

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>López/Sedillo Lopez</u> <b>SHORT TITLE</b> <u>Wrongful Conviction Compensation &amp; Services</u>	<b>LAST UPDATED</b> <b>ORIGINAL DATE</b> <u>3/4/25</u> <b>BILL NUMBER</b> <u>Senate Bill 407</u> <b>ANALYST</b> <u>Chavez</u>
--	--

### APPROPRIATION\* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$9,000.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Payments	See fiscal impact	See fiscal impact	See fiscal impact	See fiscal impact	See fiscal impact	Recurring	Public Liability Fund

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMAG	See fiscal impact	See fiscal impact	See fiscal impact	See fiscal impact	Recurring	General Fund
Courts	See fiscal impact	See fiscal impact	See fiscal impact	See fiscal impact	Recurring	General Fund
NMCD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
CYFD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
HCA: ISD	No fiscal impact	At least \$86.7	At least \$86.7	At least \$173.4	Recurring	General Fund
HCA: ISD	No fiscal impact	At least \$115.1	At least \$115.1	At least \$230.2	Recurring	Federal funds
HCA: MAD	No fiscal impact	At least \$103.0	At least \$103.0	At least \$205.9	Recurring	General Fund
HCA: MAD	No fiscal impact	At least \$103.0	At least \$103.0	At least \$205.9	Recurring	Federal funds
HCA: MAD System Changes	No fiscal impact	At least \$2,800.0	At least \$4,300.0	At least \$7,100.0	Nonrecurring	General Fund
DPS	No fiscal impact	At least \$621.3	At least \$540.8	At least \$1,162.1	Recurring	General Fund
Total	No fiscal impact	At least \$3,829.1	At least \$5,248.6	At least \$9,077.7	Recurring	

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

## Sources of Information

LFC Files

### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
Law Offices of the Public Defender (LOPD)  
New Mexico Attorney General (NMAG)  
General Services Department (GSD)  
New Mexico Sentencing Commission (NMSC)  
Health Care Authority Department (HCA)  
Children, Youth and Families Department (CYFD)  
Corrections Department (NMCD)  
Department of Public Safety (DPS)

### Agency Analysis was Solicited but Not Received From

Department of Finance and Administration (DFA)

## SUMMARY

### Synopsis of Senate Bill 407

Senate Bill 407 (SB407) enacts the Wrongful Conviction Compensation and Services Act, establishing a process for wrongly convicted individuals to seek compensation and support services.

Section 2 of SB407 defines key terms including:

- “Conviction” includes both adult and juvenile adjudications,
- “Correctional facility” covers state, private, and juvenile detention centers,
- “Incarceration” includes confinement in correctional or behavioral health facilities,
- “Petition” refers to a request for relief,
- “Petitioner” is a released person or their representative,
- “Released person” is someone previously convicted or adjudicated and now seeking relief, and
- “Sentenced” includes incarceration, parole, probation, or sex offender registration.

Section 3 of SB407 outlines the requirements of parties for a petition. SB407 would stipulate that a petitioner must file a petition for relief in a district court. The district court would also have to notify the petitioner and the New Mexico Attorney General (NMAG) of the hearing at least 90 days before the hearing. NMAG may oppose a petition, offer evidence and make arguments.

Section 4 would stipulate eligibility for relief and the standards of proof. A petition would be granted if the petitioner establishes, by a preponderance of the evidence (standard in most civil suits, requiring the plaintiff to prove, based on evidence and witness testimony presented, that there is a greater than 50 percent likelihood that the defendant caused the damage or other wrong), that the person:

- Was convicted and sentenced,
- Served all or part of the sentence,

- Did not commit the crime resulting in the conviction or no crime was committed,
- Was pardoned or the conviction was overturned, reversed, or vacated on direct or collateral review and was not found guilty upon retrial of the original offense or a lesser included felony.

