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FISCAL IMPACT REPORT

ORIGINAL DATE 2/05/20
LAST UPDATED 2/10/20

SPONSOR Sedillo Lopez HB _____

SHORT TITLE Public Defender Innocence and Justice Project SB 196

ANALYST Dick-Peddie

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$250.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$618.0	\$618.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
The Innocence Network

Responses Received From

Public Defender Department (PDD)
New Mexico Attorney General (NMAG)
Administrative Office of the District Attorneys (AODA)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 196 appropriates \$250 thousand from the general fund to the Public Defender Department for the purpose of exploring the option of creating an innocence and Justice project and “any other needs the agency might have.”

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Innocence and justice projects, sometimes called innocence clinics, are programs typically housed in law schools that work to over-turn wrongful convictions or otherwise exonerate incarcerated individuals who assert their innocence. These cases are often dated, time-intensive and can involve extensive DNA testing. According to the Innocence Network, there are over 50 innocence projects across 47 states. The University of New Mexico (UNM) currently houses an Innocence and Justice Program within the UNM School of Law, which leveraged private donations and grants with funding from the university, but will discontinue the program in FY21 due to budgetary concerns.

According to the UNM Innocence and Justice Project, successful adjudication of dated cases without DNA testing can cost up to \$180 thousand per case. The New Mexico Sentencing Commission (NMSC) noted that a DNA test can cost anywhere from \$60 thousand to \$87 thousand per kit.

The appropriation contained within SB196 is intended to enable PDD to undertake initial research and planning for creating an innocence and justice project within the agency. After the planning stage, the recurring costs to the agency could be much higher to account for staffing, DNA testing, and other costs associated with reexamining closed and often dated cases. PDD agency analysis shows that the cost of an attorney with the relevant experience necessary to run the program would cost approximately \$219 thousand per year, and the department would need at least two such attorneys to operate an innocence and justice project. Assuming the department could handle taking on 5 cases per year, if even half of those cases required DNA testing at 60 thousand per test, the recurring cost to the agency would be approximately \$618 thousand from the general fund.

According to a letter submitted February 5th, 2020 by the Dean of the UNM School of Law, the cost of running the program at UNM at full capacity was \$300 thousand a year. This figure would not reflect the cost of running the program at PDD, as the UNM School of Law utilized existing staff as well as law students to work on cases.

The appropriation of \$250 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of Fiscal Year 2021 shall revert to the General Fund.

SIGNIFICANT ISSUES

In a letter of support for SB196, Sergio Pareja, UNM School of Law Dean, stated that the Public Defender Department would be a good place to house the Innocence and Justice Program, as the law school can no longer properly support the programs efforts. Dean Pareja also noted that the law school would be interested in creating a “wrongful conviction externship” program in partnership with PDD to allow law students to continue to assist in exonerating individuals who maintain their innocence.

Of the innocence programs examined by LFC nationwide, most are non-profit organizations or housed in law schools rather than within a state agency. There may be a conflict of interest in placing such a program within PDD, if, for example, an individual was wrongfully convicted due

to ineffective counsel from the agency. Additionally, the phrase “any other needs the agency might have” included in SB196 may be overly broad, allowing the agency to use the funds for purposes unrelated to the creation of an innocence and justice project.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Innocence and Justice Program at the UNM School of Law will continue to be the only innocence clinic in the state.

ADP/sb