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FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 2/19/2017
 LAST UPDATED 2/23/2017 HB _____

SHORT TITLE Uniform Collateral Consequences of Conviction SB 292

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	See fiscal implications	See fiscal implications	See fiscal implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Law Office of the Public Defender (LOPD)
- New Mexico Corrections Department (NMCD)
- Crime Victims Reparation Commission (CVRC)

SUMMARY

Synopsis of Bill

SB 292 enacts the Uniform Collateral Consequences of Conviction Act (UCCA), requiring:

- the New Mexico Sentencing Commission (NMSC) to identify, collect and publish on the NMSC website any provision in the Constitution of New Mexico and New Mexico's statutes that imposes a collateral sanction or authorizes the imposition of a disqualification, and any provision that may afford relief from a collateral consequence. If available, the NMSC is required to publish the title and internet address of the most recent collection of collateral consequences imposed by federal law and any provision of federal law that may afford relief from a collateral consequence. (Section 4)
- counsel representing an individual charged with an offense to provide notice of collateral consequences during pretrial proceedings. Also requires a court to confirm that the individual received notice and had an opportunity to discuss the notice with counsel prior to acceptance of a plea of guilty or nolo contendere. (Section 5)
- counsel and the officer or agency releasing the individual from incarceration to provide notice of collateral consequences not more than 30 and, if practicable, at least 5 days before sentencing and release, respectively. (Section 6)

- a collateral sanction to be imposed only by statute, ordinance, or by rule authorized and adopted accordance with applicable law creating a collateral consequence that is ambiguous is to be construed as authorizing a disqualification, (Section 7)
- a decision-maker to undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual and specifies information that the decision-maker may and shall consider. (Section 8)
- for purposes of authorizing or imposing a collateral consequence in New Mexico: (1) that a conviction of an offense in a court of another state or the U.S. is deemed a conviction of the offense in New Mexico with the same elements; (2) that a juvenile adjudication in another state or the U.S. not be deemed a conviction of a felony, misdemeanor or lesser offense in New Mexico; (3) that a conviction that is reversed, overturned or otherwise vacated by a New Mexico court, a court of another state or of the U.S. on grounds other than rehabilitation or good behavior not serve as the basis for authorizing or imposing a collateral consequence in New Mexico; (4) that a pardon issued by another state or the United States be given the same effect for purposes of authorizing, imposing and relieving a collateral consequence in New Mexico as it has in the issuing jurisdiction; (5) that a conviction that has been relieved by expungement, sealing, annulment, set-aside or vacation by another court on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute has the same effect for purposes of authorizing or imposing collateral consequences in New Mexico as it has in the jurisdiction of conviction, subject to specified conditions; and (6) that a charge or prosecution in any jurisdiction that has been finally terminated without a conviction and imposition of sentence based on participation in a deferred adjudication or diversion program not serve as the basis for authorizing or imposing a collateral consequence in New Mexico. (Section 9)

Section 10 permits an individual convicted of an offense to petition the sentencing court for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing. SB 292 permits the court to issue an order of limited relief of the collateral sanctions described if the individual's criminal history, any filing by a victim pursuant to Section 14 of the UCCCA or a prosecutor and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that: (1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits or occupational licensing; (2) the individual has substantial need for the relief requested in order to live a law-abiding life; and (3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual. The order of relief is required to specify the collateral sanction from which relief is granted and any restriction imposed pursuant to Section 12(A) of the UCCCA.

Section 11 provides the following list of collateral sanctions not subject to an order of limited relief:

- requirements imposed by the Sex Offender Registration and Notification Act;
- a motor vehicle license suspension, revocation, limitation or ineligibility pursuant to the Motor Vehicle Code, for which restoration or relief is available pursuant to law other than the Uniform Collateral Consequences of Conviction Act;
- ineligibility for certification as a law enforcement officer pursuant to the Law Enforcement Training Act or for employment as a correctional officer pursuant to the Corrections Act; or

- prohibitions imposed pursuant to 30-7-16 NMSA 1978 making it unlawful for felons to receive, transport or possess a firearm or destructive device while in this state.

Section 12 requires the prosecutor be notified of a request for an order of limited relief and permits the court to issue an order of limited relief subject to restriction, condition or additional requirement. The bill requires the court to order any test, report, investigation or disclosure by the individual it reasonably believes necessary to its decision to issue an order of limited relief.

Section 13 permits an order of limited relief to be introduced in a judicial or administrative proceeding alleging negligence or other fault as evidence of due care.