The section also would allow a petitioner to meet eligibility requirements by establishing a preponderance of the evidence that, prior to the filing of the petition, the court either:

- Found that the released person did not commit the crime that resulted in the conviction or that the crime was not committed, or
- Granted a habeas corpus petition (a legal request filed by a prisoner who believes they are being held illegally) based on a finding that the released person established by clear and convincing evidence that, considering new evidence, no reasonable juror would have convicted the released person.

Section 4 finally provides that the petition shall be denied if NMAG establishes by a preponderance of the evidence that the released person was either an accomplice of the crime for which the person was convicted or intentionally and voluntarily caused their own conviction by committing perjury or fabricating evidence at trial to prevent the actual perpetrator of the crime from being convicted.

Section 5 details judicial discretion on the admissibility of evidence. The section describes the district court, when determining the admissibility and weight of evidence presented by a petitioner, should consider any challenges in proving the case due to factors like the passage of time, missing witnesses, the destruction of evidence, or other difficulties of proof not caused by the petitioner or NMAG. It also provides that the granting or denial of a petition shall not be admissible as evidence in any other proceeding.

Section 6 of SB407 details the relief that would be awarded if a petitioner's petition is granted, including noneconomic and economic damages, attorney fees, and reimbursements for restitution, missed child support payments due to incarceration, and other costs, fines, or fees. Noneconomic damages are calculated as follows:

1. \$100 thousand for each year of incarceration while awaiting a death sentence, prorated by the day for any partial years,
2. \$75 thousand for each year of incarceration other than while awaiting a death sentence, prorated by the day for any partial years, and
3. \$50 thousand for each year on parole or probation or subject to sex offender registration, prorated by the day for any partial years.
- 4.

Section 6 further details that a petitioner would not be entitled to relief provided for noneconomic damages if incarcerated while awaiting a death sentence and while waiting for any other sentence, if they were serving a concurrence sentence for a crime that was not overturned, reversed, or vacated or for which the petitioner was not pardoned. The bill further instructs that the monetary amounts award amounts be adjusted by the increase or decrease in the consumer price index from the effective date of SB407 to the date a petition was granted. The bill stipulates that the damages awarded cannot be reduced to cover costs incurred by the state, including expenses for incarceration, food, clothing, medical care, or other services provided during imprisonment. Additionally, relief cannot be offset by the value of goods or services received

under SB407 or by the cost of legal defense provided to an indigent person under the Indigent Defense Act.

Section 6 would stipulate that if an individual receives monetary compensation from a civil lawsuit or settlement related to their wrongful conviction before being awarded relief under SB407, their compensation would be reduced by the amount they received for economic and noneconomic damages in the civil case. The bill would provide that if a wrongful conviction petition is granted, the court must order record expungement and notify NMAG that the petition was granted along with relevant details. Within 60 days, NMAG must issue a letter confirming innocence and detailing any wrongful incarceration or supervision to the petitioner.

Section 7 outlines that, when a wrongly convicted person is released, they would be eligible for a stipend of \$2,000 to assist post-incarceration transition, and the following for a period of two years at no cost:

1. Services, programs, and housing in a community corrections outpatient treatment or community corrections residential treatment program,
2. Public assistance grants pursuant to the Public Assistance Act, without standard eligibility requirements,
3. Health, vision and dental coverage,
4. Food benefits in the maximum benefit amount for the supplemental nutrition assistance program for a household size of one,
5. A Medicaid personal spending allowance pursuant to Section 27-2-12.9 NMSA 1978, and
6. Utility assistance pursuant to the Low Income Utility Assistance Act.

Section 7 requires that, within 120 days of the effective date of SB407, the Health Care Authority Department (HCA) promulgate and implement rules and procedures and create forms that ensure that a determination on each benefits application is made within 14 days and that benefits commence within seven days of an application being approved. Finally, Section 7 requires the Corrections Department (NMCD), the Children, Youth and Families Department (CYFD), and all other state and local departments and agencies responsible for correctional facilities or programs provide identifying information to HCA and promulgate rules, within 120 days of SB407's effective date, designed to ensure that the person wrongfully convicted receives a benefits application form and the \$2,000 stipend to assist post-incarceration transition.

