

LFC Requester:

Felix Chavez

### AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

#### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 2/19/2025

Check all that apply:

Bill Number: SB407

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Linda M. López  
Sen. Antoinette Sedillo Lopez

Agency Name and Code Number: 305 – New Mexico  
Department of Justice

Short Title: Wrongful Conviction  
Compensation and Services  
Act

Person Writing Analysis: Benjamin L. Lammons  
Phone: 505-537-7676  
Email: legisfir@nmag.gov

#### SECTION II: FISCAL IMPACT

##### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

##### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

SB407 creates a new civil cause of action that would allow persons wrongfully convicted of criminal offenses or persons who have been pardoned to recover civil damages and other relief, including services. SB407 also create a wrongful conviction compensation fund (“WCCF”) and appropriates nine million dollars from the general fund to the WCCF to compensate such persons.

Section 1 provides that the new act should be cited as the Wrongful Conviction Compensation and Services Act (“WCCSA”).

Section 2 defines the following terms for the WCCSA: “conviction,” “correctional facility,” “incarceration,” “petition,” “petitioner,” “released person,” and “sentenced.”

Section 3 specifies that the petition for relief under the WCCSA must be filed in the district court. It also specifies that, once the petition is filed, it must be heard within 180 days, except in cases where there is good cause to extend that deadline. The district court must provide petitioners and the New Mexico Department of Justice (“NMDOJ”) with notice of the hearing at least 90 days before the hearing. The NMDOJ may oppose the petition, offer evidence, and make argument.

Section 4 provides that to be *entitled* to damages and other relief, a petitioner must prove by a preponderance of the evidence that he or she: (1) was convicted and sentenced; (2) served all or part of the sentence; (3) did not commit the crime resulting in the conviction or no crime was committed; and (4) was pardoned or the conviction was overturned, reversed, or vacated on direct or collateral review. If the conviction was reversed on direct or collateral review, a petitioner must also prove that (a) he or she was not convicted of a lesser-included felony offense arising from the same facts, unless that felony was the result of an *Alford* or no-contest plea “while maintaining a claim of innocence” and (b) either the charge was dismissed or the person was acquitted of the charge upon retrial, *or* if the person would have otherwise been entitled to a new trial, they entered an *Alford* plea or a plea of no contest while claiming innocence. This section also allows for proof of eligibility by the granting of a habeas corpus petition. Subsection (C) provides that the petition shall be denied if the attorney general establishes by a preponderance of the evidence that the released person was an accomplice to a crime or intentionally and voluntarily cause their own conviction by committing perjury or fabricating

evidence at trial.

Section 5 provides that a district court, when determining the admissibility and weight of evidence in a WCCSA case, “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 petitioner or the [NMDOJ].” It also provides that the granting or denial of a petition shall not be admissible as evidence in any other proceeding.

Section 6 lists categories of damages that “shall be awarded” to a petitioner who prevails on a WCCSA claim. These include:

- damages for loss of liberty, and pain and suffering, for up to \$100,000 for each year of incarceration while awaiting a death sentence; \$75,000 for each year of incarceration other than while awaiting a death sentence; and \$50,000 for each year on parole or probation or subject to sex offender registration, each prorated as appropriate.
- economic damages.
- child support that petitioner could not pay while incarcerated.
- reasonable attorney fees and costs incurred by the petitioner to overturn the wrongful conviction or in obtaining a pardon.
- reasonable attorney fees and costs incurred by a petitioner in obtaining WCCSA relief.
- reimbursement for other costs, fines, fees or other charges imposed on a wrongfully convicted or released person or petitioner not otherwise reimbursed.
- reimbursement for restitution amounts paid by or on behalf of the released person or petitioner because of the conviction that were not already otherwise reimbursed.
- reimbursement for any reasonable reintegration services and mental health care costs incurred by the released person between the release date and the date of the WCCF award.

Section 6 also states that, except as other provided in (C), a petitioner is not entitled to relief for time during which they were serving a concurrence sentence for a crime that was not overturned, reversed, or vacated or for which the petitioner was not pardoned. Section 6(C) provides for additional limited exceptions to the exceptions outlined in (B). Section 6(D) states that the monetary amounts indicated above shall be adjusted by a percentage increase or decrease for certain regions; (E) provides for payment in a lump sum; (F) offsets the amount of damages for certain costs, expenses, or the value of goods or services provided to the petitioner; (G) and (H) allow for adjustments of the award based on certain occurrences; (I) and (J) require expungement under Section 29-3A-4 NMSA 1978 and requires NMDOJ to provide a letter to petitioner regarding the same; and (K) states that a petitioner’s acceptance of relief under the EWCCSA does not preclude other relief under the law.

