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FISCAL IMPACT REPORT

SPONSOR HJC **LAST UPDATED** 2/9/24
ORIGINAL DATE 2/7/24
BILL CS/CS/House Bill
SHORT TITLE Cannabis As Prison Contraband **NUMBER** 239/HCPACS/HJCS
ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$26.59	At least \$37.49	At least \$64.08	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 63, 64, 65, 66, 128 and Senate Bill 6

Sources of Information

LFC Files

Agency Analysis Received From

Law Office of the Public Defender (LOPD)

Corrections Department (NMCD)

Administrative Office of the Courts (AOC)

Office of the Attorney General (NMAG)

New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of HJC Substitute for House Bill 239

The House Judiciary Committee substitute for House Bill 239 (HB239) amends Section 30-22-14 NMSA 1978, which governs the felony crime of bringing contraband into places of imprisonment, including juvenile detention facilities. Specifically, it seeks to include cannabis, as defined in the Cannabis Regulation Act, in the list of prohibited contraband. The bill, however, exempts cannabis brought into prisons or jails through regular channels and under the direction or prescription of a healthcare provider.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

House Bill 239 would not create a new offense but would reinstate one that existed prior to the legalization of medical and recreational marijuana in New Mexico. It is difficult to anticipate

how many additional criminal charges would result from the passage of this bill. Some definitions in the bill may necessitate expert testing and consultation in forensic chemistry during the litigation of these offenses.

As this crime constitutes a fourth degree felony, it carries a three-year prison sentence. This analysis assumes at least one person will be admitted to prison each year for bringing cannabis into prison and will serve the full three years. LFC estimates a marginal cost (the cost per additional inmate) of \$26.6 thousand per year across all facilities. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred each year. NMSC reports there were 39 arrests in FY22 for bringing contraband into a county jail, which constitutes a fourth degree felony with an 18-month sentence. NMSC estimates the average length of time served by an offender when a fourth degree felony was the highest charge was 516 days.

Each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand, at a cost of \$37.6 thousand. This analysis assumes at least one person will be admitted to prison for bringing cannabis into jail each year. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. Costs are anticipated to increase in FY26, as an offender in FY25 serves the remainder of the offender's term and another offender is admitted but will level off (as offenders begin to be released from prison) and remain level in future years. As to both these estimates, to account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect.

SIGNIFICANT ISSUES

The analysis of the original bill provided by the New Mexico Sentencing Commission expressed concerns with the definitions included in HB239 for cannabis similar to the one for controlled substances in existing law. The bill's definitions for "cannabis," "cannabis extract," and "cannabis products" are largely aligned with the Cannabis Regulation Act, with minor differences. NMSC suggested cross-referencing these terms with the Cannabis Regulation Act might prevent inconsistencies. Specifically, HB239's definition of "cannabis extract" lacks clarity on who approves the extraction methods, unlike the Cannabis Regulation Act, which specifies approval by the Cannabis Control Division of the Regulation and Licensing Department. These concerns seem to have been addressed by the House Consumer and Public Affairs Committee Substitute for House Bill 239.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB239 relates to
SB6, Cannabis Regulation Changes;
HB63, Cannabis School Use Prevention Resource Act;
HB64, Cannabis Packaging Requirements;
HB65, Cannabis Crime Reasonable Suspicion;
HB66, Cannabis in Delinquency;
HB128, Cannabis Regulation Changes.

SS/hg/sgs