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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/11
 LAST UPDATED 02/28/11 HB _____

SPONSOR Beffort

SHORT TITLE Prohibit Synthetic Cannabinoids SB 134/aSPAC/aSJC/aSFL#1

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	+\$1.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Department of Corrections (NMDC)

SUMMARY

Synopsis of SFL Amendment #1

The Senate floor amendment proposes to add penalties for minors who possess synthetic cannabinoids. The penalties for minors provide for the first offense that the minor be guilty of a petty misdemeanor. On the third or subsequent offense, the minor's punishment is dictated by the delinquent offender provisions in the Children's Code.

According to the Attorney General's Office, it is unclear as to whether there is the same penalty for both the first and second offense for minors. It is clear that when the minor is charged with the third or subsequent offense, he or she is treated as a delinquent offender.

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 134 adds new substances to the list of prohibited synthetic marijuana substances.

The amendment also adds the following section:

A minor who violates this section with respect to synthetic cannabinoids or any of the substances listed in Paragraphs (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978 is guilty of a petty misdemeanor and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to synthetic cannabinoids or any of the substances listed in Paragraphs (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978, the provisions of Section 32A-2-19 NMSA 1978 shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 134 adds three additional substances to the list of prohibited synthetic marijuana substances.

Synopsis of Original Bill

Senate Bill 134 adds “synthetic cannabinoids” to the list of hallucinogenic controlled substances under Schedule I of the Controlled Substances Act; and criminalizes its intentional distribution, possession with intent to distribute and simple intentional possession, with increased penalties for knowingly doing so within a drug-free school zone.

This bill amends three (3) sections of the Controlled Substances Act:

- 1) Section 30-31-6 (C): adds synthetic cannabinoids, and its derivatives, to Schedule 1 of the Controlled Substances Act.

- 2) Section 30-31-22: makes the distribution of synthetic cannabinoids, or the possession with intent to distribute synthetic cannabinoids, a crime. It also sets out the penalties for this crime; depending on the amount of synthetic cannabinoids involved, and whether or not the crime is committed in a drug-free school zone.

- 3) Section 30-31-23: makes possession of synthetic cannabinoids a crime. It also sets out the penalties for this crime; depending on the amount of synthetic cannabinoids involved, and whether or not the crime is committed in a drug-free school zone. Finally, this section is amended to read “a person” instead of “any person”.

FISCAL IMPLICATIONS

According to the Administrative Office of District Attorneys (AODA), these amendments could increase the number of people who are arrested and convicted under the Controlled Substances Act.

According to the AOC, there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

According to the Department of Corrections (NMDC) the additional minimal to moderate number of felony convictions resulting from this expanded crime bill would increase the Department's costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department's inmate population or probation/parole caseloads. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty. As is almost always the case, there is no appropriation in the bill to the Department to cover any of the Department's increased costs associated with the creation of this expanded crime.

SIGNIFICANT ISSUES

Synthetic cannabinoids are currently legal and readily available at smoke shops and over the internet under a variety of brand names, such as "Spice," "K2," "Blaze," and "Red X Dawn," among many others. These products consist of plant material that has been coated with research chemicals that mimic THC, the active ingredient in marijuana, and when smoked they produce a marijuana-like high.

Many of the chemical compounds that are now in use as synthetic cannabinoids were derived as part of standard medical research into therapeutic agents for pain treatment. They have not been approved by the FDA for human consumption and there is no oversight of the manufacturing process. Since 2009, the federal Drug Enforcement Agency (DEA) has received an increasing number of reports from poison centers, hospitals, and law enforcement regarding these products. The New Mexico Drug Court Programs have also reported on the increasing number of their participants who are turning to the use of synthetic cannabinoids for a marijuana-like high. The products are legal, and until very recently there weren't any drug tests available that would show the program participant was ingesting a synthetic cannabinoid.

According to the Administrative Office of the Courts (AOC), a number of labs do offer tests at this point, but they lack standardization as to which of the many synthetic cannabinoids they test for and what they use for a cutoff level to determine a positive drug test. The Drug Court Programs have told their participants that synthetic cannabinoids are prohibited while they are in the program, and the tests available are allowing them to monitor compliance to some degree. The DEA recently used its emergency scheduling authority to temporarily control five of the chemical compounds used in synthetic cannabinoids. This action by the DEA effectively makes the sale or possession of products containing those compounds illegal for at least one year while the DEA and the US Dept of Health and Human Services study whether these chemicals and products should be permanently controlled.

ADMINISTRATIVE IMPLICATIONS

The AOC believes any prohibition of the use of synthetic cannabinoids (be it a program prohibition, as with drug courts, or a legal prohibition) is difficult to enforce given the lack of a comprehensive drug test for such compounds, and the lack of standardization in the tests that are currently available.

TECHNICAL ISSUES

According to the Attorney General (AGO), a “controlled substance analog” under the Act includes “a substance...that has a chemical structure substantially similar” to a controlled substance “or that was specifically designed to produce effects substantially similar” to a controlled substance. The implication then becomes that synthetic cannabinoids do not qualify as a controlled substance analog of marijuana, which the Act already seems to criminalize. If synthetic cannabinoids do not qualify as a “controlled substance analog”, would a definition of synthetic cannabinoids in Sec 30-31-2 help clarify?

OTHER SUBSTANTIVE ISSUES

The NMDC reports that the Probation and Parole Division has dealt with a significant number of offenders, including many sex offenders, who use synthetic marijuana. Since it is not currently illegal, its use cannot be prohibited as a condition of probation or parole. A law criminalizing it will probably deter use and possession by probationers and parolees who could then have their supervision revoked for using or possessing it. Synthetic marijuana appears to have similar effects on the body and mind as marijuana, and is readily accessible.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The use of synthetic marijuana is likely to increase if it is not criminalized. The use of synthetic marijuana is already increasing throughout New Mexico communities. Probation and Parole Officers are already dealing with a substantial number of offenders on probation or parole that are using synthetic marijuana.

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