

SB408

nmSAFE

Making New Mexico safe for all children & families

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Bill Analysis 2019 Regular Session

SPONSOR: Senator Jacob Candelaria and Representative Andrea Romero

SHORT TITLE: Drug Possession as a Misdemeanor

SYNOPSIS OF BILL: SB 408 amends the Controlled Substance Act by reclassifying drug possession from a 4th degree felony to misdemeanor. The reclassification applies to any controlled substance or controlled substance analog, other than marijuana, listed in Schedules I, II, III, or IV. The existing punishments for a misdemeanor violation remain unchanged, i.e., a fine of not less than \$500 or more than \$1,000 or by imprisonment for a definite term less than one year or both.

In New Mexico, possession of any amount of drugs other than marijuana, including trace amounts detected in paraphernalia, carries a 4th degree felony penalty that can result in a prison sentence.

STRENGTHS: Periods of incarceration, even relatively short ones, can affect a person's ability to secure and maintain employment and housing, as well as fulfill critical family obligations such as parenting and child support. And, when a person can't participate in the workforce risk to recidivate goes up.¹ Instead of improving the safety of our communities, our drug laws impose a lifetime of punishment on those convicted. Convictions have a disparate impact on low-income and communities of color. A minor possession conviction subjects an individual to a system of legal discrimination that makes it difficult or impossible to secure employment, housing, or student loans. Even without a conviction, the consequences of an arrest include stigma and humiliation, difficult financial burdens of posting bail and hiring a lawyer, and lost hours at work or school.

WEAKNESSES: The bill does not include any retroactive sentencing provisions or reallocation of funds previously spent on criminalization to treatment and public health approaches. Defelonization is needed and a solid step forward but it is not the final destination when attempting to establish a public health approach to drug policy.

<u>Safer</u>	<u>Apolitical</u>	<u>Fiscally-Responsible</u>	<u>Evidence Based</u>	<u>Grade</u>
<p>Evidence has shown that a public health response is more effective than incarceration and that incarcerating people for drug offenses has a questionable impact on public safety.ⁱⁱ</p>	<p>60% of active New Mexico voters favor changing NM’s law to make small-scale possession of drugs a misdemeanor, instead of a 4th degree felony, which carries steeper penalties.ⁱⁱⁱ</p>	<p>Prison incarceration is costly. Arrests and convictions for drug possession is a significant driver to New Mexico’s prison and jail populations and budget. Drug offenses are in the top three categories for new admissions into our state prisons.^{iv} Of those drug law violations admissions, 59% were for possession only.^v</p> <p>According to the Council of State Government’s Justice Center 2018 report, “between FY07 and FY17, the number of new felony drug cases opened in New Mexico district courts increased 6 percent, and the number of felony drug cases reopened increased 49 percent.^{vi} In the same period, prison admissions for drug offenses increased 13 percent overall and more than doubled for women (an increase of 111 percent).^{vii}”</p>	<p>Nineteen (19) states have either never made possession a felony or have reformed their state laws making possession a misdemeanor. In the past five years, states like Oklahoma, Utah, Connecticut, Alaska, Oregon and California have all reclassified drug possession to a misdemeanor.</p> <p>California’s successful effort to make simple possession of controlled substances a misdemeanor has already saved the state hundreds of millions of dollars in prison and jail costs.^{viii}</p> <p>A Pew Trust Report, More Imprisonment Does Not Reduce State Drug Problems, reinforces a large body of prior research that cast doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations. The evidence strongly suggests that policymakers should pursue alternative strategies that research shows work better and cost less.</p>	<p style="text-align: center; font-size: 2em;">A</p>

ⁱ https://www.urban.org/sites/default/files/publication/99077/reclassified_state_drug_law_reforms_to_reduce_felony_convictions_and_increase_second_chances.pdf

ⁱⁱ “Imprisonment and Crime Rates Fell in 30 States Over 5 Years,” Pew Charitable Trusts, September 28, 2015, <http://www.pewtrusts.org/en/multimedia/data-visualizations/2015/imprisonment-crime-rates-fell-in-30-states-over-five-years>.

ⁱⁱⁱ Third Eye Strategies, Dec. 2017

^{iv} NM Sentencing Prison Forecast Report – 2018 (<https://nmsc.unm.edu/reports/2018/new-mexico-prison-population-forecast-fy2019---fy2028.pdf>)

^v NM Sentencing Prison Forecast Report – 2018 (<https://nmsc.unm.edu/reports/2018/new-mexico-prison-population-forecast-fy2019---fy2028.pdf>)

^{vi} Administrative Office of the Courts (AOC), New Mexico Judiciary 2007 Annual Report, 2007 Statistical Addendum (Santa Fe, NM: Administrative Office of the Courts, 2008). AOC, New Mexico Judiciary Statistical Addendum to the 2017 Annual Report (Santa Fe, NM: AOC, 2018). Reopened cases include any cases with post-judgement activity, such as probation violations, failure to meet the conditions of the sentence, and any other issues of noncompliance.

^{vii} NMSC, New Mexico Prison Population Forecast: FY2019–FY2028; NMSC, New Mexico Prison Population Forecast: FY2014–FY2023, (Albuquerque, NM: NMSC, 2013), <https://nmsc.unm.edu/reports/2013/new-mexico-prison-population-forecast-fy-2014-fy2023.pdf>. Prison admissions are reported by fiscal year.

^{viii} <https://law.stanford.edu/publications/proposition-47-progress-report-year-one-implementation/>