Section 8 of SB407 stipulates that if a person's conviction is overturned, vacated, or reversed, and the case is dismissed or results in an acquittal, Alford plea, or no-contest plea while maintaining innocence, the court must provide them with a copy of the Wrongful Conviction Compensation and Services Act, obtain their written acknowledgment, and record it in the case docket. Similarly, if a person receives a pardon, the governor's office must provide them with a copy of the Act, obtain a written acknowledgment on an official form, and keep a record of it.

Section 9 of SB407 explains that a person notified of their right to file a petition under the Wrongful Conviction Compensation and Services Act must do so within six years of receiving the notice. If new evidence of innocence is discovered within two years before the deadline, and it could not have been obtained earlier with reasonable diligence, the person has four years from the date of discovery to file a petition.

Section 10 provides that the State shall not assert sovereign immunity pursuant to the Tort

Claims Act as a defense or bar to filing a petition.

Section 11 of the bill would create the wrongful conviction compensation fund as a nonreverting fund in the state treasury administered by NMAG. The money in the fund would be used for the purposes of paying petitioners awarded relief.

SB407 appropriates \$9 million from the general fund to the proposed wrongful conviction compensation fund administered by NMAG for the purpose of carrying out the provisions of the bill.

The effective date of this bill is July 1, 2025.

## **FISCAL IMPLICATIONS**

This bill creates a new fund and provides for continuing appropriations. LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds because it reduces the ability of the Legislature to establish spending priorities.

NMAG provides the following:

SB407 may have a significant fiscal impact on the NMAG. Section 3 tasks the NMAG with litigating SB407 claims but does not allocate monies to the NMAG for that purpose. Section 11 tasks the NMAG with administering the wrongful conviction compensation fund and ensuring that monies for damages and services from the wrongful conviction compensation fund are disbursed to petitioners who prevail on SB407 claims. However, it does not allocate monies to NMAG for that purpose. It also does not allocate monies to the district courts, which, under Section 3, are required to hear SB407 cases and determine what, if any, damages or other relief should be awarded.

Furthermore, there would be an additional impact on NMAG and the courts depending on the appeals from the granting of petitions and the awarding of relief. The additional operating costs could be further increased due to factors like the complexity of the case, the assistance and calculation related to distributing the awards, and individuals could be more incentivized to petition under the Wrongful Conviction Compensation and Services Act even if their situation may not fall under the provisions exactly.

The General Services Department (GSD) points out that SB407 would impact their Risk Management Division (RMD) the most, particularly the public liability fund. The public liability fund has been used to compensate for actual damages currently paid by the Corrections Department (NMCD) and county jails. Wrongful incarceration or delayed release claims are already sent to RMD and these claims could be paid out via the public liability fund. When there is such a claim, RMD must factually analyze the claim for potential exposure to the state and, if RMD determines there is exposure, they must determine what the damages are. The determination is based on the following:

- How long has an individual been incarcerated,
- What they were incarcerated for,
- Economic factors – age, education, health, earning capacity had they not been incarcerated, and

- Why they were wrongly convicted and/or held beyond their sentence.

GSD points out that SB407 provides for standardized awards depending on the claim; however RMD considers each claim based on its unique circumstances, some of which are outside the scope of SB407. Once awards are determined based on what is outlined in SB407, the claims that do not fall under SB407 could be made against the public liability fund with an instant value based on the standardized awards that did fall under the bill. Because of this, the public liability fund will have an adverse effect that can be significant but difficult to determine.

