

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2018 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** Jan. 20, 2018  
**Bill No:** SJR4

**Sponsor:** Gerald Ortiz y Pino  
**Short Title:** Marijuana Possession, Use & Taxes, CA

**Agency Code:** 264  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HM5  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

SJM4 proposes a constitutional amendment allowing for the possession and personal use of marijuana by persons twenty-one years of age or older, only if the legislature regulates the production, processing, transportation, sale and taxation of marijuana and provides for revenues from the taxation of marijuana to be distributed to the general 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.

There are no immediate fiscal implications for the district attorneys. If the proposed constitutional amendment passes, and if the legislature legalizes recreational marijuana use, prosecutors should see a reduction in their caseloads. And legalization would come with increased tax revenues.

#### **SIGNIFICANT ISSUES**

SJR4 proposes a constitutional amendment that would make the possession and personal use of marijuana by persons twenty-one and older legal if, and only if, the legislature sets up a statutory structure addressing the production, processing, transportation, sale, taxation and acceptable quantities and places of use of marijuana to protect public health and safety. Further, any state revenue generated from that taxation is to be distributed to the general fund.

SJR4 would put in place constitutional guidelines the legislature must meet to legalize possession and personal use of marijuana. It would prevent legalization from occurring before laws are in place meeting those guidelines. The legislature does not need a constitutional amendment telling it what it should put into legislation legalizing marijuana – it can establish laws for legalizing marijuana that address the issues in SJR4 without having a constitutional amendment in place. Having the constitutional amendment in place, however, would ensure that the issues identified in the amendment would be addressed by any legislation now, or in the future. It would also limit further expansion of marijuana laws: for example, if a future legislature lowered the legal age to 18, courts would be called upon to consider whether such a

law would be legal under New Mexico's constitution.

Several states have legalized marijuana for recreational use. The vast majority of states allow for limited use of medical marijuana in certain circumstances. Recreational use remains illegal in New Mexico, but in 2007 New Mexico legalized medical marijuana in the Lynn & Erin Compassionate Use Act. See NMSA 1978, Sections 30-31(C) and 26-2B-3(F). Marijuana is illegal under the federal Controlled Substances Act, and the United States Supreme Court held that Congress' authority under the Commerce Clause includes the power to prohibit the local cultivation and use of marijuana – even where that cultivation and use is completely intrastate and is in compliance with state law. See *Gonzales v. Raich*, 545 U.S. 1 (2005). See also *Gonzales v. Oregon*, 546 U.S. 243 (2006). Until recently the Department of Justice has refrained from enforcing federal cannabis laws in states that have legalized its use. However, in January 2018, United States Attorney General Jeff Sessions reinstated a policy of enforcing the federal marijuana laws in states that have legalized its use. While SJR4 sets out a road-map for the legislature to legalize recreational marijuana use in New Mexico to protect public health and safety, it does not address the potential legal issues, including the conflict with federal law.

## **PERFORMANCE IMPLICATIONS**

There are no immediate performance implications for the district attorneys. If the constitutional amendment proposed in SJM4 passes, and if the legislature puts the required laws in place to legalize recreational use of marijuana, prosecutors should see a reduction in their caseloads. Note that state prosecutors do not enforce federal law, so the potential conflict between state and federal marijuana laws will not affect state prosecutors.

## **ADMINISTRATIVE IMPLICATIONS**

The constitutional amendment proposed by SJM4 must be submitted to the voters.

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

HM5 resolves that a formal request be made to the New Mexico congressional delegation to create new legislation protecting medicinal cannabis users in New Mexico from the threat of being sent to federal prison.

## **TECHNICAL ISSUES**

SJR4 addresses legalization of “personal use” of marijuana. Presumably, the drafters intend SJR4 to apply to recreational use of marijuana, as opposed to medicinal use of marijuana, because New Mexico already has statutes in place legalizing medical marijuana. If so, it would be clearer to use the word “recreational,” instead of the word “personal.” If the drafters intended SJR4 to apply to medical marijuana use, that should be made clear. (Note that there are many issues that will arise if that is the case. For example, SJR4 only allows use by persons twenty-one or over, and younger persons may need to use medical marijuana.)

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None proposed.

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

New Mexico voters will not vote on a constitutional amendment setting requirements on the legislature if it chooses to pass laws legalizing the possession and personal use of marijuana by persons twenty-one years of age or older.

**AMENDMENTS**

None proposed.