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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Zamora/Reeb **ORIGINAL DATE** 2/22/23

BILL

SHORT TITLE Cannabis as Contraband in Corrections **NUMBER** House Bill 429

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY24	FY25	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$0.0	At least \$53.2	At least \$64.2	At least \$117.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)
 New Mexico Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of House Bill 429

House Bill 429 expands the term “contraband” in existing law that prohibits bringing contraband into prisons and jails to include cannabis (including cannabis extract and cannabis products), except when it is prescribed by a healthcare provider. HB429 also clarifies the healthcare provider exception applies to jails as well as prisons. Bringing contraband into a prison remains a third-degree felony; bringing contraband into a jail remains a fourth-degree felony.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

As this crime constitutes a third-degree felony, it carries a three-year prison sentence. This analysis assumes at least one person will be admitted to prison each year for bringing cannabis

into a prison and will serve the full three years. LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in each year.

NMSC reports there were 39 arrests in FY 22 for bringing contraband into a county jail, which constitutes a fourth-degree felony with an 18-month sentence. NMSC estimates the average length of time served by an offender when a fourth-degree felony was the highest charge was 516 days. Each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand, at a cost of \$37.6 thousand. This analysis assumes at least one person will be admitted to prison for bringing cannabis into a jail each year. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. Costs are anticipated to increase in FY 26, as an offender in FY 25 serves the remainder of the offender's term and another offender is admitted but will level off (as offenders begin to be released from prison) and remain level in future years.

As to both these estimates, to account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect.

Additionally, AOC comments that HB429's increase in the scope of penalties is likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. Indigent offenders are entitled to public defender services, all of which results in increased costs to the general fund.

SIGNIFICANT ISSUES

Prior to the 2021 legalization and regulation of cannabis and cannabis products in New Mexico, cannabis would have been included in the existing statute's definition of prohibited controlled substances. HB429 updates existing law prohibiting the bringing of contraband into a prison or jail to include cannabis, cannabis extract and cannabis products as prohibited contraband, although they are no longer a controlled substance. Thus, cannabis is treated like alcohol. As a result of this update, the bill does not create a new criminal offense but reinstates a prior one.

Although in New Mexico the Cannabis Regulatory Act allows for lawful personal use of cannabis, AOC reports that:

In *People v. Raybon*, 11 Cal. 5th 1056 (2021), the California Supreme Court concluded that possession of cannabis in prison remained unlawful, even after the state's Proposition 64 generally legalized adult possession of up to a specified amount of cannabis, subject to certain exceptions. While the California decision does not set a precedent for New Mexico, a similar outcome regarding the possession of cannabis in prison or a jail could be likely in New Mexico. See <https://cpoa.org/cannabis-in-prison/> .

TECHNICAL ISSUES

NMAG notes that, if this bill is intended to prohibit cannabis in detention or commitment facilities for children, Section 30-22-14.1, which governs facilities operated by CYFD for these

purposes, would need to be amended as well.

OTHER SUBSTANTIVE ISSUES

A third-degree felony is punishable by up to three years in prison and a \$5,000 fine. Section 31-18-15, NMSA 1978. A fourth-degree felony is punishable by up to 18 months in prison and a \$5000 fine. Section 31-18-15, NMSA 1978.

NMSC reports:

Other states have been struggling with these issues post-cannabis legalization. See, for example, this article about a court case on these issues from California: D. Taylor, “Inmates Can Legally Possess Marijuana, but Not Smoke It, California Court Rules” (*New York Times*, 2019) (available at: <https://www.nytimes.com/2019/06/16/us/california-inmates-marijuana.html>).

The issue of prisoners using medical cannabis while under supervision or incarcerated was litigated in 2020, where a District Court judge ordered that medical cannabis had to be allowed to those incarcerated or under supervision. See *State v. Montaña* (D-202-CR-2017-04212), Order Granting Defendant’s Motion for Declaratory Judgement and Petition for Writ of Mandamus (Dec. 2020) (available at: https://ultrahealth.com/wp-content/uploads/2020/12/CR-2017-4212-Montano-Order-Granting-Mtn-for-Declaratory-Judgment_Petition-for-Writ-of-Mandamus.pdf)

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