NMCD provides the following relating to the additional operating impacts of SB407:

The proposed bill, which allows a person wrongfully convicted of a crime to file a petition for relief and receive compensation based on the time incarcerated, would not fiscally affect the Corrections Department. This is because the department is solely responsible for carrying out sentences and incarcerating as determined by the courts, and it does not play a role in the conviction process, which is under the jurisdiction of the judicial system.

If an expungement or sealing order is issued after a conviction is reversed, and the individual has served a period of incarceration or community supervision with the department, the department would be responsible for updating its internal records and ending any further supervision, if applicable. The department's role in this process remains administrative.

If the proposed bill is passed, the department will need to update its existing policies and procedures to ensure that individuals are provided with the necessary application forms and information about the available benefits and transition assistance stipend at the time of their release. The department's role will be limited to facilitating this process, without requiring significant changes to its core operations.

The Children, Youth and Families Department (CYFD) would also need to update its existing policies and procedures to ensure that individuals are provided with the necessary application forms and information about the available benefits and transition assistance stipend at the time of their release.

The Health Care Authority Department (HCA) provides the following:

**ISD Fiscal Implications:** HCA Income Support Division (ISD) is responsible for determining eligibility for essential programs such as Supplemental Nutrition Assistance Program (SNAP), Cash Assistance, Low Income Home Energy Assistance Program (LIHEAP), and Medicaid. Due to the complexities involved in eligibility determination and case management, as SB407 is written ISD is finding it challenging to accurately estimate the required staffing levels to effectively manage these programs. The eligibility staffing needs are directly tied to the volume of cases expected, which remains uncertain as SB407 is written. However, ISD anticipates the need for additional resources to ensure efficient managing of the program. Specifically, the program would require 2 FTE dedicated to the program management:

1. **Management Analyst III (Pay Band 65)** – This role will be responsible for determining eligibility, ensuring compliance with program guidelines. The total cost for this position is estimated at \$92.4 thousand annually (\$32.0 GF, \$60.4

FF).

2. **Social and Community Services III (Pay Band 70)** – This role will be responsible for managing rule changes, overseeing program requirements, and providing ongoing supervision of the eligibility determination process. The total cost for this position is estimated at \$109.4 thousand annually (\$54.7 GF, 54.7 FF).

These positions are essential to ensure that eligibility determinations are made in a timely, accurate, and efficient manner. Without this additional staff, ISD risks delays in processing, which could result in noncompliance with the requirements stated in SB 407.

**Medical Assistance Division (MAD) Fiscal Implications:** Implementation of SB407 is anticipated to require ASPEN eligibility system changes, including:

- Application changes (Apply for benefits, BeWellNM, paper applications),
- Data collection screen changes with conviction reversal decision information,
- Prioritization of application registration tasks based on wrongful conviction flag,
- A new category of eligibility (COE) for a public assistance program; the COE shall follow the Non-Financial, Financial, Assets, Verification and Recertification rules/policy for the General Assistance Program,
- All other services such as health care coverage shall be administered following the current policy/rules,
- Correspondence changes (Notice of Case Action, Help Us Make a Decision, and the ISD 120 form),
- Reports and Dashboard changes, and
- Data transfer (export and import).

The total estimated cost of the ASPEN and Unified Portal (UP) changes needed is \$7.1 million. The expectation is the \$7.1 million will be all state general funds with no federal match allowed to make these changes. The estimated time to complete all the system changes is about 22 months.

MAD estimates FTE requirements of two (2) FTE for a total cost of \$205.9 thousand recurring:

- **Social and Community Services III (Pay Band 70)** \$97.4 thousand with \$48.7 thousand in general fund and \$48.7 thousand in federal funds) to track eligibility applications.
- **Social and Community Services Supervisor (Pay Band 75)** \$108.5 thousand with \$54.25 thousand general fund and \$54.25 thousand federal funds to design program requirements and coordinate with ISD.

To meet the two-year, Medicaid personal spending allowance required, based on the state statute cited, the state estimates a \$95.00 per month payment to each individual. The state assumes no federal match would be allowed, requiring payments to be made from state general funds. HCA cannot estimate cost without additional data about the potential population.

