

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date Feb. 1, 2019
Bill No: SB408

Sponsor: Candelaria and Romero
Short Title: Drug Possession as Misdemeanor

Agency Code: 264
Person Writing Gail MacQuesten
Phone: 505 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	unknown	unknown	unknown	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act: none found

SECTION III: NARRATIVE

SB408 amends Section 30-31-23 NMSA 1978 to make the possession of any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in those Schedules a misdemeanor, punishable by a fine of not less than \$500 or more than \$1000, or by imprisonment for a definite term less than one year, or both.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Simple possession cases will have a lower penalty. It is difficult to know if this will encourage defendants to plead, or encourage them to “roll the dice” and go to trial.

SIGNIFICANT ISSUES

The statute currently makes the possession of any amount of certain substances under the Schedules a fourth degree felony, subject to eighteen months imprisonment, a \$5000 fine, or both. SB408 makes possession of any of the Scheduled substances a misdemeanor.

Under SB408, possession of a Scheduled substance will not be a felony, and conviction will not carry the consequences of a felony conviction, which can follow a person through life. SB408 is directed at possession for personal use – although the statute applies to possession of any amount of a substance, if a person possesses a large amount the charge will likely be a felony charge of possession with intent to distribute, rather than simple possession.

Possession of marijuana is addressed in a different section of the statute. Penalties for marijuana possession range from a petty misdemeanor to a fourth degree felony (for possession of eight ounces or more). Although another bill, HB356, would legalize possession of marijuana, if HB356 does not pass, and SB408 does, possession of eight ounces of marijuana will be a felony, while possession of cocaine (for example) would be a misdemeanor.

PERFORMANCE IMPLICATIONS

As mentioned above, it is not known if SB408 will encourage more pleas or more trials.

ADMINISTRATIVE IMPLICATIONS

None found.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB356 Cannabis Regulation Act, would also amend Section 30-31-23, legalizing possession of marijuana.

HB57 would restore felon's voting rights.

TECHNICAL ISSUES

Presumably, the lower sentence provided for in SB408 will apply to all convictions and sentencing proceedings after its effective date, although that is not clear.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.