

SB216

nmSAFE

Making New Mexico safe for all children & families

A

Bill Analysis 2021 Regular Session

SPONSOR: Senator Candelaria and Senator Jaramillo

SHORT TITLE: Possession of a Controlled Substance

SYNOPSIS OF BILL: SB 216 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 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 and are subject to habitual offender sentencing enhancements.

STRENGTHS: Periods of incarceration, even relatively short ones, can affect a person's ability to achieve financial and personal stability, as well as fulfill critical family obligations such as parenting and child support. And, when a person can't participate in the workforce, their risk to recidivate goes up.¹ Instead of improving the safety of our communities, our felony drug laws impose a lifetime of punishment on those convicted. Convictions have a disparate impact on low-income and communities of color. A simple 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>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
<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>62% 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. Drug offenses are in the top three categories for new admissions into New Mexico’s state prisons.^{iv} Of those drug law violations admissions, 59% were for possession only.^v</p> <p>Between 2007 and 2017, New Mexico’s “prison admissions for drug offenses increased 13 percent overall and more than doubled for women (an increase of 111 percent).^{vi}”</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.^{vii}</p>	<p>At least 19 states punish possession as a misdemeanor. Most recently, Oklahoma, Utah, Connecticut, Alaska, Colorado and California have all reclassified drug possession to a misdemeanor. In November 2020, Oregon became the first state in the nation to completely decriminalize possession of all drugs.</p> <p>A large body of research casts 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.^{viii}</p>	<p style="text-align: center;">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} 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.

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

^{viii} Pew Trust Report, *More Imprisonment Does Not Reduce State Drug Problems*, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.