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## FISCAL IMPACT REPORT

SPONSOR: HCPAC DATE TYPED: 03/13/01 HB 918/HCPACS  
 SHORT TITLE: Possession of Marijuana SB \_\_\_\_\_  
 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 SB 315

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)  
 Bernalillo County Metro Court

### SUMMARY

#### Synopsis of Substitute Bill

The substitute 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 is \$300.

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 substitute bill also provides for the court to refer the under aged offender to a drug counseling program administered or approved by the Department of Health.

#### 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**

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, 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.

In contrast, the Bernalillo County Metro Court state that Judges and staff, under the present language of the Bill, would be somewhat uncertain as to how to proceed concerning: 1) the charging of mandatory fees for those who “acknowledge guilt” by signing the citation, or, who are found to be guilty after contesting the citation; 2) the use of criminal bench warrants for those who don’t pay completely or timely; 3) eligibility for installment payments or community service conversion normally accorded to those who plea, or are found to be, guilty as to misdemeanors; and, 4) availability of contempt for those who say they want to contest the citation but never show up at the appropriate court. Sorting out these issues could require considerable time of Judges and staff and thereby negatively impact the BCMC’s ability to efficiently handle and conclude its overall caseload.

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.

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.”

Bernalillo County Metro Court(BCMC) explains that even if the fine is just a “civil fine” rather than a criminal one, constitutionally speaking, the collected fines are directed to the current School Fund, not the General Fund. See, New Mexico Constitution, Art. XII, § 4.

## **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.

BCMC reports that special crimes cannot be created just for those under the age of 18, because they are preempted by the Children's Code. See, A.C.L.U. v. City of Albuquerque, 128 N.M. 315 (1999) (the New Mexico Supreme Court struck down the City of Albuquerque's curfew ordinance because the Children's Code evidences a legislative intent to limit criminalization of youthful behavior to those acts that would be crimes if committed by an adult).

## **QUESTIONS**

What is to be done when alleged offenders sign the citation acknowledging their guilt, but later change their mind and want to contest it in court? Even if this is permitted, should there be a definite time-limit for doing this? To avoid unnecessary issuance of warrants, such time limit for changing their mind (plea) should be less than the 30 day time-limit for payment.

BD/ar