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FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/09

SPONSOR Chasey LAST UPDATED _____ HB 209

SHORT TITLE Require Notice of Collateral Consequences SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Indeterminate See Below	Recurring	General

HB 209 relates to HB 210

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Bernalillo Metropolitan Court (BCMC)
 New Mexico Sentencing Commission (SC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 209 requires a court to provide a defendant with notice of collateral consequences of conviction prior to accepting a plea or entering a judgment on a plea agreement. A list of consequences will be provided to the AOC and annually updated by the SC.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. As stated below, for collateral consequences to be adequately addressed, there will have to be full time personnel to research and keep up with all areas of the law and any possible private consequences. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. 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.

SIGNIFICANT ISSUES

The 2008 Legislature created and provided funding for a Collateral Consequences Task force. With staffing and research provided by the SC, this task force determined that the consequences of a felony and some misdemeanor convictions go far beyond a jail or prison sentence or a period of probation. Defendants can lose professional and trade licenses or the ability to obtain them, gun privileges, federal housing assistance and more.

HB 209 creates an affirmative duty for the courts, which creates a situation where a plea that is constitutionally sound may be invalidated statutorily. The list created by the SC will be a starting point for the Courts. The Courts, not the SC, are responsible for the pleas and the consequences, not the SC. Thus, the Courts will have to have full-time staff dedicated to the continual changes in the law, particularly in the realm of immigration consequences that change on a more than annual basis. Additionally, the Courts will be duty bound to find out about all “collateral consequences” involving private industry so that pleas will not be invalidated.

The term “collateral consequences” is not defined or limited in the bill. For example, if a particular business refuses to hire anyone with a felony conviction for a particular offense, under this bill a defense attorney could argue that this is a collateral consequence and, though the plea for all other purposes will be constitutionally sound, the plea will be invalidated under the statute.

Moreover, in the case of immigration consequences, the New Mexico Supreme Court and the Court of Appeals have ruled that the trial court only has a duty to ensure that a defendant understands the “direct” consequences of the plea and is under no duty to advise the defendant of the “collateral” consequences. The trial court was not constitutionally required to advise the defendant in these cases of the result of deportation as a result of the plea. The Courts have continually put this duty on defense counsel who is in a better position to know the specific facts and circumstances of any client and determine the collateral consequences that a plea will incur.

HB 209 significantly expands the duties of the courts during criminal pleas. It is not likely that placing the initial responsibility for discovering collateral consequences on the SC will protect the finality of pleas when there is a later challenge based on a collateral consequence that the SC did not identify.

The PDD provided the following:

The statute does not clearly state that the requirements of this act also apply to magistrate and municipal courts. It is especially important for magistrate and municipal court judges to advise defendants of collateral consequences because so many people in those courts enter guilty pleas without ever talking to a lawyer. The vast majority of defendants charged with a first DWI enter uncounseled guilty pleas because there is no mandatory period of incarceration. They are not told that if they subsequently have several more convictions they will be subject to mandatory jails terms of one year in prison or more.

The language of the bill should clearly indicate that it applies to all courts or there should be a comparable statute incorporating this requirement into the magistrate and municipal court codes.

ADMINISTRATIVE IMPLICATIONS

This bill will require the courts to print or post the subject notice. It will require the SC to check each year to see if newly-enacted laws required the notice to be amended.

RELATIONSHIP

HB 209 relates to HB 210, Continue Collateral Consequences Task Force which provides an appropriation to the SC to continue studying the collateral consequences of criminal arrest, conviction and incarceration.

DW/mc