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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/21

SPONSOR Cervantes LAST UPDATED _____ HB _____

SHORT TITLE Uniform Collateral Consequences of Conviction SB 183

ANALYST Eckberg

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

Senate Bill 183 enacts the Uniform Collateral Consequences of Conviction Act (Act). Collateral consequences are broadly defined to include both collateral sanctions and disqualifications. Collateral sanctions is defined as a disability or penalty imposed on a person as a result of conviction that applies by operation of law. A disqualification is defined as a penalty that may be imposed by an administrative agency or court in a civil proceeding on grounds relating to the individual's conviction. The bill requires the New Mexico Sentencing Commission (in conjunction with the district attorneys and NMAG) to identify and compile all New Mexico legal provisions that impose collateral consequences or disqualifications, and any provision that may afford relief from a collateral consequence. The compilation (and required updates) must be posted on NMSC's website.

Counsel representing individuals charged with an offense are required to give written notice to the accused individual of the additional legal consequences beyond just a conviction (using the same or a similar informational form provided in the bill). Before accepting a plea of guilty or no contest

a court must confirm that the individual received and understands this notice. A sentencing court must provide additional notice as part of sentencing, or, if the individual has been sentenced to imprisonment or other incarceration, the officer or agency releasing the individual shall provide that notice at least five days before release.

A collateral sanction must be imposed only by statute or ordinance, and any ambiguity in the statute must be construed as only a disqualification and not as a collateral sanction. Disqualifications may be imposed by relevant decision makers (a state department, agency or officer, or other public entities that may become subject to the Act by other law or ordinance) only after individually assessing whether the relevant benefit or opportunity should be denied to the individual, and after reviewing other relevant information (including any effect on third parties).

Convicted individuals may petition the sentencing court for limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing. Numerous factors must be considered by the court, including whether granting the requested relief would pose an unreasonable risk to the safety or welfare of the public or any individual. The prosecutor shall be notified of the petition and may submit evidence and be heard on relevant issues. Victims are allowed to participate in hearings regarding petitions for limited relief in the same manner as existing law allows at a sentencing proceeding.

Judges or courts cannot grant petitions for limited relief as to the requirements of the Sex Offender Registration and Notification Act, motor vehicle license suspensions or revocations arising out of the Motor Vehicle Code when restoration or relief is available under other law, ineligibility for certification as a law enforcement officer or employment as a correctional officer, or legal prohibitions making it illegal for convicted felons to carry or possess firearms or destructive devices.

In civil lawsuits alleging negligent hiring or other forms of negligence, orders of limited relief are evidence of due care in hiring, retaining, licensing, leasing to, and otherwise transacting business with the convicted individual if the person being sued knew of the order or certificate at the time of the alleged negligence or fault.

Finally, the Act does not provide a basis for invalidating a plea or conviction, a basis for a cause of action for monetary damages, or a basis for a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with the Act.

The effective date of SB183 is January 1, 2022.

FISCAL IMPLICATIONS

Administrative Office of the Courts (AOC) explains there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any processes the court is required to undertake under the Uniform Collateral Consequences of Conviction Act, including entertaining a petition for and issuing an order of limited relief. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Administrative Office of the District Attorneys (AODA) notes depending on how many petitions are filed, it could affect the workload of district attorneys, public defenders, and courts. Prosecutor's offices may also incur additional expenses should the need arise to have expert witnesses at the hearings on the petitions.

New Mexico Sentencing Commission (NMSC) advises that though they may rely on compilation work done in this area by the National Institute of Justice (NIJ), there still would be a significant amount of work to collate all of the initial data, publish the data on collateral consequences on its website, and keep the information updated as required under SB183. At present, Commission staff is already operating at capacity given its staffing levels. Additionally, were the federal law requiring NIJ to collect information on collateral consequences to change, the burden on NMSC would be considerable.

Public Defender Department (PDD) indicates any increase in workload necessary to comply with SB183 would likely be absorbed in the ordinary course of business.

The bill does not include an appropriation.

SIGNIFICANT ISSUES

SB183 implements a uniform act, meaning it is a product of the National Conference of Commissioners on Uniform Statutory Laws (NCCUSL), intended to be passed in all 50 states so that it is uniformly applied. Vermont is the only state to have enacted the act and the Massachusetts Legislature introduced it in 2021.

New Mexico Office of the Attorney General (NMAG) notes SB183 appears to duplicate already existing requirements in court rules requiring both counsel and the court to advise a defendant of collateral consequences, as well as procedures for obtaining relief from collateral consequences, when such relief is allowed. Neither the Supreme Court nor the federal circuits have held that the trial court must inform defendants of all possible consequences flowing from a guilty plea.

AODA raises the concern that it is not clear what the role of district attorneys will be in working with the sentencing commission other than helping to provide information of collateral consequences.

NMSC notes that criminal justice reform efforts in the nation have started to focus on collateral consequences of a conviction and the barriers they pose to re-integration of those convicted of a crime into society. It provides this explanation of the concern:

The consequences of a criminal conviction don't end with the prison sentence served or fines paid. Collateral consequences — separate from and in addition to direct consequences, such as imprisonment, fines and community supervision — continue to affect millions of Americans who have been convicted of a crime as they attempt to develop productive lives after their release and rehabilitation. . . .

Collateral consequences have long been hidden, buried in the language of state and federal statutes and codes, without a straightforward way for individuals, their attorneys or their sentencing judges to know which ones might be pertinent and applicable to a specific situation. However, having this information is critical for making informed decisions

during the course of a criminal case and for understanding the legal and regulatory barriers to reentry.

“Criminal Conviction: Impact on Corrections and Reentry”, Catherine E. Forrest (NIJ Update, Corrections Today, January/February 2016).

According to the National Inventory of Collateral Consequences of Conviction (<https://niccc.nationalreentryresourcecenter.org/>, searched February 3, 2021), there are currently 617 collateral consequences in New Mexico.

PERFORMANCE IMPLICATIONS

AOC notes the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed.
- Percent change in case filings by case type.

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