To pay the required \$2,000/month stipend and address any potential shortfall in benefits,

SB 407 allocation of state general funds would be used to ensure the individual receives the maximum benefit as outlined in the bill.

The Department of Public Safety (DPS) provides the following:

If the bill becomes law, the Law Enforcement Records Bureau (LERB) would experience a significant workload increase due to the increased volume of expungement requests and the requirement to provide petitioners with expungement “upon court order” and criminal history records upon request. To manage this increase effectively, LERB would need to expand its workforce to include two additional expungement personnel, reclassify three existing personnel, convert our existing dedicated law clerk and an in-house attorney from LERB fee revenue to general fund, a continued funding for a contract attorney to oversee compliance and address legal complexities related to record clearance.

## SIGNIFICANT ISSUES

NMAG provides the following:

### Definitions

Section 2 does not define “wrongful conviction” or “pardon.” Because SB407 creates civil remedies for persons who have been wrongfully convicted or pardoned, it may be advisable to define those terms. The term “pardon” has been defined as “executive action that mitigates or sets aside punishment for a crime.” Black’s Law Dictionary (12th ed. 2024).

### Procedural Due Process

Section 3 may be problematic because it does not specify whether a SB407 petitioner or the district court is required to serve NMAG with a copy of the petition. Without notice regarding the specific nature of a SB407 claim, NMAG may be unable to determine whether to litigate such claims in advance of a hearing on the merits. In other civil actions, state agencies are entitled to notice of the nature of the claims being brought. See, e.g., *Marrujo v. N.M. State Hwy. Transp. Dep’t*, 1994-NMSC-116, ¶ 30, 118 N.M. 753 (dismissing a civil complaint against the transportation department under the Tort Claims Act because serving the transportation department with a copy of an accident report was insufficient to provide it with notice of the plaintiff’s claims).

### Discovery

Section 3 is silent regarding discovery. Ordinarily, in civil suits, a party may obtain discovery of relevant, non-privileged information prior to a hearing on the merits under Rule 1-026 NMRA by serving written interrogatories, requests for production of documents and inspection, and requests for admission. Rules 1-033, 1-034, and 1-036 NMRA. A party may also obtain discovery by deposing witnesses and issuing subpoenas. Rules 1-030 and 1-045 NMRA.

Rule 1-001 of the Rules of Civil Procedure states: “These rules govern the procedure in the district courts of New Mexico in all suits of a civil nature whether cognizable as cases at law or in equity except to the extent that the New Mexico Rules are inconsistent therewith.” However, as a practical matter, it is not clear whether the customary discovery deadlines would allow parties sufficient time to obtain discovery prior to the SB407 merits hearing. For that reason, it may be advisable to clarify whether customary rules of discovery and discovery deadlines do or do not apply in SB407 cases.



### Burden of Proof

Section 5 provides that the district court, when determining whether evidence is admissible, “shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence and other difficulties of proof not caused by the petition or [NMAG].” This provision may be at odds with Rule 11-901 NMRA, which contains no such language and, to admit evidence, requires only that there be sufficient evidence that the item of evidence offered by the proponent “is what the proponent claims it is.”

The language in Section 5 may also conflict with Section 4, which requires only that the elements of a SB407 claim be proven “by a preponderance of the evidence.” It seems that that requiring courts to consider difficulties of proof might lead to unusual results and, in some cases, would reduce the petitioner’s burden of proof to something less than a preponderance of the evidence.

### Existing Wrongful Conviction Civil Remedies

Wrongfully convicted persons may already have satisfactory civil remedies. The New Mexico Human Rights Act (“NMHRA”) states:

A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief in any New Mexico district court. NMSA 1978, § 41-4A-3(B) (2021). The NMHRA also provides that “the court may, in its discretion, allow a prevailing plaintiff or plaintiffs reasonable attorney fees and costs to be paid by the defendant.”