Section 14 permit a victim of an offense to participate in a proceeding for issuance of an order of limited relief in the same manner as at a sentencing proceeding pursuant to the Victims of Crime Act.

Section 16 provides that the UCCCA applies to collateral consequences unless the law creating the collateral consequence expressly states the UCCCA does not apply. The bill clarifies that the UCCA does not apply to the imposition of a collateral sanction on an individual until the date that is 6 months after the required collection of laws is first available on the internet, but a collateral sanction validly imposed before that date may be the subject of relief pursuant to the UCCCA.

FISCAL IMPLICATIONS

LOPD states the fiscal impact for the public defender could be notable. Additional demands on an already overburdened criminal justice system are likely to have fiscal consequences. While the courts, district attorneys, and trial counsel should already be advising defendants of most of these consequences, fiscal impact assessment would be necessary after the implementation of the proposed scheme. The bill creates a series of mandates which require that the public defender engage in research, draft a resource with citations and explanations of the collateral consequences it identifies, utilize its IT department to publish the list, follow legislation so that the list can be updated every year, and train employees on collateral consequences and what advisements would become statutorily required if the law is implemented. This would undoubtedly use public defender resources in many ways. Though the public defender would likely be able to absorb some of these costs in the short term, increasing the attorney workload and further stretching IT resources would likely result in the public defender needing increased funding in the future.

LOPD also explains the bill could result in increased appeals. The appellate division of the public defender is particularly strained, and if this law did increase the appeal case load in any significant way the fiscal impact on the public defender could be pronounced, as it might require adding more full-time employees to that division.

LOPD stats a very clear advisement of collateral consequences might dissuade some defendants from entering pleas, which could increase the number of cases that go to trial. If trials increased in any significant way, the public defender would again need to higher more full-time employees.

The AOC explains there will be a minimal administrative cost for statewide update, distribution and documentatio laws, amendments to existing laws and new hearings have the potential to increase caseloads in n of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and required court orders, hearings and other proceedings. New the courts, thus requiring additional resources to handle the increase.

The AOC also stated “while the enactment of the UCCCA could lead to additional hearings when the collateral consequences are what are really at stake, as well as additional hearings on motions for orders of limited relief, the cost of which are unknown at this time, it is also possible that fewer pleas will be overturned as involuntary or uninformed, so fewer reversals for new trials or additional proceedings may occur than currently.”

NMSC states there will be no cost to comply with the bill. The commission will only have to post a link to the UCCA on their website.

In response to SB 158, the AOC warned the bill could lead to additional hearings when the collateral consequences are what are really at stake, as well as additional hearings on motions for orders of limited relief, the cost of which are unknown at this time, it is also possible that fewer pleas will be overturned as involuntary or uninformed, so fewer reversals for new trials or additional proceedings may occur than currently.

SIGNIFICANT ISSUES

LOPD states “while this bill states that it does not create a cause of action for money damages, the bill does create several new duties and requirements for multiple agencies. For those reasons, new liabilities or bases for existing liabilities might result from this legislation. Any failure of the public defender to properly explain and notify the defendant of collateral consequences at the plea stage could result in increased appeals based on ineffective assistance of counsel. Appeals would likely be fairly limited, based on how the legislation is drafted and because appeal opportunities are usually foreclosed through the entry of a plea, which is when the issue would mostly arise.”

LOPD also explains the bill “creates new duties for several agencies, but has no appropriations for any agency. Given that state agencies are facing significant budget cuts this fiscal year it might be problematic to impose new obligations upon them when they will already be struggling to meet their previous obligations with fewer resources.”

The AOC submits the following analysis:

Section 2(C) defines “convicted” and “conviction” to include an adjudication as a youthful offender or serious youthful offender that results in an adult sentence. SB 158, as introduced in 2013, included within the definitions of adjudication as a juvenile.

Section 28-2-1 NMSA 1978 *et seq.* sets out the Criminal Offender Employment Act. To the extent that the UCCCA conflicts with that Act, it is unclear how conflicts would be resolved. The amended SB 158, a duplicate of SB 292, passed the House and Senate unanimously in 2013 but was vetoed by the Governor.

The UCCCA permits an individual to petition for an order of limited relief at or before sentencing. If allowing an individual to successfully integrate back into society following incarceration is an important factor in reducing recidivism, it may be worth it to permit an individual to petition up to and upon release from incarceration, regardless of the costs incurred and the resources expended.

