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FISCAL IMPACT REPORT

SPONSOR <u>Romero, A/Martinez, J</u>	LAST UPDATED <u>3/2/2023</u>
	ORIGINAL DATE <u>2/15/2023</u>
SHORT TITLE <u>Cannabis Record Expungement</u>	BILL NUMBER <u>House Bill 314/aHCPAC/aHJC</u>
	ANALYST <u>Gray</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Public Defender Department (PDD)
Administrative Office of the District Attorney (AODA)
New Mexico Attorney General (NMAG)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of HJC Amendment to House Bill 314

The House Judiciary Committee amendment to House Bill 314 makes a clarification providing that the automatic expungement referenced on page 2 line 17 refers to automatic expungement as defined in the section.

Synopsis of HCPAC Amendment to House Bill 314

The House Consumer and Public Affairs Committee amendment to House Bill 314 clarifies that automatic expungement applies to public records, provides and individuals can seek automatic expungement, and provides requests for expungement remain confidential.

Specifically, the HCPAC amendment provides that in the event of cannabis and non-cannabis charges the impacted individual may seek automatic expungement through an administrative process through the Administrative Office of the Courts (AOC).

Synopsis of Original Bill

House Bill 314 clarifies the scope of automatic expungement. Currently, automatic expungement applies to all records relating to an offense involving cannabis that is no longer a crime. Statute provides for automatic expungement from public records of cannabis offenses two years after the arrest or conviction, but if the arrest or conviction included multiple charges, only the portions of the public records related to the cannabis offense would be expunged. HB314 would also remove public records related to the other offenses.

HB314 also contemplates requiring the complete destruction of the records and creating procedures for individuals to request a review of the expungement status of their charges.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

AOC estimates the cost of this one-time project, including the hiring of contract staff to assist in reviewing cases, to be \$500 thousand. This funding was appropriated to AOC in the 2021 session.

SIGNIFICANT ISSUES

When a person has multiple convictions, only the cannabis-related charges need to be expunged. When a person is convicted of possessing cannabis and other charges, the court must locate the records and redact the cannabis charges while maintaining the references to the other charges. This bill contemplates easing those difficulties while maintaining the original intent of not placing the burden of going through the court process to expunge a cannabis charge on the individual.

Under HB314, automatic expungement would not only be eliminated for anyone with additional more serious charges but also those with minor misdemeanor or traffic offenses in addition to the cannabis charge. This is important because for simple cannabis and paraphernalia possession cases, often a traffic stop or other minor encounter with law enforcement led to the discovery of the cannabis in the first place. For this reason, the impact of the cannabis charge on those with multiple convictions remains high where the additional charge is a traffic offense or misdemeanor.

AOC reports that, under HB314, the judiciary will focus its activities on destroying the cases that only involve cannabis-related charges, and that the courts will not be required to undertake page-by-page redaction of records. The total cases AOC will need to review will decrease by approximately 90 thousand cases.

Currently, the judiciary removes the records from public access by sealing the records. Once sealed, the charges or offenses are no longer available on publicly accessible websites. Although the records are no longer accessible by the general public, records may still be available for law enforcement purposes. For example, Section 29-3A-2(C)(2) indicates that “public records” does not include district attorney or attorney general files maintained as a confidential record for law

enforcement purposes. Further, records may be released at a future time per a court order.

HB314 contemplates destroying these records. The complete destruction of eligible cannabis-related records supports the goal of fully eliminating the possibility that these records will pose a barrier or otherwise negatively impact the person named in the records.

AOC reports that it has already expunged over 14 thousand simple cases involving only cannabis related charges.

TECHNICAL ISSUES

The proposed language limiting automatic expungement is as follows: “Automatic expungement applies to court or agency records involving only cannabis and cannabis paraphernalia charges and requires destruction of the records.” The use of “and” in reference to cannabis and cannabis paraphernalia charges suggests both must be present.

BG/al/ne/rl