NMSA 1978, § 41-4A-5 (2021). In NMHRA suits, “the public body’s liability shall not exceed the sum of two million dollars per claimant.” NMSA 1978, § 41-4A-6 (2021).

### Conflicts of Interest

Section 3 requires NMAG to litigate SB407 claims. However, NMAG special prosecutors prosecute felony offenses in New Mexico state courts. If a conviction obtained by an NMAG special prosecutor becomes the basis for a SB407 claim, that prosecutor may have a conflict of interest which, in turn, may be imputed to other NMAG attorneys and prohibit them from litigating SB407 claims. See Rule 16-110(A) (“Where lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 16-107 or 16-109 NMRA of the Rules of Professional Conduct, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.”).

Section 11 requires NMAG to administer the wrongful conviction compensation fund. But having NMAG take on an adversarial role by litigating the SB407 claim as required by Section 3 and having the NMAG switch to a fiduciary role when wrongful conviction compensation fund monies must be disbursed to pay a SB407 award may create a conflict. See Rule 16-108 NMRA (conflict of interest, current clients; specific rules).

HCA provides the following:

To meet SB407 requirements for a Medicaid personal spending allowance, the state will need to create a mechanism for issuing and tracking monthly payments of the Personal Needs Allowance (PNA). Section 27-2-12.9 NMSA 1978 specifically refers to Medicaid PNA increases.

SB407 requires the provision of health, vision, and dental insurance coverage at no cost for two years from the date of release through Medicaid, the New Mexico health insurance exchange, or another comparable health insurance program. To maintain these benefits, the state may need to use only state general funds if federal matching funds for alternative health care coverage are not available.

Typically, coverage of health care services using only state general funds is provided on a fee-for service basis for a specific set of claims that cannot be paid through Medicaid (due to the recipient not meeting Medicaid eligibility qualifications).

The language in SB407 conflicts with federal regulations for determining eligibility for SNAP, Medicaid, Cash and LIHEAP. SB407 provides a person with a \$2,000.00 a month stipend for two years and entitles them to SNAP, Medicaid, LIHEAP, and Cash programs plus other support services. SB407 requests a general fund appropriation to issue benefits which would be countable towards the federal programs administered by ISD.

Page 13 lines 16-20 and Page 14 lines 1-15 conflicts with federal law as federal law requires an individual to meet the standard financial and nonfinancial eligibility requirements.

Page 19 line 1, HCA would not be able to implement by July 1, 2025.

DPS provides the following:

This bill places new demands on DPS to process expungement orders in a timely manner. Existing federal requirements under the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division mandate that expunged records be removed from national databases, which adds procedural complexity. LERB must synchronize its expungement processes with state and federal systems, ensuring compliance with 28 Code of Federal Regulations Part 20, which governs the privacy and security of criminal history record information. Additionally, failure to execute expungement orders properly could result in civil liability for DPS under the federal Privacy Act of 1974 (5 U.S.C. §552a), which requires correction or deletion of inaccurate government records.

SB407 relates to New Mexico's Expungement Act (NMSA 1978, Section 29-3A-1 to 29-3A-9), which already provides a mechanism for clearing wrongful convictions. However, unlike SB 407, the Expungement Act requires petitioners to wait one-year post-exoneration to request record clearance. If passed, SB407 would mandate immediate expungement, necessitating procedural modifications to prevent conflicting interpretations of record retention laws.

Page 11 of the bill states: enter an order of expungement pursuant to Section 29-3A-4 NMSA 1978 or an order sealing records and files pursuant to Section 32A-2-26 NMSA 1978, as applicable to the petition. The expungement or sealing order shall provide that

the petitioner is entitled to, upon request to the DPS LERB, copies of the arrest and other criminal records related to the conviction at issue in the petition.

