

LFC Requester:

Ginger Anderson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original _____ **Amendment** x
Correction _____ **Substitute** _____

Date Prepared: 2/6/24

Bill No: HB 65

Sponsor: Andrea Reeb

Short Title: Cannabis Crime
Reasonable Suspicion

Agency Name and Code Number: 305 – New Mexico
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY24 | FY25 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY24 | FY25 | FY26 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: This bill proposes to amend the language in NMSA 1978 Section 26-2C-25 Personal Use of Cannabis. The amendments propose to remove the language that personal use of cannabis is not grounds for “detention, search or arrest of a person or search of property and cannabis products are not contraband,” and change it to “the odor or mere possession of a cannabis product shall not constitute grounds for a law enforcement officer to stop, detain or search a person or to search property absent reasonable suspicion.”

The proposed amendments also seek to amend the language related to operating a vehicle or motorboat while under the influence of intoxicating liquor or drugs.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

This bill would remove the following language from section 1, subsection (A) of NMSA 26-2C-25 “...and shall not constitute grounds for detention, search or arrest of a person or search of property, and cannabis products that relate to the conduct are not contraband or subject to seizure or forfeiture pursuant to the Controlled Substances Act or the Forfeiture Act.” The implications for removing the language related to detection, arrest or search appear to be minimal. The language clearly articulates what conduct is lawful for a person who is twenty-one years of age or older as it relates to the personal use of cannabis. Since the statute provides that the conduct is lawful, the logical premise is that it is not grounds for detention, search or arrest of a person or search of property and that the cannabis products are not contraband.

This provision, however, also seeks to remove the language specifically articulating that the cannabis is not subject to seizure pursuant to the Controlled Substances Act or Forfeiture Act. The Controlled Substances Act and the Forfeiture Act provide due process protections for seized property. *See generally*, NMSA 1978 §§ 30-31-35 and 31-27-4. The purpose of the Forfeiture

Act is to protect the constitutional rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture; and to deter criminal activity, amongst other purposes. NMSA 1978 §31-27-2. In forfeiture proceedings, the burden of proof is on the State to prove by clear and convincing evidence that the property in question is subject to forfeiture. *State v. Nunez*, 2000-NMSC-013, 129 N.M. 63. The statute, as currently enacted, removes cannabis products related to personal use from seizure or forfeiture under these Acts. It is unclear whether removing this provision would then subject persons to seizure or forfeiture. Removing this provision may then provide the due process protections provided by these Acts to persons whose property is subject to forfeiture .

This bill further proposes to amend subsection C of NMSA 26-2C-25, by removing the language that the odor, possession of cannabis for personal use, or possession of multiple containers does not constitute reasonable suspicion of a crime, nor is it a basis to stop, detain or search a person. The amendment proposes to simplify the language. The proposed added language reads “[t]he odor or mere possession of a cannabis product shall not constitute grounds for a law enforcement officer to stop, detain or search a person or to search property absent reasonable suspicion of criminal activity.”

Finally, this bill also proposes to amend subsection D of NMSA 1978 § 26-2C-25. The bill seeks to amend “watercraft” to “motorboat.” This amendment is consistent with the language in the Boating While Intoxicated Act. NMSA 1978 § 66-13-2(C) defines “motorboat” as:

“any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principle source of propulsion. “Motorboat” includes a vessel propelled or designed to be propelled by a sail, but does not include a sailboard or a windsurf board. “Motorboat” does not include a houseboat or any other vessel that is moored on the water, but not moving on the water.”

This bill also proposes to amend the language of subsection D from “intoxicated” or “impaired by alcohol” to “under the influence of intoxicating liquor or of any drug or any combination thereof.” This language is also consistent with NMSA 1978 § 66-13-3(B) which provides that it is “unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely operating a motorboat to operate a motorboat.”

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to NMAC 18.17.2.11(G). Operation while under the influence of alcohol or controlled substances: No person shall operate a motorboat or vessel, nor use water skis, surfboard or similar device, while under the influence of alcohol or any controlled substance.

Relates to NMAC 18.17.2.7 defines “personal watercraft” as a class A motorboat less than 16 feet, designed to be operated by a person sitting, standing or kneeling on the vessel rather than the operating sitting or standing inside the vessel. Examples include jet skis, sea doos, wave runners and similar devices.

Companion - SB 190 introduced in the second session, 2024; proposes to amend the Driving

While Under the Influence of Intoxicating Liquor or Drugs Act. It further proposes to define the term motorboat. Amendment in SB 190 proposes NMSA 66-1-4.11(F) “motorboat” means any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principal source of propulsion. “Motorboat” includes a vessel propelled or designed to be propelled by a sail, but does not include a sailboard or windsurf board. “Motorboat” does not include a houseboat or any other vessel that is moored on the water, but not moving on the water;

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS