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## FISCAL IMPACT REPORT

**SPONSOR** O'Neill/ Baldonado      **ORIGINAL DATE** 1/18/17  
**LAST UPDATED** 2/16/17      **HB** \_\_\_\_\_

**SHORT TITLE** Private Employer Conviction Inquiries      **SB** 78/aSPAC

**ANALYST** Rogers

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 State Personnel Office (SPO)  
 New Mexico Corrections Department (NMCD)  
 Administrative Office of the Courts (AOC)  
 New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 78 removes the word “written” when referring to employment applications, expanding the terms of the bill to cover all types of applications used by private employers.

#### Synopsis of Bill

Senate Bill 78 titles Chapter 28, Article 2 NMSA 1978 as the “Criminal Offender Employment Act.” The bill creates a new section of the act prohibiting a private employer using a written employment application from inquiring about an applicant’s prior convictions. After review of the application and discussion of employment with the applicant, a private employer may then take prior convictions into consideration. The law does not prohibit an employer from notifying the applicant that law or the employer’s policy could disqualify an applicant with a certain criminal history from qualifying for positions with the employer.

## **FISCAL IMPLICATIONS**

Neither the original bill nor the SPAC amendment does not create any fiscal impact.

The bill may reduce costs stemming from recidivism by making it easier for ex-convicts to obtain and retain employment. “Ban the Box” statistics often state that maintaining employment is a main factor in reducing recidivism. The All of Us or None campaign has identified job discrimination as a main barrier to the successful return of convicts to their communities. It is difficult to measure the success of these initiatives and the impact the bill would have for New Mexico.

In a prior response to a similar 2015 legislative session bill, the AOC has stated there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to any actions brought against private employers to enforce the provisions of the Criminal Offender Employment Act, or potentially against a private employer for negligent hiring, by a plaintiff harmed by an employee who has previously been convicted of a crime.

## **SIGNIFICANT ISSUES**

In 2010, a bill was enacted prohibiting state agencies from inquiring about a criminal conviction until the applicant is selected as a finalist for the position. According to the National Employment Law Project (NELP), New Mexico became the second state in the nation to pass such a law.

The bill does not contain a penalty for failure of a private employer to act pursuant to the provisions of the Criminal Offender Employment Act.

The New Mexico Sentencing Commission, in response to similar bills in prior years, explains that having any lifetime arrest dims employment prospects more than any other employment-related characteristic. Given the large number of individuals arrested in the U.S. annually and the high lifetime prevalence of arrest (Brame, Turner, Paternoster, & Bushway, 2012), this is discouraging for those who become involved in the criminal justice system. The finding that even an arrest (whether it results in a conviction, jail, or prison time) narrows employment prospects heightens the importance of diversion programs and reducing official reliance on the criminal justice system.

In 1998, Hawaii became the first state to adopt a fair chance law as applied to both public and private employment. According to NELP, nine states - Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, and Vermont - now prohibit private as well as public employers from posing questions about a job applicant's conviction history until later in the hiring process.

Fair-chance hiring policies increase employment of people with criminal records; early results of such policies have been promising. For instance, after adopting a fair-chance hiring policy, the city of Durham, North Carolina, increased its percentage of new hires with criminal records from less than 2.5 percent in 2011 to 15.5 percent in 2014. Minneapolis, Minnesota, has seen similarly positive results; banning the box on job applications resulted in more than half of job seekers with criminal records being hired. And in Atlanta, Georgia, a fair-chance hiring policy led to

people with criminal records making up fully 10 percent of all city hires between March and October 2013.

Additionally, some private employers - such as Target Corporation, one of the nation's largest employers - have removed criminal history questions from their job applications.

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