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FISCAL IMPACT REPORT

ORIGINAL DATE 2/21/06
 LAST UPDATED 2/24/06 HJM 82

SPONSOR Rehm

SHORT TITLE Consumption Of Illegal Drugs As Possession SB _____

ANALYST Peery

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
NA	NA	NA	NA

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From
 Public Defender Department (PDD)

No Responses Received From
 Administrative Offices of the Courts (AOC)
 Administrative Office of the DAs (AODA)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Joint Memorial 82 calls for the New Mexico Sentencing Commission study means of amending New Mexico statutes to make the results of blood or other tests indicating a detectable amount of an illegal drug in a suspect's system as proof of possession of an illegal drug. The joint memorial calls for the New Mexico Sentencing Commission to explore and report on the statute defining possession of a drug to include ingestion of the illegal drug. Also, the joint memorial calls for the executive director of the New Mexico Sentencing Commission or designee to report to the interim Courts, Corrections and Justice Committee by October 2006 on ways to amend the Criminal Code to resolve the problem of proving possession of an illegal drug through blood or other tests.

SIGNIFICANT ISSUES

PDD states the memorial begins with an erroneous premise that persons who drive under the influence of drugs are not punishable. PDD states the DWI laws of this state, Section 66-8-102 NMSA 1978, already punishes people who drive under the influence of any substance that impairs their ability to operate a motor vehicle. PDD reports the existing laws are not limited to driving under the influence of alcohol.

PDD states the memorial will discourage people who have drug problems from seeking help such as medical care, when they know they can be prosecuted for “possessing” drugs in their blood or urine. It will have its greatest impact on the low-income citizens of the state who rely on hospital emergency rooms for medical care.

ADMINISTRATIVE IMPLICATIONS

PDD states the changing of the criminal code to punish consumption as possession will greatly increase the number of felony prosecutions that are brought and overtax an already overloaded system with status crimes, punishing people who are addicted to drugs as criminals.

TECHNICAL ISSUES

PDD reports the memorial presents a double jeopardy problem as well. PDD reports if a person uses drugs but also has drugs for future use, can s/he be prosecuted for both “possessions”? PDD states any convictions for both will be challenged and assuming the substances are the same, the court will most likely have to reverse one conviction.

OTHER SUBSTANTIVE ISSUES

PDD reports people who are currently on probation or parole for some other offense are prohibited from using any controlled substances and can have their probation or parole revoked for using drugs. PDD states drug court or other forms of treatment are far more effective and cheaper options than another felony conviction and incarceration.

RLP/mt