In New Mexico, as referenced in NMSA 1978 Section 29-3A-4, individuals seeking to expunge their records may be allowed to file their petition under seal (keeping their identity and records private). A seal is not the same as a permanent deletion of a record. When a record is sealed, it is hidden from public access but still exists in legal and government databases. It can only be accessed under specific circumstances, such as by the parties, pursuant to a court order, or for law enforcement purposes. A permanent deletion, also known as expungement, means that the record is completely erased as if it never existed. These records are typically removed from all official databases and cannot be accessed even with a court order (except in rare cases). These rare cases can include the following:

- Law Enforcement and Criminal Investigations: Courts, law enforcement agencies, and other criminal justice agencies retain access to expunged records for purposes such as criminal investigations, persecutions, and sentencing considerations.
- Employers Requiring Security Clearance: Employers in sectors that require security clearances, such as financial institutions regulated by the Securities and Exchange Commission (SEC), may have access to expunged records during background checks.

It is important to note that while expunged records are removed from public access and background checks, they are not destroyed. The records remain accessible to specified entities under the conditions outlined above. See the Criminal Records Expungement Act found at NMSA 1978, Sections 29-3A-1 through 29-3A-7.

The provisions outlined in Section 8(B)(2) mandate that individuals acknowledge receipt of the Wrongful Conviction Compensation and Services Act through a signed document. However, as individuals cannot be compelled to sign documents, it is recommended that the documentation process be revised. Specifically, if an individual refuses to sign, a state official should be required to submit an affidavit, under penalty of perjury, attesting that the notice was provided in writing.

Furthermore, the bill does not impose a cap on potential awards, which could result in significant financial liability. This concern is particularly notable in Section 6(A)(2-8), where, for instance, Section 6(A)(2) allows for the recovery of economic damages stemming from wrongful convictions. In cases involving high-earning professionals, such as neurosurgeons, the resulting compensation for lost income could be substantial.

Additionally, the bill remains silent on whether hearings are to be conducted before a jury. Given that these proceedings fall under civil litigation, it is presumed that a jury would be impaneled (a jury is selected and sworn in to hear a case) if requested by either party.

## **ADMINISTRATIVE IMPLICATIONS**

DPS provides the following:

If passed, SB407 would require DPS to process record expungements upon court order, necessitating adjustments to individuals records once the DPS Legal has completed their

review. LERB would then need to coordinate with the New Mexico Administrative Office of the Courts (AOC) and the FBI to ensure synchronized record updates. LERB, which maintains arrest records, would need to adapt its procedures to prevent records from being disseminated after expungement orders. Staff training on record disposition policies would be essential to maintain compliance.

HCA provides the following:

SB407 will require HCA to promulgate rules, create an application form to apply for benefits, process applications within 14 days of the date of application.

The proposed effective date introduces significant barriers to the appropriate staffing (creation, recruitment, and onboarding) needed for successful program implementation and management.

## OTHER SUBSTANTIVE ISSUES

NMAG provides the following:

Section 3 appears to permit a SB407 petitioner to file a SB407 petition in any district court in New Mexico. Failing to limit venue may increase costs and inconvenience to SB407 litigants. Venue could be limited by (1) the county where the petitioner was wrongfully convicted; (2) the county where the petitioner served part or all of the sentence that was imposed; or (3) county that has a NMAG office.

DPS provides the following:

The expungements outlined in SB407 are for civil purposes only. Current expungement laws focus on conviction records, but arrest records associated with wrongful convictions may still be accessible under NMSA 1978, Section 29-10-1, which governs arrest record retention. This article does not grant the court's authority to expunge or seal criminal records. All arrest record information is subject to conditional or limited disclosure.

Neither the Arrest Record Information Act nor Inspection of Public Records Act authorizes law enforcement agencies to protect the identity of persons who have been arrested or charged with a crime. The Arrest Records Act does not prohibit the release of timely, accurate information when a juvenile is arrested for a criminal act.