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FISCAL IMPACT REPORT

SPONSOR: McSorley DATE TYPED: 02/28/01 HB _____
 SHORT TITLE: Possession of Marijuana SB 315
 ANALYST: Dunbar

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 317

Duplicates HB 918

Relates to HB 431

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)

Office of the Attorney General (AG)

Public Defender

Corrections Department

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

The bill amends the current statute prohibiting possession of controlled substances (Section 30-31-23 NMSA 1978) by making its criminal penalties for possession of one ounce or less of marijuana applicable only to persons under the age of eighteen.

The bill creates a civil fine to replace the criminal sanctions for adults who are found guilty of possessing one ounce or less of marijuana. The civil fine for a first offense is \$100. The civil fine for a second or subsequent offense is \$500.

Significant Issues

The Department of Public Safety will create a citation to be used for possession of one ounce or less of marijuana and a warning for instances in which the citation is not issued. Law enforcement officers will issue the citation, offering the alleged offender the option of accepting the citation (and agreeing to pay the applicable civil fine) or electing to contest the citation in metropolitan or

magistrate court

A signature on the citation constitutes an admission of guilt. However, a record of payment of a civil fine shall not be admissible as evidence in a separate civil or criminal action except to establish a prior offense for possession for application of the higher fine for second or subsequent offenses.

FISCAL IMPLICATIONS

AOC speculates that the fiscal impact of this bill on the state general fund would be positive. The civil fines of \$100 and \$500 are probably higher than the average criminal fine for misdemeanor marijuana possession.

The bill would require the Department of Public Safety to design and print a civil citation form to utilize in the enforcement of this act. DPS points out that there is no funding provided in the bill and that there would be an annual recurring cost of at least \$50,000.

The Public Defender remarks that all agencies associated with the courts or law enforcement agencies are compelled to devote a huge portion of fiscal assets to fight the “war against drugs.” The Public Defender further states that decriminalizing Marijuana and other scheduled substances, as contemplated in this legislation, could, in the long run, “free-up” enormous amount of money and man power that can be devoted to other matters.

ADMINISTRATIVE IMPLICATIONS

Administrative Office of the Courts points out that it is not entirely clear how the courts will handle civil fines. The cases will be initiated by citations B, the process typically used to begin a traffic case, which is processed according to the Rules of Criminal Procedure. However, they will be civil cases, assigned civil case numbers, and processed according to the Rules of Civil Procedure. Judges, police officers, and lawyers will need to learn how to apply the civil process to these cases.

The statewide automation system may need to establish a new case category. Judges and staff will need training on the new procedures. The cost of these is not determinable.

The staffs of metropolitan and magistrate courts will need to process mailed-in citations. AOC states the courts do this for traffic cases. Therefore, no major changes of procedure will be required. AOC further states that it is not likely that the workload associated with these cases will be any greater than the workload associated with the misdemeanor cases they replace. Because the consequences of pleading guilty will be reduced, it is likely that the number of trials in these cases will drop.

DPS anticipates that because of the nature of the changes proposed by the legislation, training will be required of all commissioned law enforcement officers in order to know how to proceed in dealing with individuals who possess marijuana.

Also, in order to use the subsequent offense portion of this bill, DPS would have to design and maintain a tracking system that could be certified in court for identifying subsequent offenders.

RELATIONSHIP

This bill conflicts with Senate Bill 317, which addresses the issue of possession of small amounts of marijuana in a different fashion.

Senate Bill 315 -- Page 3

This Bill is identical to House Bill 918.

This Bill is similar to the Compassionate Use of Medical Marijuana Act (House Bill 431) that contemplates allowing seriously ill patients to engage in the medical use of marijuana without being arrested, incarcerated or prosecuted.

TECHNICAL ISSUES

AOC suggests that the Legislature may wish to consider whether the term civil penalty as used elsewhere in the code is preferable to civil fine, and whether other language more commonly used in civil cases might be preferable to offense, alleged offender, and guilty.

DPS provides the following comments on the legislation:

The attempt to create a “civil offense” with attendant fines and jurisdiction of the metropolitan and magistrate courts may be constitutionally impermissible. The issue is whether or not the act as proposed is punitive in nature. If so, it implicates both Article II, Section 10 of the New Mexico Constitution and the Fourth Amendment of the United States Constitution, as well as all other relevant constitutional provisions relating to criminal statutes. Subsequent to the New Mexico Supreme Court’s decision in *State v. Nunez, 2000-NMSC-013, 39 N.M. St. B. Bull. 21, 2 P.3d 264 (S. Ct. 1999)*, it is clear that although the legislature may attempt to characterize matters as purely civil, it is up to the courts to decide whether they are indeed criminal because they provide for penalties.

An additional technical problem is presented because Section 2 of the proposed legislation still criminalizes first and second possessory offenses with respect to possession of an ounce or less of marijuana and treats them as crimes. This is internally inconsistent with the language in Section 1 that attempts to create “civil offenses.”

OTHER SUBSTANTIVE ISSUES

The Public Defenders office provided the following statistics:

- In the United States, 1.6 million people are arrested for drugs. Eight hundred thousand of them are marijuana users.
- The Governor has noted that tobacco kills 400,000 people a year, alcohol about 150,000 (not including drinking and driving), and legal prescription drugs about 100,000. Combined, cocaine and heroin (which use and possession is **not** decriminalized by this legislation) kill approximately 3000.

BD/ar