Uniform Law Commission [documents](#) pertaining to the UCCCA, including a summary of the Act, a legislative fact sheet, the final act with comments and prefatory note, etc. can be found at the commission's website.

In their prefatory note to the final act, the commissioners report:

Both the criminal justice system and society as a whole face the problem of managing the growing proportion of the free population that has been convicted of a state or federal criminal offense. In a trend showing little sign of abating, the U.S. prison population has increased dramatically since the early 1970s. Heather C. West & William J. Sabol, *Prisoners in 2007*, at 1, Bureau of Justice Statistics Bulletin (Dec. 2008, NCJ 224280); Thomas P. Bonczar, *Prevalence of Imprisonment in the U.S. Population, 1974-2001*, at 1, Bureau of Justice Statistics Special Report (Aug. 2003, NCJ 197976). Prison growth is large in absolute and relative terms; in 1974, 1.8 million people had served time in prison, representing 1.3% of the adult population. In 2001, 5.6 million people, 2.7% of the adult population, had served time. The Department of Justice estimates that if the 2001 imprisonment rate remains unchanged, 6.6% of Americans born in 2001 will serve prison time during their lives. Bonczar, *supra*. This may be an underestimate given that the incarceration rate has increased every year since 2001. See Pew Center on the States, [One in 100: Behind Bars in America in 2008](#).

NMCD explains “if the passage of the bill were to result in the removal of societal obstacles for former inmates, it could potentially reduce recidivism rates. Any reduction in recidivism rates is speculative, and is unlikely to be known for several years.”

ADMINISTRATIVE IMPLICATIONS

LOPD states the bill has fairly onerous administrative implications for what are termed the id agencies, which include the New Mexico sentencing commission, the district attorney, the attorney general, and the public defender. Not included within the definition of an id agency but still impacted are all corrections facilities in New Mexico. The bill requires each agency to engage in research and drafting through its mandate that the id agencies identify, collect, cite and describe collateral consequences found in our constitution and statutes. The mandate creates an ongoing duty to update and publish that list on the id agencies website. The bill also requires courts and public defenders to provide particular notice to defendants at the plea stage. Thus, the bill will require the id agencies to utilize their IT agencies in order to create a new webpage and update it. In addition to utilizing existing staff and possibly creating the need for additional staff and funds for the agencies, the implementation of these laws would require agency wide trainings on their new duties.

The bill requires NMCD to give notice to its paroling or discharging inmates that collateral consequences may apply because of their convictions, the internet address of the relevant collections of laws pertaining to collateral consequences, and that there may be ways to obtain relief from these collateral consequences. This notice must be no more than 30 days, and if practicable, at least five days before release. NMCD should be able to absorb this administrative burden with current staffing levels.

TECHNICAL ISSUES

According to the LOPD, the bill attempts to give courts the authority to essentially nullify collateral consequences created by law and imposed by a departments, agencies, officers, and instrumentalities for any individual person who is eligible to be sanctioned by the consequence. It is unclear how or whether a court's order granting relief to an individual for a certain collateral consequence would bind an agency over which the court has no jurisdiction.

OTHER SUBSTANTIVE ISSUES

LOPD analysis states:

Not included within the reach of this bill is an even larger body of collateral consequences emanating from the private sector. Those collateral consequences are often similar and equally disruptive and include similar disqualifications like access to housing, employment, and loans. The bill does not seek to identify or categorize these types of collateral consequences and thus does not provide guidance on how an attorney, a court, or a correctional facility is to assist a defendant in navigating this other world of collateral consequences, if at all. Given that this bill requires very specific notification of what collateral consequences are and how to obtain relief from them, it could lead to confusion and to a defendant erroneously believing that that they have been fully informed of all collateral consequences, only to find that severe disabilities still apply when trying to reestablish themselves after a sentence. It would be advisable to include a broad notice statement that other types of collateral consequences exist, outside of consequences implemented by state actors, in the advisement portion of this bill.

NMCD explains current law makes individuals with felony convictions ineligible to become correctional officers. This bill could conceivably result in a convicted felon being given the right to be eligible to become a correctional officer. NMCD states having a convicted felon (especially one who had previously served prison time in a NMCD prison) work as correctional officer in a NMCD prison would pose an unreasonable risk to the convicted person as well as NMCD staff.

ALTERNATIVES

NMCD suggests amending the bill to state that a convicted felon's ineligibility to become a correctional officer is not grounds for filing a petition for limited relief.

TR/al/jle