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FISCAL IMPACT REPORT

ORIGINAL DATE 03/31/21

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Expungement of Certain Criminal Records SB 2/SJCS/aSf1#1

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	\$250.0	\$250.0	\$500.0	Recurring	General Fund (AOC)

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB2

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)*
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)

(*Response to HB12, introduced in 2021 regular Legislative session)

SUMMARY

Synopsis of SFI#1 Amendment

Senate Floor Amendment #1 to the Senate Judiciary Committee substitute for Senate Bill 2 provides that the Supreme Court shall promulgate rules to implement the bill's provisions for expungement of arrest and conviction records and, in the provisions for notice of cases eligible for dismissal and expungement and of challenges by a prosecutor, replaces the Public Defender Department with defense counsel of record in the case resulting in conviction.

Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 2 amends the Criminal Offender Employment Act to include in the list of criminal records that may not be used or disseminated

in connection with applications for public employment or licenses convictions that have been sealed, dismissed, expunged or pardoned; juvenile adjudications; and convictions for a crime that is not job-related for the position sought and consistent with business necessity. The bill also removes misdemeanor convictions involving moral turpitude from the permissible causes for denying, revoking or suspending public employment or a license to engage in a trade, business or profession and removes an agency's authority to deny public employment or a professional license for convictions that do not relate to a particular employment position if the agency determines the convicted person is not sufficiently rehabilitated to warrant the public trust.

The bill makes related amendments to the Uniform Licensing Act, which prohibit a professional licensing board from excluding from licensure an otherwise qualified person solely because the person had been arrested for or convicted of a crime, unless the person has a "disqualifying criminal conviction." A "disqualifying criminal conviction" is a conviction for a crime that is "job-related for the position in question and consistent with business necessity." The board must also issue and post a list of specific criminal convictions that could disqualify an applicant from receiving a license and must produce an annual report containing information about the number of license applicants who had a disqualifying criminal conviction and details of how those applications were handled by the board.

HB2 amends the Criminal Record Expungement Act by:

- Adding a new section providing that public records held by a court or state or local jurisdiction relating to offenses involving cannabis that are no longer a crime on the effective date of the Cannabis Regulation Act, or would have resulted in a lesser offense, shall be automatically expunged two years after the arrest or conviction. For persons who are under age 18 at the time of the applicable arrest or conviction, the applicable public records are retained for two years or until the person turns 18, whichever comes first, and then automatically expunged.
- Adding a new section requiring correctional facilities and jails in which persons are currently incarcerated or who have been incarcerated in the past for offenses that are no longer a crime under the CRA, or would have resulted in a lesser offense, to notify the court that those persons' cases may be reopened to consider dismissal of their sentences or to have their cases expunged. By January 1, 2022, DPS must identify past convictions eligible for dismissal and expungement and notify the Corrections Department, prosecutors, and the Public Defender Department of eligible cases. Prosecutors are given the opportunity to challenge the dismissal and expungement.
- Amending Section 29-3A-4, which relates to expungements of records upon release without conviction, to add certain penalty assessments and deferred sentences for which related public records may be expunged; make changes to the requirements for notice of petitions and providing objections; and add provisions governing the form and content of petitions and their disposition.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

AOC estimates that identifying and reviewing legacy cannabis records and sorting through case records to expunge the appropriate documents will take a significant amount of time and require additional staff and contractors. AOC also projects needing funding to train judges and court staff on applying the law and addressing both pending cannabis cases and formally expunging documents. AOC estimates the cost to train judges, provide additional administrative staff, and to hire additional IT staff to update the court records database and fully and accurately perform the statutorily required expungements to cost \$500 thousand over two fiscal years.

In the short term, LOPD states that the bill could increase its fiscal burden. LOPD would have to allocate staff to handle old cases that are reopened, including in counties where LOPD does not have full-time attorneys.

AODA states the bill's provisions for identifying and challenging cases eligible for recall or dismissal of a sentence will require more resources for district attorney offices to comply with the requirements for reviewing and determining whether to challenge eligible cases and pursuing challenged cases in court.

SIGNIFICANT ISSUES

AOC notes that Section 6(D) requires DPS to identify all convictions eligible for recall, dismissal, and expungement, and DPS then notifies NMCD, prosecutors, and LOPD. Prosecutors then have an opportunity to challenge the recall or dismissal of one of the cases, and must inform the court by July 1, 2022. If not challenged, the court shall dismiss the case. However, AOC points out that the bill does not provide for the court to receive the list of cases to be dismissed.

AOC suggests that Section 6(D) be amended as follows:

D. On or before January 1, 2022, the department of public safety shall review the public records in the state criminal history databases and shall identify all past convictions that are potentially eligible for recall or dismissal of sentence, dismissal and expungement or redesignation pursuant to the Cannabis Regulation Act. The department of public safety shall notify the corrections department, the administrative office of the courts, prosecutors and the public defender department of all cases that are eligible for recall or dismissal of sentence, dismissal and expungement or redesignation.