

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez ORIGINAL DATE _____
LAST UPDATED 2/13/19 HB _____

SHORT TITLE Medical Cannabis and Removal of Children SB 477

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 356, SB 204, SB 242, SB 323, SB 406

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)

Public Education Department (PED)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 477 makes changes to the Abuse and Neglect Act (Section 32A-4 NMSA 1978), the Family Services Act (Section 32A-3A NMSA 1978) and the Public School Code (Section 22 NMSA 1978) to be certain that parents qualified for medical marijuana will not have that used as a sole indication for an allegation of child abuse or neglect or trigger enforcement or intervention regarding that use of medical marijuana.

FISCAL IMPLICATIONS

No appropriation is made.

SIGNIFICANT ISSUES

PED indicates that it does not currently provide guidance on any relationship between use of medical marijuana and child maltreatment:

The PED provides an e-learning training opportunity on the detection and reporting of child abuse or neglect that may be used to meet the intent of the required training as identified in the Standards for Excellence (<http://swrtc.nmsu.edu/elearning/educators/>). The existing training is silent on medical cannabis as it relates to reporting of alleged abuse or neglect. School districts and charter schools may have individual policies or procedures that address perceived or actual substance use by a parent or guardian of a student and the appropriate response school staff would take in this situation. It is unclear whether districts or charters currently address allowable medical cannabis use. The PED could qualify the provisions of SB477 in its existing e-learning training opportunity.

DOH notes that other jurisdictions are dealing with this issue, including the following:

Parental rights for medical cannabis users around the country remain in question as states struggle to identify when intervention is required. Child Protective Services in Los Angeles has taken the lead on this issue. Rather than looking at use of cannabis as being grounds for intervention, the agency is looking at the environment where the use is occurring and determining if the environment may cause harm

(https://blogs.findlaw.com/law_and_life/2016/11/can-cps-take-my-kids-away-over-legal-marijuana.html);

(<http://dcfs.lacounty.gov/Policy/FYI/2011/FYI1110MedicalMarijuanaa.rtf>). Americans for Safe Access has developed guidelines for those using medical cannabis where children are in the home that are about sensible use of medical cannabis around children and keeping product secure and out of reach of minors.

(https://www.safeaccessnow.org/ca_child_custody).

Substantial racial disparities exist in marijuana possession arrests nationally. According to a report by the ACLU, “on average, a Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates” (<https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>). Black/African American and Native American children are also disproportionately represented in the child welfare and foster care systems (https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf). In both cases, racial bias (of police, caseworkers, etc.) is believed to be a contributing factor.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

PED would be charged with making this change known to all school districts and charter schools.

RELATIONSHIP to other bills having to do with marijuana regulation, including the following:

HB 356

CANNABIS REGULATION ACT

SB 204

MEDICAL MARIJUANA IN SCHOOLS

SB 242

MEDICAL CANNABIS GROSS RECEIPTS & DEDUCTIONS

SB 323

DECREASE MARIJUANA PENALTIES

SB 406

MEDICAL MARIJUANA CHANGES

Many of the provisions of SB 477 are included in Section 15 of SB 406, making very similar changes to the Family Services Act.

TECHNICAL ISSUES

NMAG notes a possible conflict between the provision of Section 3, that “no school employee shall report, or threaten to report...” a parent for use of medical marijuana with the First Amendment right to free speech.

OTHER SUBSTANTIVE ISSUES

NMAG notes the conflict between state and federal law regarding marijuana, inasmuch as the federal government continues to consider marijuana as a forbidden drug (i.e., Controlled Substance Category 1), despite the fact that many states have legalized medical marijuana, and a smaller number have legalized recreational marijuana.

ALTERNATIVES

In view of the possible legalization of recreational marijuana (if HB 356 were passed and signed), a determination as to what amount of use of recreational marijuana by a parent would be protected and what could be considered in allegation of child neglect (e.g., constantly being under the influence of marijuana, as being constantly under the influence of alcohol is).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Parents could be considered abusive or neglectful of their children if using a drug approved for a medical condition.

LAC/gb