

LFC Requester:	Ellen Rabin
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

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 1/25/2023
Bill No: HB 154

Sponsor: Andrea Reed & William R. Rehm
Short Title: Cannabis Use – Possession, Production, and Use

Agency Name and Code 305–Office of the Attorney General
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.

BILL SUMMARY

Synopsis: HB 154 proposes changes to both Chapter 32A of the Children's Code (Delinquency) and Chapter 26 Drugs and Cosmetics (Civil) under the New Mexico Statutes Annotated. The changes would impact both civil and delinquent penalties for buying, possessing, and or producing cannabis. The proposed legislation implicates children under the age of 18 in the juvenile and civil context.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Proposed Legislative Changes to Section 32A-2-3

The amended changes proposed in HB 154 adds three cannabis definitions and includes a new section under the "delinquency act" for "buying, attempting to buy, receiving, possessing, or being served any cannabis product." The primary issue is that these proposed additions do not comport with the spirit or legislative intent¹ of the "delinquency act." The statute defines a delinquent act as:

"an act committed by a child that would be designated as a crime under the law if committed by an adult, not including a violation of Section 30-9-2 NMSA 1978, including the following offenses . . ."

§ 32A-2-3(A) NMSA. The act is explicit in that it mirrors delinquent acts with the criminal code for adults. The crimes mentioned in § 32A-2-3 NMSA are Chapter 30 crimes or Motor Vehicle Code violations. It is no longer a crime under § 30-31-23 NMSA for adults to be in possession of cannabinoids. Therefore including the proposed section (8) as a defined "delinquency act" is a direct contradiction of the definition of the statute because it is not a "crime" of possession for adults.

Conversely, as it stands, § 32A-2-3(A)(2) NMSA currently considers it a "delinquent act" for minors to be "buying, attempting to buy, receiving, possessing or being served any alcoholic liqueur . . ." Similarly to the proposals in HB 154, there is no adult criminal code that generally makes it illegal for adults to buy, attempt to buy, receive, possess, or be served any alcoholic liquor.

¹ "The Court then pursued 'the legislative intent by applying rules of construction.' Reasoning that because (1) the Court presumes that the Legislature knows the existing law, (2) the Court should not adopt statutory constructions that lead to absurd results, and (3) the Court should construe statutes according to the purpose for which they were enacted . . ." *State v. Adams*, 2022-NMSC-008, ¶ 24, 503 P.3d 1130 (internal citations omitted).

Alternatively, the propositions of HB 154 could be included as a separate Article 2, Delinquency Statute. For example, a Section 32a-2-29 NMSA, Motor Vehicle Code Violations or Section 32a-2-33 NMSA, Child in Possession of a Firearm on School Premises. This would prevent any conflict with the definition or intention of the “delinquency act.”

Proposed Legislative Changes to Section 26-2C-27 & 28

HB 154 essentially removes civil penalties for a person under the age of 18 who engages in the personal production of cannabis or the unlicensed sales of cannabis. Similarly, there is no delinquency violation under Section 32A-2-3 NMSA for the sale of cannabis as a minor. HB 154 does not address Section 26-2C-26 NMSA. Thus, a civil penalty of fifty dollars (\$50.00) for any person under the age of 18 who smokes cannabis products in a public place would remain enacted.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

HB 156 Cannabis School Use Prevention Resource Act

HB 157 Cannabis Packaging Requirements

HB 165 Uniform Unclaimed Property Act

SB 31 Guardianship Changes

TECHNICAL ISSUES

Proposed Legislative Changes to Section 32A-2-3 NMSA

HB 154 adds three definitions of cannabis prior to the current section (A) which defines “delinquency act” – the primary purpose of § 32A-2-3 NMSA. The outline of the proposed legislation could be interpreted as excluding the definitions of cannabis from the Delinquency Act. To prevent misinterpretation and to better track the current structure of the Act, HB 154 Section (D)(8) should be moved to follow the current Section (A)(2) of the statute. This would place HB 154 Section (D)(8) behind the section that addresses buying, receiving, or possessing alcoholic liquor. Alternatively, HB 154 Section (D)(8) could be moved to follow the current section (4) which references the Controlled Substances Act.

Additionally, the three definitions of cannabis (Sections (A) (B) & (C) of HB 154) should be included as subsections of the portion in which they are applicable. Therefore, the definitions should be drafted as subsections of HB 154 Section (D)(8). Traditionally, definition portions follow the sections of a statute in which they have been used, this better assists the reader.

The definition of “cannabis” in HB 154 does not include the entirety of the definition of “cannabis” as defined in § 26-2C-2 NMSA so the statutory definitions are in conflict.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

The propositions of HB 154 could be included as a separate Article 2, Delinquency Statute. For example, a Section 32a-2-29 NMSA, Motor Vehicle Code Violations or Section 32a-2-33 NMSA, Child in Possession of a Firearm on School Premises. This would prevent any conflict with the definition or intention of the “delinquency act.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

Should HB 154 remain included in § 32A-2-3 NMSA as a Delinquent Act, despite the conflict with the intended purpose of the act, the outlined structure should be reworked to address the technical issues and contradicting definitions.