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FISCAL IMPACT REPORT

ORIGINAL DATE 2-19-09

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE ID Theft Reports and Prosecution SB 500

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB279

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 500 would require mandatory police reports of identity theft cases on forms provided by and filed with the NMAGO. HB500 would also extend the statute of limitations for identity theft prosecutions up to five years after the violation is discovered. The bill also modifies N.M.S.A 1978, §30-16-24 by expanding the definition of identity theft to include using another individual's identity to impede a criminal investigation or process.

It also requires the NMAGO to provide victims of identity theft with an “Identity Theft Passport” which individuals can use for official purposes. It also requires the NMAGO to create a database to store information about individuals who are issued an Identity Theft Passport and to make that information to other law enforcement agencies. HB500 also requires the NMAGO to provide materials to law enforcement and the general public on methods of preventing identity theft.

Finally, it provides a procedural mechanism for individuals to challenge and expunge inaccurate criminal records.

FISCAL IMPLICATIONS

The Attorney General’s Office acknowledges the significant administrative responsibilities the bill places on its office yet provides no appropriation for operational costs. Administrative Office of the Courts also expresses concern regarding the fiscal impact on its agency.

SIGNIFICANT ISSUES

The district attorneys draw attention to the following issues:

1. In Section 4, subsection A, the use of the term “claims to be a victim of identity theft” might be overly broad, and leave room for fraud. It might be preferable to say or require “...a person who has reported to law enforcement that they are the victim of identity theft...”
2. It is not clear why the Attorney General is the most logical agency to implement and carry out the passport program contemplated by this bill. It would seem that perhaps the Motor Vehicle Division or some other agency might already be much better equipped to implement and oversee this program.
3. The term “factually innocent” in Section 5 is somewhat troubling. “Innocent” is usually used in conjunction with more formal proceedings regarding guilt or innocence, or in association with a situation in which there is no question about the identity of the person charged. One must wonder if issuance of a certificate of “factual innocence” leaves open possibilities for fraudulent use of such certificates, or their use in some other improper manner. Perhaps if the court issued something like an “order of identity theft victimization”-- although more awkward sounding—it might eliminate any question about the propriety of using the term “factually innocent”.

PERFORMANCE IMPLICATIONS

This legislation allows for a Memorandum of Understanding (MOU) between the DMV and the NMAGO in order to create Identity Theft Passports and corresponding databases.

DUPLICATION

House Bill 279 is a duplicate.

TECHNICAL ISSUES

Administrative Office of the Courts recommends that in Section 5.C the bill include guidance as to who may request a vacation of the determination of factual innocence, and the procedure for doing so. It also points out that there is no definition of “identity theft passport” and there is only limited direction to the AGO and DPS as to what information such a document shall contain.

OTHER SUBSTANTIVE ISSUES

Several states, including Ohio, Arkansas, Virginia, Delaware, Nevada, Montana and others have adopted legislation requiring their Attorney’s General to issue “identity theft passports” which is a card that can be presented to law enforcement or other individuals who may challenge an identity theft victim about their identity and which is designed to serve as a shield to protect victims from unlawful detention or arrest for crimes committed by another under a stolen identity. See <http://www.ncsl.org/programs/lis/privacy/idt-statutes.htm>.

A criminal court may not be able to effectively order credit reporting agencies to correct their records without having jurisdiction over those agencies.

EO/mt