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FISCAL IMPACT REPORT

ORIGINAL DATE 2/27/15

SPONSOR Stewart LAST UPDATED _____ HB _____

SHORT TITLE Reduce Controlled Substance Penalties SB 674

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJR 2, Conflicts with HB 160 and SB 383

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Bill 674 proposes to amend Section 30-31-23, regarding possession of controlled substances. The bill would reduce penalties for possession of marijuana or synthetic cannabinoids. The bill reduces possession of marijuana or synthetic cannabinoids from a fourth degree felony to a misdemeanor. It also changes the possession of marijuana or synthetic cannabinoids in a drug-free school zone from a third degree felony to a fourth degree felony.

Additionally, the bill eliminates Section E of Section 30-31-23 NMSA 1978.

FISCAL IMPLICATIONS

PDD could have some small reduction in caseload owing to increased willingness of defendants

to plead to a lesser penalty; this could allow PDD to fulfill its constitutional mandate with fewer requests for additional resources. It envisions little impact.

According to AOC, as penalties decrease, a reduction in a potential prison sentence may lead defendants to forego the retention of attorneys and forego demands for jury trials, requiring less judge time and courtroom staff time, reduce the need for courtroom availability and jury fees. This potential cost reduction is not capable of quantification.

The four inmates currently incarcerated in a New Mexico prison costs the state \$257.3 thousand based on FY14 average cost per inmate.

SIGNIFICANT ISSUES

AODA reports that SB 674 would have only two thresholds for possession of marijuana and synthetic cannabinoids: one ounce or less, and over one ounce to, potentially, tons. The possession of any amount of any controlled substance listed in Schedule I, II, III or IV, or their analogs, would all be punished the same. If possession of the drugs were not in a school zone, the maximum penalty would be a fine of \$500 to \$1,000 or imprisonment of up 364 days, or both. That means someone could possess pounds of methamphetamines, PCP, marijuana, “Spice” or bath salts and many other drugs but their crime would still just be a misdemeanor and the maximum penalty would be a fine and less than a year in jail. Currently possession of eight ounces or more of marijuana or synthetic cannabinoids is a fourth degree felony. Possession of the controlled substances listed in the various schedules is a misdemeanor unless they are listed in Section E. of the current law. See, Sect. 30-31-23(B) and 30-31-23(D), NMSA 1978. A variety of substances are listed in Section E. and include PCP and methamphetamines. The bill would also change the possession penalties that apply to a posted drug-free school zone. There the maximum penalty for possession would be what is provided for a fourth degree felony, imprisonment for up to 18 months, and possibly also a \$5,000 fine.

AODA continues, that without considering the wisdom of allowing any amount of almost any drug to be treated so lightly, the proposed change would provide a ready defense to anyone charged with possession with intent to distribute marijuana, synthetic cannabinoids or the other drugs listed in Schedule I, II, III or IV, or their analogs. See, Sect. 30-31-22, NMSA 1978. Someone in possession of large amounts of the drugs could simply claim the drugs were for their personal use, and unless there is other evidence showing an intent to distribute it would be difficult to prove otherwise. Penalties now provided for possession with intent to distribute range from a fourth degree felony to a second degree felony, depending upon the amount of the drug possessed, the type of drug involved and whether it was a first or second or subsequent offense.

Additionally, AODA states that controlled substances are classified in one of five schedules by the state board of pharmacy. They are placed in Schedule I if the board finds that “...the substance: (1) has a high potential for abuse; has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.” A substance is placed in Schedule II if the board finds that:

“(1) the substance has a high potential for abuse; (2) the substance has a currently accepted medical use for treatment in the United States or currently accepted medical use with severe restriction; and (3) the abuse of the substance may lead to severe psychic or physical

dependence.” To be in Schedule III, the board must find: “(1) the substance has a potential for abuse less than the substances listed in Schedules I and II; (2) the substance has a currently accepted medical use for treatment in the United States; and (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.” To place a substance in Schedule IV the board must find: “(1) the substance has a low potential for abuse relative to the substances listed in Schedule III; (2) the substance has a currently accepted medical use for treatment in the United States; and (3) abuse of the substance may lead to limited physical or psychological dependence relative to the substance in Schedule III. See, Sect. 30-31-5(A), (B), (C) and (D), NMSA 1978.

AODA identifies some of the substances in Schedule I include, but are not limited to: heroin, morphine, some forms of amphetamine, marijuana (if not used under medical marijuana protocols), mescaline and synthetic cannabinoids. See, Sect. 30-31-6, NMSA 1978. Schedule II controlled substances include opium and various opiate compounds, coca leaves and compounds or derivatives that are its equivalent and methadone if not used in accordance with a valid prescription. See, Sect. 30-31-7, NMSA 1978. Among the Schedule III controlled substances are limited amounts of materials and compounds listed in Schedule II that have a stimulant effect on the central nervous system and, if not listed in another schedule, materials and compounds that have a potential for abuse related to a depressant effect on the central nervous system, including barbiturates and LSD. See, Sect. 30-31-8, NMSA 1978. Items in Schedule IV have a potential for abuse associated with a depressant effect on the central nervous system and include chloral hydrate and phenobarbital. See, Sect. 30-31-9, NMSA 1978. Even though drug abuse, of both illegal and prescription drugs, is a significant problem in New Mexico and results in numerous overdoses, possession of any amount of those drugs (besides marijuana) would just be a misdemeanor. Possession of one ounce of marijuana or less would be a petty misdemeanor. Possession of any amount of marijuana in excess of one ounce would also just be a misdemeanor.

According to NMSC, On June 30, 2014 there were 4 inmates in the custody of the New Mexico Corrections Department for a new admission whose highest charge was for a violation of Paragraph 3 of Subsection B of Section 30-31-23 NMSA 1978.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SJR2 (Use, Regulation, Sale and Tax of Marijuana, CA), Conflicts with HB 160 (Cannabis Revenue and Freedom Act), and SB 383 (Decrease Marijuana Possession Penalties).

OTHER SUBSTANTIVE ISSUES

The AGO points out that this bill effectively eliminates felony penalties for the possession of all controlled substances. By eliminating subsection 30-31-23(E), the penalty for all controlled substances (including heroin, cocaine and methamphetamine) would be governed by the penalty

expressed in subsection (D). The penalty in subsection (D) is a misdemeanor. An exception that must be noted is that this Bill maintains felony penalties for possession of controlled substances within a school zone.

The California Legislative Analyst reported in an analysis of Proposition 47, which is similar to this bill that California could see “net state criminal justice system savings that could reach the low hundreds of millions of dollars annually. These savings would be spent on school truancy and dropout preventions, mental health and substance abuse treatment, and victim services. New county criminal justice system savings that could reach several hundred million dollars annually.” In New Mexico the savings would not be as dramatic as California, but the state could see a savings from fewer incarcerations.

ABS/aml