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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/07

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 479

SHORT TITLE Crime of Consumption of Controlled Substance SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Corrections Department (CD)

Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

House Bill 479 amends the crime of possession of a controlled substance to recognize a positive test by blood, urine or other medical test is *prima facie* evidence of knowing and intentional drug possession.

### FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

The New Mexico Supreme Court has held that a positive drug test is insufficient evidence to prove the crime of possession of a controlled substance, as that crime is currently defined. *State v. McCoy*, 116 N.M. 491, 496 (1993), *reversed on other grounds*, *State v. Hodge*, 118 N.M. 410 (1994). *See also State v. Twayne H.*, 123 N.M. 42, 47 (Ct. App.), *cert. denied*, 123 N.M. 83 (1997). HB 479 appears in part intended to address these holdings by making a positive drug test by urine, blood or other medical test *prima facie* evidence of knowing possession of a controlled substance.

## PERFORMANCE IMPLICATIONS

House Bill 479 would have an impact on court performance by increasing challenges to the new statutory language.

## ADMINISTRATIVE IMPLICATIONS

Any additional cost of this incurred in the defense of this crime would be absorbed in the ordinary course of business by courts and corrections.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 479 relates to:

- HB 403, relating to criminal law, which would modify the crime of driving under the influence of intoxicating liquor to allow three hours for the administration of a chemical test to determine alcohol concentration, provide for the admissibility of chemical tests taken more than three hours after driving, and reconcile multiple amendments to the same section of law in laws 2005; declares an emergency.
- HB 420, relating to driving under the influence of intoxicating liquor or drugs, which would modify the crime of driving under the influence of intoxicating liquor to allow three hours for the administration of a chemical test to determine alcohol concentration, and reconcile multiple amendments to the same section of law in laws 2005.
- HB 478, relating to criminal law, which would modify the crime of driving under the influence of intoxicating liquor to allow three hours for the administration of a chemical test to determine alcohol concentration, create a per se violation for driving under the influence of certain controlled substances, and reconcile multiple amendments to the same section of law in laws 2005.

## OTHER SUBSTANTIVE ISSUES

The case of *State v. Hodge*, 118 N.M. 410, 882 P.2d 1, (1994), deals with similar subject matter. In *Hodge*, the Supreme Court vacated the defendants' convictions on the charge of possession of a controlled substance where the only evidence of possession was a urinalysis that showed cocaine in the defendants' systems. "[T]he mere presence of drugs in the urine or bloodstream does not constitute possession." *State v. McCoy*, 116 N.M. 491, 497, 864 P.2d 307, 313 (App.1993); *overruled on other grounds*, *State v. Hodge*, 118 N.M. 410, 882 P.2d 1 (1994).

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

A positive drug test will remain only some evidence of knowing drug possession, requiring corroboration by other evidence, instead of providing *prima facie* evidence that, if unchallenged, can be sufficient to support a criminal conviction.

CS/csd