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FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13

SPONSOR Kane LAST UPDATED _____ HB 465

SHORT TITLE Decrease Marijuana Possession Penalties SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Unknown	Unknown	Unknown	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 New Mexico Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 465 (HB 465) sets out that upon a first violation of possession of one ounce or less of marijuana, a person would pay a civil penalty of \$50.00, and upon a second violation of possessing one ounce or less of marijuana, a person would be guilty of a petty misdemeanor but subject only to a fine of up to \$100.00. Similarly, the bill would require a person to pay a civil penalty of up to \$100.00 for possessing between one ounce and four ounces of marijuana, and upon a second violation a person would be guilty of a petty misdemeanor subject to only a fine of up to \$200.00. This penalty scheme continues if a person possesses between four and eight ounces, such that a misdemeanor conviction would follow and imposition of a fine of up to \$300.00. It separates marijuana from synthetic cannabinoids, leaving pre-existing penalties for synthetic marijuana in place.

The effective date of the Act is July 1, 2013.

FISCAL IMPLICATIONS

HB 465 may result in minimal savings to county detention centers and the PDD and DA's statewide as a result of fewer incarcerations and prosecutions.

Because HB 465 does not change penalties for possession of marijuana in excess of 8 ounces, the threshold for a fourth degree felony conviction, there will be no impact on the NMCD.

SIGNIFICANT ISSUES

The AGO has noted the following:

HB 465 does not provide any authority or guidance for law enforcement. For instance, when a field officer discovers that someone is in possession of marijuana, would he have to discern whether this was a first or subsequent offense and would he be disabled from making an arrest if the ultimate penalty is a civil penalty? A criminal statute that simultaneously has civil and criminal penalties for the same conduct makes enforcing that statute a challenge for law enforcement.

Without clarity as to whether the imposition of a civil penalty is a formal adjudication of guilt there may be Federal consequences implicated such as ability to obtain student loans, and immigration consequences for even the payment of a civil penalty.

Finally, the bill leaves intact the existing penalties for synthetic cannabinoids, leaving those within the criminal realm, however even making charging of either marijuana or synthetic cannabinoids by a field officer difficult because law enforcement has no means to distinguish synthetic cannabinoids from marijuana in the field and would have to discern this by circumstantial evidence or a defendant's admission which is not always present a case.

OTHER SUBSTANTIVE ISSUES

The AGO stated that rather than including a "civil penalty" which is ambiguous as to whether or not the imposition of such constitutes a conviction, re-writing this bill to contain a special penalty fine clause for a first offense (analogous to special penalty traffic fines with no incarceratory sentence) may be more appropriate. This bill also seeks to impose a civil penalty but does not provide an apparatus for payment of court costs as delineated in the criminal code which are usually mandated upon conviction.

NCJ/svb