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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/08
 SPONSOR Maestas LAST UPDATED 2/6/08 HM 39
 SHORT TITLE Criminal Offender Employment Act Application SB _____
 ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HJM13 and Relates to HB223

Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- State Personnel Office (SPO)
- Department of Health (DOH)
- Public Education Department (PED)
- New Mexico Corrections Department (NMCD)
- Workforce Solutions Department (WSD)

SUMMARY

Synopsis of Bill

House Memorial 39 notes that in 2007, pursuant to HM 41 and SJM 4, the Secretary of Workforce Solutions convened a task force to review barriers to public employment for persons with criminal convictions and to make recommendations for removing those barriers while protecting the public, that the task force found that state agencies are inconsistently applying the provisions of the Criminal Offender Employment Act, including Subsection b of Section 28-2-4 NMSA 1978, providing for a presumption of sufficient rehabilitation for certain individuals, and that implementation of the Criminal Offender Employment Act is limited due to a lack of understanding and inconsistent interpretation of the law. Therefore, HM 39 resolves that each state agency be directed to comply with all of the provisions of the Act, and to apply the presumption of sufficient rehabilitation set forth in the Act. HM 39 also resolves that each state agency cooperate with the Workforce Solutions Department and the task force to develop a

better understanding of and to consistently apply the provisions of the Criminal Offender Employment Act.

The effective date of the Act is July 1, 2008.

FISCAL IMPLICATIONS

There is no appropriation contained in this bill.

State agencies may incur additional expenses complying with the provisions of this memorial.

There will be an indirect fiscal impact upon the judiciary whose staff must cooperate with the Workforce Solutions Department and the task force and comply with the provisions of the Criminal Offender Employment Act.

SIGNIFICANT ISSUES

The 2007 Legislature approved House Memorial 41 and Senate Joint Memorial 4 requesting that task force be convened to review barriers to public employment for persons with criminal convictions and to make recommendations for removing those barriers. The membership of this task force included the following: the New Mexico Federation of Labor, the New Mexico District Attorney's Association, PB&J Family Services, New Mexico Department of workforce solutions, the Mid Region Council of Governments, the state personnel office, the New Mexico regulation and licensing department, the Association of Commerce and Industry, the New Mexico Women's Justice Project, the New Mexico children, youth and families Department, and the New Mexico corrections department.

Members of the task force engaged in the following activities: developed and distributed an on-line survey tool focusing on hiring policies and practices to each cabinet secretary or agency head who serves on the Governor's cabinet, the executive directors of state boards and commissions that have the ability to hire staff, the New Mexico State Legislature, the office of the New Mexico District Attorneys, and the New Mexico courts. Additionally, members of the task force visited Project SOAR (Success for Offenders After Release) at the New Mexico State Penitentiary in Santa Fe; visited Crossroads (a program that provides a wide array of transitional services to individuals recently released from prison or jail) in Albuquerque, heard a presentation of research on background checks conducted by state agencies in other states; hosted a public forum at a community center in Albuquerque and conducted in-person interviews with individuals with criminal convictions. The task force further reviewed current literature, research and reports from national organizations and other states on barriers individuals with criminal convictions face and what steps can be taken to address these barriers.

In November 2007, members of the task force reported their findings and recommendations to the members of the Courts, Corrections & Justice Committee.

1. Task Force findings included:

- that state agencies are inconsistently applying the provisions of the Act, including the provision for a presumption of sufficient rehabilitation for certain individuals;
- that implementation of the Act is limited due to a lack of understanding and inconsistent interpretation of the law. (From HM 39)

2. Most persons with criminal convictions have barriers to employment related to those convictions and associated behavioral and educational issues, which can include “spotty” work histories, low skill levels, and physical and mental health problems. (<http://reentrypolicy.org/http>)
3. The Criminal Offender Employment Act, 28-2-3.A, Employment Eligibility Determination, states that subject to the provisions of Section B (which provides that records of arrest not followed by a valid conviction and misdemeanor convictions not involving moral turpitude shall not be used in connection with an application for any public employment, license or other authority), in “determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession”.
4. In 28-2-4, Power to refuse, renew, suspend or revoke public employment or license, the state and its political subdivisions can refuse to grant employment for certain causes to persons with convictions but must explicitly state in writing the reasons for their decision to do so. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section, which provides that where moral turpitude is involved but the conviction does not directly relate to the particular employment, the employer can make the determination, after investigation, that the person has not been sufficiently rehabilitated to warrant the public trust.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. It appears that this legislation will have a minimal, if any, impact on performance measures as they relate to judicial budgeting.

ADMINISTRATIVE IMPLICATIONS

The department of workforce solutions is asked to work with other agencies to ensure that state agencies are complying with all of the provisions of the criminal offender employment act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Memorial 39 relates to House Bill 223 and duplicates House Joint Memorial 13. HB 223 includes \$170,000 appropriation from the general fund to the Department of Workforce Solutions in order to continue with the work of the 2007 task force.

Criminal Offender Employment Act, NMSA 19778 28-2-1 et. seq.

OTHER SUBSTANTIVE ISSUES

NMCD already complies with the Criminal Offender Employment Act, and will cooperate fully with the task force. However, it is important to note that convicted felons are disqualified by law (Section 33-1-11 NMSA) from ever working as correctional officers for NMCD, and NMCD’s largest number of vacancies is correctional officer positions.

DOH notes that the wording of NMSA 28-2-1, et seq, and HM39 does not take into account the particular vulnerability of DOH patients and consumers. However, NMSA 28-2-1 & HM 39 does give agencies discretion when determining the employment, trade, licensing, business, or profession of individuals convicted of felonies, violent crimes, and crimes of moral turpitude. HM39 would require documentation of the decision making process when exercising this discretion. NMSA 28-2-4, subsection B prescribes that there shall be a presumption of rehabilitation upon completion of probation, parole, or three (3) years' expiration after release. Agencies will still be able to rebut the presumption when considering the safety and wellbeing of patients, consumers, and employees.

According to the United States Department of Justice, about one in every 37 U.S. adults will serve time in a state or federal prison. In 2006, almost 4,000 New Mexicans were incarcerated. Nationally, about 65% of individuals who are released from prison are rearrested within three years. The cost to society for re-confinement is significant.

Research has shown that obtaining gainful employment for an individual who has been released from prison is a key factor in reducing recidivism and ensuring the safety and security of the citizens of New Mexico.

Rehabilitated criminals are provided a broad range of protection in state employment and licensing by the Criminal Offender Employment Act, §28-2-1 N.M.S.A. et. seq. Courts might use the existing laws to provide greater protection.

New Mexico's public postsecondary institutions do not discriminate against persons with criminal convictions from attending, taking classes, and selecting career paths. However, due to the shooting rampage at Virginia Tech last spring, colleges are increasingly concerned about particular applicants who have had troubled pasts, including criminal convictions. This proposal would allow the Task Force on Employment Barriers to participate in a review process to ensure that heightened concern over college campus shootings was not being used as a barrier to keep certain students from attending New Mexico colleges.

ALTERNATIVES

The Governor could issue an executive order directing state agencies to provide evidence of their full compliance with the Criminal Offenders Employment Act.

DL/mt