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## FISCAL IMPACT REPORT

SPONSOR: Godbey DATE TYPED: 02/20/01 HB 412  
 SHORT TITLE: Increase Controlled Substances Penalties SB \_\_\_\_\_  
 ANALYST: Rael

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		\$1,400.0 Significant See Narrative		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Attorney General’s Office (AGO)  
 Department of Public Safety (DPS)  
 Corrections Department (CD)  
 Public Defender (PD)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

This bill increases criminal penalties for distribution of controlled substances and counterfeit controlled substances pursuant to Sections 30-31-20, 22 and 25, by one level: petty misdemeanors are increased to misdemeanors, fourth degree felonies are increased to third degree felonies, third degree felonies become seconds and second degree felonies become first degree felonies.

Section 30-31-20 B. is amended to increase the penalty for a first trafficking conviction from a second degree felony to a first degree felony. Second and subsequent offenses remain a first degree felony.

Section 30-21-21 is amended to increase the first conviction for distribution of marijuana to a minor from a third degree to a second degree felony and for subsequent offenses from a second to a first degree felony. The penalty for distribution of all other controlled substances to a minor is increased from a second degree felony to a first degree felony for first offenses. Second and subsequent offenses remain a first degree felony.

Section 30-31-22 A is amended to increase distribution of marijuana (first offense) from a fourth to a third degree felony, and subsequent offenses from a third to a second degree felony. For distribution of more than a hundred pounds of marijuana (first offense) the penalty is increased from a third to a

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second degree felony; subsequent offenses are increased from second to first degree offenses. Penalties for distribution of other non-narcotic controlled substances are increased for a first offense from a third to a second degree felony and for subsequent offenses from a second to a first degree felony.

Section 30-31-22B is amended the penalty for distribution of a counterfeit substance to increase it from a petty misdemeanor to a full misdemeanor with the corresponding fine and imprisonment.

Section 30-31-22C is amended to increase the penalty for distribution of drugs in a school free zone. First offense distribution of marijuana is increased from a third to a second degree felony, with subsequent offenses increasing from second to first degree felonies. Distribution of more than a hundred pounds of marijuana (first offense) is increased from a second to a first degree felony.

Section 30-31-25 makes the following acts fourth degree felonies: to misuse a registration number under the controlled substance act, to obtain a controlled substance by fraud: to falsify documents under the controlled substance act; posses or use devices to mislabel drug containers. The section is amended to make these crimes third degree felonies.

### **FISCAL IMPLICATIONS**

Since the number of convictions each year for drug offenses is large, the impact to the Corrections Department will be significant beginning in about one or two years and increasing thereafter. The Department roughly estimates that about one-third of the convictions for these offenses will result in a longer prison term and about two-thirds of the convictions for these offenses will result in a longer probation term.

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. Any net increase in inmate population will be housed at a private facility.

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. This bill will result

in a minimal increase in revenue from the larger fines due to the higher degree of offense and additional probation supervision fees from the longer periods of probation.

The Public Defender reports that potential costs to the Public Defenders and the District Attorneys could be significant. The Public Defender Department estimates the bill would require the addition of a Public Defender 3 level attorney in each district office at a cost of \$62,540 salary and benefits per attorney, increased funding for contract public defenders in districts without a departmental office, increased funding for conflict attorneys in districts with an office, and the additional of two Public Defender 3s in the appellate division. In Public Defender Attorney costs, the price would be over \$740,000 a year. Contract conflict costs would certainly approach \$400,000 or more.

### **ADMINISTRATIVE IMPLICATIONS**

Increased penalties could have the potential to increase jury trials, thus requiring additional resources to handle these cases. It will cost the judicial system \$400 for statewide update, distribution, and documentation of statutory changes.

### **OTHER SUBSTANTIVE ISSUES**

The Public Defender notes that this bill would designate almost all controlled substances trafficking offenses as either first or second degree felonies, the most serious penalties under the Criminal Code for any crime less than murder. When faced with such a severe penalty, criminal defendants are far more likely to exercise their right to proceed to jury trial, since they have little to lose. Defendants would also be more disposed to litigate all issues surrounding the legality of the seizures of the controlled substances via motions to suppress evidence. If convicted, defendants would also have no reason to forgo an appeal. Thus, this bill would significantly increase the amount of motions practice and jury trials taking place at the trial level, and the number of cases appealed to the court of appeals.

Finally, the Public Defender notes, the sentencing scheme contained in this bill would be inconsistent with the legislature's prior enactments within the criminal code. In the past, the legislature has shown an inclination to punish violent offenders more severely than non-violent offenders. However, this bill would subject a person who commits the first time offense of selling any amount of cocaine, no matter how small, to a more severe penalty (18 years) than a person who commits the violent offenses of voluntary manslaughter (6 years) and even second degree murder (15 years). Only capital murder would have a more severe penalty.

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