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FISCAL IMPACT REPORT

SPONSOR Hamblen ORIGINAL DATE 02/09/21
 LAST UPDATED 03/14/21 HB _____

SHORT TITLE Gender & Orientation Data Collection SB 316/aSJC

ANALYST Dinces/Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DOH expenses	\$0.0	\$111.0	\$0.0	\$111.0	Nonrecurring	General Fund
HSD expenses	\$0.0	\$142.3	\$1.3	\$143.6	Recurring \$1.3 Nonrecurring \$142.3	General Fund
CD expenses		\$250.0	NFI	\$350.0	Nonrecurring	General Fund
Other agency expenses	Uncertain	Uncertain	Uncertain	Uncertain	Mixed	General Fund
Total	\$0.0	\$503.3	\$1.3	\$504.6	Mixed	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB124 and SB75.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Office of the Attorney General (NMAG)
- Department of Workforce Solutions (WSD)
- Department of Public Safety (DPS)
- Higher Education Department (HED)
- Economic Development Department (EDD)
- Department of Health (DOH)
- Human Services Department (HSD)
- Corrections Department (CD)

SUMMARY

Synopsis of Amendment

The Senate Judiciary Committee amendment makes the requirement of collection of data on sexual identification and gender identity common to *all* agencies and executive departments, not just those previously identified in the bill.

Synopsis of Original Bill

Senate Bill 316 requires certain public bodies and 12 executive departments, in the course of collecting data pursuant to federal programs and surveys, or in accord with DOH guidelines to:

- Collect voluntary self-identification information pertaining to sexual orientation and gender identity;
- Report data collected to the legislature along with the method used to collect the data;
- Make data collected available to the public in accordance with state and federal law, except for personal identifying information (PII) which shall be deemed confidential and not disclosed; and
- Prevent the reporting of data that would be considered PII or would result in statistical unreliability.

This information is required to be used only for demographic analysis, coordination of care, service quality improvement, approved research, and fulfilling reporting requirements of funding or policy decisions and can be summarized by political divisions from census code or zip code up to state level.

FISCAL IMPLICATIONS

According to the Department of Public Safety:

It is unclear to DPS whether the intent of SB316 is to include voluntary self-identification of sexual orientation and gender identity in the employment context (DPS workforce), or if the bill contemplates the collection of the voluntary data in the context of DPS's provision of law enforcement and law enforcement support services to the public. In either data collection context, DPS states that changes would need to be made to their software system. However, costs for this change are unknown.

According to the Administrative Office of the Courts:

There could be possible cost to modify reSearch, SOPA and/or Case Lookup to provide the sexual orientation and gender of a party and internal cost for training court personnel to enter sexual orientation in Odyssey so data can be pulled and reported.

DOH indicated that personnel and systems changes to implement the provisions of SB316 needed would cost the agency \$111 thousand for changes to its information systems and promulgation of new requirements. HSD also indicates a requirement for updating information systems to meet the law's requirements (a one-time cost of \$142.3 thousand and on-going requirement for a 0.02 FTE employee (\$1.3 thousand).

The Corrections Department indicates a one-time cost of \$250 thousand, for the purposes noted below:

Fiscal impact comes from the need to update the current offender management system.

NMCD's current system, CMIS, does not have the fields to track sexual orientation or gender identity at this time. The passing of the bill would require a complete systems-wide analysis of offender demographics to determine interdependencies with other system tables and functions, adding sexual orientation and gender identity as fields in current offender demographic tables, add appropriate security to allow needed access and prevent unnecessary access to these data fields, reviewing the impact of these additions to current reporting responsibilities, such as internal incident reports, PREA mandates for sexual victimization and predation surveys, and various other reporting.

The Department would also need to follow these same steps for the new offender management system that is currently under development, OMNI.

Based on the personnel needed to perform the analysis and work for the above tasks and CMIS, anticipate an approximate cost of \$175k, in salary and benefits. Cost associated with potential change requests for the new system, projected at \$75k, in professional services, for a total potential cost of \$250k.

There could be additional administrative costs to collect data for those already in custody, but based on the bill language this would only impact current courses of demographic collection which takes place upon intake.

Other agencies contacted did not indicate a fiscal note to modify their systems to accommodate these data or to train their personnel to sensitively obtain this information or use the new data fields.

SIGNIFICANT ISSUES

Data are available through the Center for Disease Control's Behavioral Risk Factors Surveillance System (CDC, BRFSS) and through the New Mexico Youth Risk and Resilience Survey (YRRS). Both are systematic, collecting data on different age groups using different methods, the BRFSS on adults throughout the country by telephone and the YRRS on high school and middle school students (separately) by means of a long written questionnaire. Despite the scientific manner in which both of these studies are conducted, the results regarding sexual orientation are markedly different: the BRFSS indicates that 4.7 percent of those surveyed in New Mexico report themselves to be lesbian, gay, or bisexual and 0.8 percent state that they are transgender. Asking different questions of a different age group, the YRRS states that 10.7 percent of New Mexico high school students identify themselves as gay, lesbian or bisexual. The difference is striking – the YRRS figure is 2.27 times as high as the corresponding BRFSS figure. It seems unlikely that the age difference between the two samples accounts for such a large discrepancy.

