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## FISCAL IMPACT REPORT

SPONSOR: McSorley DATE TYPED: 3/8/01 HB \_\_\_\_\_  
 SHORT TITLE: Possession of Controlled Substances Penalties SB 313  
 ANALYST: Rael

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
See Narrative			Recurring	Intensive Supervision Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates: HB 919

### SOURCES OF INFORMATION

- Corrections Department (CD)
- Department of Public Safety (DPS)
- Administrative Office of the Courts (AOC)
- Attorney General's Office (AGO)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)
- Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

The Possession of Controlled Substances Penalties bill amends the habitual offender-sentencing scheme to provide the courts with the discretion to increase incarceration for drug related offenses under the habitual offender felony law. Under current law, a habitual felony offender must be

sentenced to serve a certain number of years in the Department's prisons depending on the number of prior felony convictions, as follows:

- (a) for one (1) prior felony conviction - one (1) year mandatory prison sentence
- (b) for two (2) prior felony convictions - four (4) year mandatory prison sentence.
- (c) for three (3) or more prior felony convictions - eight (8) year mandatory prison sentence.

### Significant Issues

The bill allows the court the discretion to utilize the habitual offender-sentencing scheme when the instant or prior offense is for possession of a controlled substance or trafficking in a controlled substance. The current law provides mandatory sentencing for habitual offenders under a non-discretionary scheme.

### **FISCAL IMPLICATIONS**

This bill could result in a decrease of fiscal burdens upon the department, since judges could exercise their discretion in the case of drug possession and trafficking offenses, and not sentence offenders to additional prison terms in the custody of the Department. There could be a concomitant increase in costs however, associated with Parole and Probation, since these judges could sentence these categories of offenders to extended probation periods in lieu of incarceration. At the present time, there are 951 male drug offenders incarcerated in Department facilities; there are 180 women incarcerated in the Grants private facility for drug offenses.

The private prison annual cost of incarcerating an inmate based upon Fiscal Year 00 actual expenditures is \$21,670 per year for males. The cost per client to house a female inmate at the privately operated facility in Grants is \$24,348 per year.

The cost per client in Probation and Parole for a standard supervision program is \$1,536 per year. The cost per client in Intensive Supervision programs is \$3,922 per year. The cost per client in Department-Operated Community Corrections programs is \$5,519 per year. The cost per client in Privately-Operated Community Corrections programs is \$10,724 per year.

There will be a minimal increase in revenue due to possible additional probation supervision fees being collected.

Both the Public Defender Department and the Administrative Office of the Courts report that this bill could result in decreased expenses to it since mandatory penalties often result in increased trials since the defendant "has nothing to lose." This bill could enhance bargaining power and lead to increased pleas and thus a decreased fiscal burden on the criminal justice system.

However, the District Attorneys report that the lack of mandatory sentencing for these circumstances will require them to spend greater resources preparing arguments in an effort to ensure that defendants serve the time currently mandated.

### **ADMINISTRATIVE IMPLICATIONS**

In the long term, the bill could result in a significant decrease in the administrative burden on prison staff who will be required to manage a larger prison system. However, this decrease could be balanced

out by the increased administrative demands upon the parole and probation systems of the Department.

**TECHNICAL ISSUES**

It is unclear whether the bill intends to exclude all felony crime convictions within the Controlled Substances Act (including manufacture) or simply possession or trafficking from a mandatory sentence increase.

**OTHER SUBSTANTIVE ISSUES**

The Department of Public Safety notes that this bill may result in inconsistent sentencing of habitual offenders either from judge to judge or even by individual judges.

This law would allow a three time convicted drug trafficker who sells drugs to children to spend less time in prison than a person convicted of felony DWI.

FAR/njw