs as a result of Senate Bill 408 being passed. Prosecutor offices and district courts would also likely see a significant reduction in operating costs, as the prosecution of controlled substance crimes would no longer require felony level due process, meaning no further requirement for preliminary hearings/grand juries for such charges. Furthermore, felony convictions carry significant collateral consequences over and above those carried by misdemeanors, such as the inability to vote, possess firearms or hold certain jobs. Consequently, a greater impetus exists presently for defendants to contest such charges through jury trial. Therefore, reduction of such charges to misdemeanor level will result in more controlled substance cases being resolved short of costly jury trials. Furthermore, misdemeanor guilty pleas

can and often do occur at arraignment, or at least at an earlier point in time and relative to the overall proceedings (magistrate courts still have six-month time limits for prosecution). It is impossible to speculate on how many resources and how much money LOPD would save, but there is sound reason to believe that LOPD would spend less on defending controlled substance charges if such cases were prosecuted as misdemeanors. Consequently, resources could be appropriately reallocated to early investigation of treatment options for clients.”

AOC, in response to the original bill, submitted the following analysis:

Felony possession of controlled substances charges have to be heard in the district courts, as the magistrate and Metropolitan courts do not have jurisdiction over felony charges. Amending the statute to make these misdemeanor charges would shift those cases from the district courts to the magistrate and Metro courts, which would have a fiscal impact on those courts, due to the increased caseloads. The magistrate courts will be consolidated under the administrative authority of the district courts by the beginning of Fiscal Year 20. Therefore, the fiscal impact of this shift in caseloads from the district to magistrate courts will be easier for those courts to accommodate, since they will be under the same administrative authority.

However, the Metro court and the Second Judicial District Court will not be part of the administrative consolidation, and it will therefore have a greater fiscal impact on the Metro court. This bill would add an administrative burden on the Metropolitan Court, which would have fiscal implications due to increased number of cases in the court and the need for additional judicial and staff time and resources to resolve these cases. In addition, there would be an increase in the number of cases that the Metropolitan court would have to monitor post-conviction, to ensure compliance with conditions of probation. These implications depend on the number of such cases filed in the court. There would not be an efficient mechanism for the district court to reallocate the resources to the Metro court, to accommodate this shift in caseloads.

There will also be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

AODA, in response to the original bill, explained “simple possession cases will have a lower penalty. It is difficult to know if this will encourage defendants to plead, or encourage them to ‘roll the dice’ and go to trial.”

ADOA also stated:

The statute currently makes the possession of any amount of certain substances under the Schedules a fourth degree felony, subject to eighteen months imprisonment, a \$5,000 fine, or both. Senate Bill 408 makes possession of any of the Scheduled substances a misdemeanor.

Under Senate Bill 408, possession of a Scheduled substance will not be a felony, and conviction will not carry the consequences of a felony conviction, which can follow a person through life. Senate Bill 408 is directed at possession for personal use – although the statute applies to possession of any amount of a substance, if a person possesses a large amount the charge will likely be a felony charge of possession with intent to distribute, rather than simple possession.

Possession of marijuana is addressed in a different section of the statute. Penalties for marijuana possession range from a petty misdemeanor to a fourth degree felony (for possession of eight ounces or more). Although another bill, House Bill 356, would legalize possession of marijuana, if House Bill 356 does not pass, and Senate Bill 408 does, possession of eight ounces of marijuana will be a felony, while possession of cocaine (for example) would be a misdemeanor.

AOC explains “this bill will have an administrative impact on the courts, due to the additional judicial resources necessary to hear these cases in the magistrate and Metropolitan courts. Even though the magistrate and district courts will be under the same administrative authority, and should be able to shift administrative responsibility, the increase in caseload in the magistrate courts will still take more judicial time which the courts will not be able to accommodate through administrative consolidation. While the district courts should be able to shift clerical assignments between the courts, they will not be able to add more judges to those courts to hear the additional cases. Therefore, there will be an administrative impact on the judges in the magistrate and Metropolitan courts, due to the increase of cases in those courts.”

PERFORMANCE IMPLICATIONS

LOPD explained, in response to the original bill, “court services, such as drug courts, would likely need to route through magistrate and metropolitan courts instead of through district courts, as court centered addiction services would still be necessary to overall controlled substance harm reduction. In turn, this could trigger a change in which courts are funded for which purposes.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to House Bill 356 Cannabis Regulation Act, which would also amend Section 30-31-23 NMSA 1978, legalizing possession of marijuana.

Relates to Senate Bill 323, which would decrease marijuana penalties.

Relates to House Bill 57, which would restore felon’s voting rights.

TECHNICAL ISSUES

AOC explained, in response to the original bill, “it seems counterintuitive that this Bill would reduce the offense of possession of any amount of a controlled substance enumerated in Schedule I, II, III or IV, or its analog, to a misdemeanor; but would leave the offense of possession of eight ounces or more of marijuana or synthetic cannabinoids as a fourth degree felony under Section 30-31-23(B)(3) NMSA 1978.”

TE/sb/al