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FISCAL IMPACT REPORT

SPONSOR HJC **ORIGINAL DATE** 03/07/11
LAST UPDATED 03/12/11 **HB** 311/HJCS

SHORT TITLE Enact "Uniform Consequences Conviction Act" **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$10.0-\$15.0*	\$5.0-\$6.0*	\$15.0-\$16.0*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*This range does not include all anticipated costs or savings. See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorney (AODA)

Attorney General's Office (AGO)

Public Defender Department (PDD) (on original bill)

Children, Youth & Families Department (CYFD) (on original bill)

Parole Board (PB)

New Mexico Corrections Department (NMCD)

New Mexico Sentencing Commission (NMSC) (on original bill)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 311 enacts the Uniform Collateral Consequences of Conviction Act. Collateral consequences are broadly defined to include both collateral sanctions and disqualifications. A collateral sanction is defined as a disability or penalty imposed on a person as a result of a felony conviction that applies by operation of law. A disqualification means a penalty that may be imposed by an administrative agency or court in a civil proceeding on grounds relating to such a conviction.

The bill requires the New Mexico Sentencing Commission to identify and compile all New Mexico legal provisions that impose collateral sanctions or disqualifications, and any provision that may afford relief from a collateral consequence. The compilation (and required updates) must be posted for public viewing on the NMSC's website.

Courts are required to give formal notice to accused individuals of additional legal consequences beyond just a conviction (using the same or a similar informational form provided in the bill). Courts must give this same notice to those accused individuals when it accepts a plea of guilty or nolo contendere, and must confirm that the individual understands the notice and has had an opportunity to discuss the notice with counsel. NMCD and other jails and detention facilities must give written notice (containing specified information) to all offenders being released from custody.

Under HB 311, a collateral sanction must clearly be imposed by statute, ordinance or authorized rule, and any ambiguity in a statute must be construed as authorizing only a disqualification ion. Disqualifications may be imposed by relevant decisions makers (a state department, agency or officer or an instrumentality as defined made subject to this act by separate law) only after individually assessing whether the relevant benefit or opportunity should be denied to the individual, and after reviewing other relevant information, including any effect on third parties and whether an order of limited relief has been granted.

The bill authorizes convicted individuals to present a petition to the sentencing court at or before sentencing requesting limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing. The court must consider certain factors, including whether granting the requested relief would pose an unreasonable risk to the safety or welfare of the public or any individual.

A court cannot grant petitions for limited relief to relieve the requirements of the Sex Offender Registration and Notification Act, motor vehicle license suspensions or revocations arising out of the Motor Vehicle Code, ineligibility for certification as a law enforcement officer, or prohibitions against convicted felons carrying or possessing firearms.

Victims are generally allowed under HB 311 to fully participate in all hearings regarding petitions for limited relief.

In civil lawsuits alleging negligent hiring or other forms of negligence, orders of limited relief are evidence of due care in hiring, retaining, licensing, leasing to, and otherwise transacting business with the convicted individual if the person being sued knew of the order at the time of the alleged negligence or fault.

Finally, HB 311 expressly does not provide a basis for invalidating a plea or conviction or a cause of action for monetary damages, and it does not affect the rights of crime victims.

The bill carries a delayed effective date of January 1, 2012.

FISCAL IMPLICATIONS

The table above reflects the \$10,000-\$15,000 in costs estimated by the NMSC in response to the original bill for identifying, collecting and publishing a list of collateral consequences in FY12, and \$5,000-\$6,000 to update that information in succeeding fiscal years.

That estimate may be somewhat high, since it included costs for publication in the New Mexico Register and the New Mexico Administrative Code, which publication is no longer required under this substitute. However, the range reflected in the table may also be low because it does

not reflect additional costs generated by more court hearings in criminal cases when it is the collateral consequences that are really at stake: AOC anticipates fewer plea agreements and more trials when defendants are given notice of all of the collateral consequences of a guilty plea, and more hearings on petitions for limited relief. The cost of such an increase is unknown at this time. The AOC reports that many courts have an inadequate number of judges for the existing case filings, and to the extent HB 311 will create more new cases for judges to address, this shortage will be aggravated. On the other hand, the AOC points out that it is also possible that the number of cases now being overturned on appeal and returned to the trial court for a new trial or additional proceedings based on the defendant's lack of knowledge of collateral consequences (resulting in a non-voluntary or uninformed plea) might be reduced by enacting HB 311. Any resulting cost savings is also unknown at this time.

SIGNIFICANT ISSUES

The NMSC in its analysis of the original bill explains the concern raised by collateral consequences generally:

Collateral consequences are generally regarded as the negative effects on a criminal offender that persist after the completion of a sentence of imprisonment, probation or parole. Common examples include the loss of the right to vote, disqualification for employment opportunities and inclusion in criminal justice databases. Collateral consequences highlight the tension between the desire to punish criminal offenders and ensure public safety, while not placing unnecessary barriers on offenders attempting to successfully reenter society.

The NMCD advises that to the extent the bill ultimately results in the removal of social barriers for former inmates (in employment, public housing, and the other collateral sanctions identified in the bill), beginning in FY 14 it might help reduce recidivism rates, and ultimately the NMCD prison population and probation/parole caseloads.

In light of these concerns, it is important to consider the absence in the substitute of any procedure that allows for consideration of petitions for limited relief after an offender has completed serving a period of incarceration, or after completion of probation or parole. As the AODA explains:

Apparently if an offender wants an order of limited relief issued, it will have to be done at the time of sentencing. Since the parole board is removed from the substitute bill, there is no longer a way to seek such relief once the offender is released from prison. This will clearly not help an offender find housing and/or jobs when being released back to society as most offenders won't think to apply for this relief at the time of sentencing.

PERFORMANCE IMPLICATIONS

NMCD states it should be able to absorb the required notices to its paroling or discharging inmates with current staffing levels.

TECHNICAL ISSUES

Section 10(A) requires a petition seeking a limited order of relief to be presented to a court before or at sentencing. It is not clear if the intent of the substitute is to bar such relief after sentencing, such as upon completion of serving a sentence, probation or parole.

OTHER SUBSTANTIVE ISSUES

Current law makes individuals with felony convictions ineligible to become correctional officers. Both the DPS and the NMCD point out that because Section 11 does not exempt this collateral sanction from the scope of the relief that may be afforded under the bill, the bill could conceivably result in a convicted felon being eligible to become a correctional officer. NMCD advises it would take the position that having a convicted felon (especially one who had previously served prison time in a NMCD prison) work as a correctional officer in a NMCD prison would pose an unreasonable risk to the convicted person as well as NMCD staff.

Finally, the PB provides this comment as to the substitute:

For the Parole Board, this substitute addresses our concerns from the original form of the bill and makes it much more efficient to implement. Whereas the previous version would have placed an untenable burden on the Board, the current version provides a more reasonable method for providing for relief from various collateral consequences of a conviction.

MD/bym:svb