

**LFC Requester:**

**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

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*{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** March 5, 2019  
**Bill No:** SB408a

**Sponsor:** Judiciary Committee  
Amendment  
**Short Title:** Drug Possession as  
Misdemeanor

**Agency Name and Code Number:** Administrative Office of the District Attorneys (AODA) 264  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

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

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

<b>Estimated Revenue</b>			<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>FY19</b>	<b>FY20</b>	<b>FY21</b>		
0	Unknown	unknown	Recurring	Magistrate drug court fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>		(Unknown)	(Unknown)	(Unknown)	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB356, SB577, SB323, HB317  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

The Judiciary Committee to SB408 (SB408a) amends Section 30-31-23 NMSA 1978, Controlled Substances-- Possession Prohibited, to make possession of more than one ounce of marijuana or synthetic cannabinoids a misdemeanor.

SB408a adds a new Section 2, amending Section 30-31-25.1 NMSA 1978, regarding drug paraphernalia, to make use or possession with intent to use drug paraphernalia punishable by a “penalty assessment” and a fine of \$50.

SB408a adds a new Section 3, creating a statute defining “penalty assessment.” Payment of a penalty assessment citation shall not be considered a criminal conviction. Instead, it is similar to a non-traffic citation. A person may accept the penalty assessment, or may challenge it in court (and is required to pay costs). The magistrate court or metropolitan court in the county where the alleged violation occurred has jurisdiction for any case arising from a penalty assessment under the Criminal Code.

Penalty assessments collected pursuant to this section shall be transferred to the administrative office of the courts for credit to the magistrate drug court fund.

**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.

SB408a reduces the penalty for possession of any amount of marijuana more than one ounce to a misdemeanor, and reduces the penalty for possession of drug paraphernalia to a \$50 “penalty assessment,” which is not considered a criminal conviction. This is likely to reduce the number of cases for the district attorneys. It is unknown whether defendants charged with possession of more than one ounce of marijuana will be more likely to plead or more likely to “roll the dice” and go to trial when the potential penalty is lowered. However, district attorneys will not be involved in prosecuting possession of drug paraphernalia cases that are subject to a “penalty assessment.”

## **SIGNIFICANT ISSUES**

SB408a does not change the penalty for possession of small amounts of marijuana or synthetic cannabinoids, but reduces the penalty for possession of amounts greater than 8 ounces. Currently, possession of eight ounces or more is a fourth degree felony; SB408a makes the crime a misdemeanor. This will make the provisions regarding marijuana consistent with the provisions in the original SB408, which would make possession of a Scheduled substance a misdemeanor.

SB408a adds a provision regarding use of drug paraphernalia or possession with intent to use drug paraphernalia. Currently, it is a misdemeanor; under SB408a it is subject to a “penalty assessment citation,” and is subject to a \$50 penalty. It is not treated as a criminal offense.

SB408a’s new section sets out what is meant by a “penalty assessment citation.”

## **PERFORMANCE IMPLICATIONS**

Presumably the district attorneys will not be involved in prosecuting drug paraphernalia cases that are subject to a non-criminal “penalty assessment” citation.

## **ADMINISTRATIVE IMPLICATIONS**

Some drug cases will be separated into two cases: one will be a criminal case for possession of the drug (which may be a misdemeanor), and the other will be a non-criminal “penalty assessment” citation for possession of drug paraphernalia. Note that defendants may not want to pay a penalty assessment if they also face misdemeanor possession charges, because their acknowledgement of possession or use of drug paraphernalia may be used in the criminal case.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB356 Cannabis Regulation Act  
SB577 Cannabis Regulation Act  
SB323 Decrease Marijuana Penalties  
HB317 Drugged Driving Penalties

## **TECHNICAL ISSUES**

None found.

## **OTHER SUBSTANTIVE ISSUES**

None found.

## **ALTERNATIVES**

None proposed.

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

Status quo.

## **AMENDMENTS**

None proposed.