Section 7 identifies a stipend and services that a wrongfully convicted person is eligible for when a conviction is reversed, overturned, or vacated and the person is released. These include:

- a \$2,000 stipend.
- two years of services, programs, and housing in a community corrections outpatient treatment or community corrections residential treatment program.
- public assistance.
- health, vision, and dental coverage.

- food benefits in the maximum benefit amount permitted under the supplemental nutrition assistance program.
- a Medicaid personal spending allowance pursuant to NMSA 1978, Section 27-2-12.9; and
- utility assistance pursuant to the Low-Income Utility Assistance Act.

Section 7 also requires that, within 120 days of the effective date of the WCCSA, the health care authority (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.

Lastly, Section 7 requires that 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 necessary information to the HCA and promulgate rules designed to ensure that the person wrongfully convicted receives a benefits application form and a \$2,000 stipend after being released.

Section 8 requires a court to provide a wrongfully convicted person a copy of the WCCSA, notify them of their WCCSA rights in writing, and obtain and file a signed form from that person acknowledging that they have been notified of their WCCSA rights. This Section also requires the Governor's office to do the same with regard to a pardoned person.

Section 9 establishes statutes of limitation for bringing WCCSA claims. Such claims must be brought no later than six years from the date the wrongfully convicted person was sentenced to incarceration, probation, parole, or required to register as a sex offender or no later than six years from the date the wrongfully convicted person was notified of his or her WCCSA rights.

However, if new evidence of innocence is obtained less than two years before either of the above statutes of limitations expire, a WCCSA petition may be filed up to four years after the date the new evidence was obtained.

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 WCCSA petition and seeking to recover damages or other relief.

Section 11 creates the WCCF. It provides that WCCF monies are appropriated "for the purposes of paying petitioners awarded relief under the [WCCSA]." It also requires that the NMDOJ administer the WCCF and that disbursements be made "by warrant of the secretary or finance and administration pursuant to vouchers signed by the attorney general or the attorney general's authorized representative.

Section 12 provides that the "The [WCCSA] shall be liberally construed to carry out its purposes."

Section 13 states: "Nine million dollars (\$9,000,000) is appropriated from the general fund to the [WCCF] for expenditures in fiscal 2026 and subsequent fiscal years to carry out the purpose of the [WCCSA]. Any unexpended or unencumbered balance at the end of the fiscal year shall not revert to the general fund."

Section 14 provides that the WCCSA's effective date is July 1, 2025.

## FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

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

## SIGNIFICANT ISSUES

### Definitions

Section 2 does not define “wrongful conviction” or “pardon.” Because the WCCSA 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 WCCSA petitioner or the district court is required to serve the NMDOJ with a copy of the petition. Without notice regarding the specific nature of a WCCSA claim, the NMDOJ 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 WCCSA 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 WCCSA 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 the [NMDOJ].” 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 WCCSA 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 the NMDOJ to litigate WCCSA claims. However, NMDOJ special prosecutors prosecute felony offenses in New Mexico state courts. If a conviction obtained by a NMDOJ special prosecutor becomes the basis for a WCCSA claim, that prosecutor may have a conflict of interest which, in turn, may be imputed to other NMDOJ attorneys and prohibit them from litigating WCCSA 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 the NMDOJ to administer the WCCF. But having the NMDOJ take on an adversarial role by litigating the WCCSA claim as required by Section 3, and having the NMDOJ switch to a fiduciary role when WCCF monies must be disbursed to pay a WCCSA award may create a conflict. *See* Rule 16-108 NMRA (conflict of interest, current clients; specific rules).

### **PERFORMANCE IMPLICATIONS**

None.

## **ADMINISTRATIVE IMPLICATIONS**

None

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

No duplicate, companion, conflicting, or related bills appear to have been introduced in the current legislative session.

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

Section 3 appears to permit a WCCSA petitioner to file a WCCSA petition in any district court in New Mexico. Failing to limit venue may increase costs and inconvenience to WCCSA 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 NMDOJ office.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**