The data discrepancy referred to above indicates the difficulty in collecting sensitive data by survey. It might suggest that data collected from those interacting with state agencies might be subject to question. It would be difficult to know whether those willing to respond to voluntary questions from law enforcement officers, state financial or health insurance agencies, for example, would be representative of the larger population. It might be thought likely that those concerned about being stereotyped because of gender and sexual orientation might be less likely to volunteer to answer such questions or to answer them truthfully than those of standard binary identities. This might limit the value of the data to be obtained through the results of this bill's

provisions.

Along these lines, the DOH states that “This bill would require the various state agencies to systematically collect sexual orientation and gender identity demographic information which could increase the agencies’ overall capacity to address health disparities in the population.

“Equality New Mexico (EQNM), which includes stakeholders from various agencies, has called for this bill. EQNM advocates for the rights and equality of LGB and TGNC people <https://eqnm.org/#eqnm>.” EQNM believes that the data will be useful in making resources available to LBGTQ individuals.

DOH goes on to quote statistics regarding the association of gender nonconformity with depression, suicide, substance use, and unemployment.

HSD notes uncertainty as to the applicability of new requirements to its clients and to its employees [DPS echoes these questions], and uncertainty as to the uses to be made of the data obtained: “SB316 does not specify how the data collected will be utilized. It is unclear whether the data would be collected from people served by the HSD, HSD employees or both. SB316 also does not specify when the information would be reported to the legislature or made available to the public or how often.”

According to the Department of Workforce Solutions:

While the Department of Workforce Solutions does collect voluntary demographic data through some of its programs and departments, gender identity or sexual orientation data is not always collected. The Department would be required to update and/or implement software for programs that do not already collect this information in order to collect and report this data as required by the bill.

According to the Department of Public Safety (DPS):

In the provision of services context, the DPS provides law enforcement services to members of the public without regard to an individual’s or group’s protected class. DPS, other than gathering information from state issued driver’s licenses or IDs in the course of its law enforcement duties, does not ask members of the public to voluntarily self-identify any protected class status. In the dispatch context, DPS may ask for race and gender as needed to identify an individual that law enforcement is attempting to locate. Aside from those necessary situations, there is a concern that asking for this voluntary information from members of the public may result in a perception by the public that law enforcement decisions take into account the protected class status of an individual and may spur civil rights complaints and inaccurate perceptions of law enforcement decision making.

According to the Higher Education Department:

SB316 requires the NMHED to collaborate with higher education institutions in New Mexico to collect voluntary demographic data pertaining to sexual orientation and gender identity of students. SB316 states that the NMHED shall make the data available to the public in accordance with state and federal law, except for personal identifying information, which shall remain confidential. SB316 also provides acceptable uses of the data collection. Uses that may relate to higher education include demographic analysis, conducting approved research and fulfilling reporting requirements.

The fiscal and programmatic impact to the NMHED is anticipated to be minimal as

gender data is already being collected statewide. To add a new code into the NMHED's Electronic Data Editing and Reporting (eDEAR) System for sexual orientation will not be a protracted nor costly task.

The fiscal and technical impact to higher education institutions is indeterminate, as each institution will need to customize its own distinct Student Information System (SIS) to include gender and sexual orientation fields. The cost of modifying each SIS system may vary since the higher education institutions do not share the same SIS platform. The institutions will also need to modify their admissions applications to capture the data voluntarily provided by students in regards to their gender and sexual orientation

ADMINISTRATIVE IMPLICATIONS

HSD indicates that “As of February 1, 2021, HSD had 1,601 current employees. To report the collection of data regarding HSD employees, HSD would have to develop a method to gather the information about employees. No specific federal guidelines exist in human resources so HSD would have to establish categories for data collection. HSD would also have to develop processes to collect, aggregate, analyze, maintain and report the data... Additional training will be required for HSD staff to increase sensitivity while gathering this information while conducting eligibility interviews with HSD customers.”

HED states that “Each higher education institution will have to administer the collection of sexual orientation and gender identification data.”

DPS notes that “In the provision of services context, DPS personnel (both classified and commissioned) would need to be trained on how and when to request and document the protected class information in the course of their duties.”

RELATIONSHIP with Senate Bill 75 /House Bill 124, which are identical and establish penalties for disclosure of individuals' sensitive information, including sexual orientation, with certain exceptions.

OTHER SUBSTANTIVE ISSUES

HSD indicates that “In the behavioral health arena, collecting this information has been required by the federal Health Resources and Services Administration (HRSA) for Federally Qualified Health Centers (FQHCs) for at least 5 years. FQHCs are a cornerstone of the primary care and behavioral health care delivery systems, and the data is used to ensure that barriers to effective care for non-conforming or traditionally underserved individuals are identified and rectified. If the fiscal impacts and lack of clarity raised elsewhere in this analysis are addressed, the information could possibly be used to similar purpose for other public benefit programs.”