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FISCAL IMPACT REPORT

SPONSOR	<u>Senate Floor</u>	ORIGINAL DATE	<u>3/04/19</u>	HB	
		LAST UPDATED	<u>3/11/19</u>		
SHORT TITLE	<u>Conviction Info On Job Applications</u>			SB	<u>CS/CS/96/SJCS/SFIS/a SF1#1</u>
		ANALYST			<u>Edwards</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with House Bill 573 and Senate Bill 227, also amending Section 28-1-7 NMSA 1978.

SOURCES OF INFORMATION

LFC Files

Responses Received

New Mexico Corrections Department (NMCD)
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)

Responses Received From a Similar Bill in the 2017 Legislative Session

Department of Health (DOH)
 State Personnel Office (SPO)

SUMMARY

Synopsis of SF1 #1 Amendment

Senate Floor Amendment #1 amends Section 2(A) to clarify that nothing shall prohibit an employer from notifying the public, in addition to applicants, that the law or employer's policy could disqualify applicants with certain criminal histories.

Synopsis of Original Bill

The Senate Floor Substitute for Senate Judiciary Committee Substitute for Senate Bill 96 adds a new section to the Criminal Offender Employment Act concerning private employers that parallels present restrictions in hiring for government employees. The bill would ban private employers from asking about an applicant's history of arrest or conviction on the employment application. The employer may take into consideration an applicant's conviction after review of

the initial application and upon discussing possible employment with the applicant.

The Senate Floor Substitute for the Senate Judiciary Committee Substitute for Senate Bill 96 also includes a provision whereby a person who believe he or she has had their rights under this provision violated may seek relief under the Human Rights Act.

FISCAL IMPLICATIONS

Senate Floor Amendment #1 does not change the fiscal impact analysis below.

The Senate Floor Substitute for the Senate Judiciary Committee Substitute for Senate Bill 96 creates little if any additional fiscal impact to state agencies.

The bill may reduce costs stemming from recidivism by making it easier for ex-offenders 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 offenders 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 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 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. AOC explains "the Human Rights Act, Section 28-1-10 NMSA 1978, provides for a grievance procedure permitting a written complaint alleging that discrimination has occurred, and procedures leading to a hearing before the Human Rights Commission. Section 28-1-11 NMSA 1978 sets out hearing procedures. Section 28-1-12 NMSA 1978 governs enforcement of the commission's order by a district court, initiated by the filing of a petition in district court."

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