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FISCAL IMPACT REPORT

ORIGINAL DATE 3/06/17

SPONSOR SFI LAST UPDATED _____ HB _____

SHORT TITLE Decreasing Marijuana Penalties SB 258/SFIS

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	(Moderate), see fiscal impact section	(Moderate), see fiscal impact section	(Moderate), see fiscal impact section	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SB 258 relates to HB 89 and HB 102.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (OAG)

SUMMARY

Synopsis of Senate Floor Substitute

Senate Floor Substitute for SB 258 provides that a person convicted of possessing up to one-half ounce of marijuana would be issued a \$50 penalty assessment; possession of more than one-half ounce but not less than one ounce would be a petty misdemeanor for the first offense and misdemeanor for a second or subsequent offense; possession of more than one ounce but not more than eight would be a misdemeanor; and more than eight ounces would be a fourth degree felony.

The penalties for possession of synthetic cannabinoids would remain unchanged. Senate substitute amends Section 30-31-25.1, NMSA 1978 to provide that a person who is found guilty of violating subsection A (use or possession of drug paraphernalia) would be issued a \$50 penalty assessment. The Senate substitute for SB 258 creates a new section of Chapter 31, NMSA 1978 for penalty assessments under the Criminal Code.

FISCAL IMPLICATIONS

The AOC states the substitute for SB 258 could have a positive fiscal impact on the courts; court workloads could be lessened by reducing the charges of possession of marijuana up to one-half ounce and use or possession of drug paraphernalia to penalty assessments. These penalty assessments would not require court hearings, unless the charges are contested. Currently, these charges carry criminal penalties which require court hearings to be set automatically. Criminal charges, which carry the potential of jail time, require the defendant to be arraigned by a judge, and often require additional hearings to resolve the charges. For penalty assessment cases, the defendant may either choose to pay the penalty assessment without appearing in court, or if they choose to appear in court, may file an appearance plea and waiver, similar to Form 9-104B NMRA, and pay the penalty assessment and court costs without having to see a judge. Processing of penalty assessments involves less court resources than criminal cases.

The AOC also explains the substitute would reduce the number of criminal cases which the courts would need to process. For example, in 2016 there were 2,100 possession of marijuana (one ounce or less) cases filed in the magistrate and metropolitan courts, which were not related to any DWI, domestic violence, or felony charges. There were 3,660 cases of use or possession of drug paraphernalia, which were not attached to DWI, domestic violence, or felony charges. For the purposes of this analysis, the Administrative Office of the Courts did not have the necessary time or resources to calculate the number of cases where these were the only criminal charges (aside from not being attached to DWI, domestic violence, or felony cases). However, these numbers support a reasonable inference that even a moderate reduction in these types of criminal charges would have a significant impact on the courts' workload.

LOPD explains according to a study of FY12 FY16 run by IT staff of LOPD, public defenders were appointed in well over 2,500 cases in which Section 30-31-23(B) NMSA 1978 (possession of marijuana or synthetic cannabinoids) was the primary charge. The proposed reduction in penalty for many of these cases could only have a positive effect on the workload of the LOPD, rendering the agency better able to address its constitutionally mandated duty of defending New Mexicans accused of more serious crimes. To the extent this results in fewer trials, fewer additional resources would have to be allocated to our stretched-to-the-limit criminal justice system. Such benefits should inure to LOPD, district attorneys, the OAG, courts, counties and possibly the corrections department.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

AOC states defendants have the right to counsel on any charges which carry the potential of jail time. "Uncounseled convictions that result in a sentence of imprisonment, whether actually served or suspended, violate the Sixth Amendment right to counsel as applied to the states through the Fourteenth Amendment." *State v. Aragon*, 1997-NMSC-062, Section 8; see also *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). Reducing these charges to penalty assessments would reduce the number of cases in which the court is required to appoint an attorney. Accordingly, it would also reduce the strain on the Law Offices of the Public Defender.

The OAG explains the substitute changes the amount of marijuana that constitutes criminal

possession from “one ounce or less” to “up to one-half ounce” and allows for imprisonment for possession of one-half ounce to one ounce for a second or subsequent offense and allows for imprisonment for possession of one to eight ounces. The original bill allowed for imprisonment only for possession of eight ounces or more and authorized only monetary fines for possession of lesser amounts. The substitute returns to the current statute’s penalties with the exception of allowing for a penalty assessment for possession of up to one-half ounce. These changes also conform with the criminalized amounts and penalties for possession of synthetic cannabinoids, as proposed in SB 258.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SJR 19 Possession & Personal Use of Marijuana; potential conflict with HB 89 and SB 278 Cannabis Revenue & Freedom Act.

TR/sb