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FISCAL IMPACT REPORT

SPONSOR Chasey ORIGINAL DATE 02/14/09
LAST UPDATED _____ HM 26
SHORT TITLE Criminal Charge Collateral Consequences SB _____
ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.0	\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
New Mexico Sentencing Commission (NMSC)
Public Defender Department (PDD)
New Mexico Corrections Department (NMCD)
Public Education Department (PED)
Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Collateral consequences are the results of arrest, prosecution or conviction for a crime and are not part of the sentence imposed. These consequences may be unintended and unforeseen by the defendant or may be direct consequences intended by the judge. Beyond the terms of a sentence, a defendant may experience many far-reaching and unexpected effects, including employment barriers, disenfranchisement, loss of access to federal educational loans, loss of professional licenses and eviction from public housing. The collective effect of these collateral consequences is to create substantial barriers to an individual's ability to reenter and become a productive member of society.

Collateral consequences may result in punishment far beyond the sentence prescribed by law and more severe than was intended or warranted. The American bar association standards for criminal justice require a court to ensure, before accepting a plea of guilty, that the defendant has

been informed of the collateral consequences of conviction and that failure of a court to inform a defendant of applicable collateral consequences shall not be a basis for withdrawing a plea of guilty. A system of justice that is fair and equitable should provide adequate information to guide the courts and defendants prior to the entering of a plea.

The New Mexico Sentencing Commission is requested to collaborate with the Public Defender the district attorneys and the Administrative Office of the Courts to develop a process of notification of the collateral consequences of criminal charges and to identify remedies to employment barriers. Also, a mechanism should be recommended for developing and disseminating a current list of collateral consequences to the court. The findings and recommendations regarding collateral consequences notification and remedies to employment barriers shall be presented to the appropriate interim legislative committee by November 1, 2009.

FISCAL IMPLICATIONS

There would not be any immediate increases in expenditures as all participants of the proposed group are already members of the New Mexico Sentencing Commission. However, if such changes were adopted by the criminal system there would be incremental increases based on additional administrative requirements (see District Attorney comments in Significant Issues section).

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission notes.

The Collateral Consequences Task Force, formed as a result of legislation passed in the 2008 session, asked the New Mexico Sentencing Commission and several other key agencies to study and make recommendations on the collateral consequences of a felony conviction. Collateral consequences are all the consequences other than direct consequences such as jail, prison or probation. They include loss of job, licensure, housing, parental rights, etc.

One of the recommendations of the Task Force was to have the state provide offenders with some type of notice of these consequences prior to pleading. Such a requirement would need to be thoughtfully developed so as to both provide the information to offenders and to minimize the impact on how pleas are handled. This Memorial asks the key players to consider these factors and possibly develop such a notice in accordance with American Bar Association standards and to report its findings to the appropriate interim committee by November 1 2009.

The Public Defender adds.

This Memorial would greatly assist the Department in the representation of its clients in informing them of the collateral consequences of their convictions, particularly in the context of plea agreements. At present, the primary burden of notification of the collateral consequences of a criminal conviction, at least in one regard, falls on the Public Defender Department. *See e.g., State v. Paredes*, 2004-NMSC-036, ¶¶ 12-16, 136 N.M. 533, 101 P.3d 799 (holding that it was ineffective assistance of counsel for an attorney to fail to advise a defendant that he would almost certainly be deported when he entered a particular plea, and as a result the defendant must be allowed to withdraw his plea as being involuntary and unknowing). Additional resources and continued co-operation with the other branches of the criminal justice system would assist the Public Defender Department in the effective representation of its clients.

The District Attorney information offers a slightly different view.

There are already procedures in place to assure a defendant is making a voluntary and informed decision when making his/her plea, Rule 8-502. Currently a defendant is questioned in regards to his understanding of his plea and if he has discussed it with his attorney or the government, Rule8-502(C) *Ensuring that the Plea is Voluntary*. If the defendant has questions regarding the effect of his plea, he is generally allowed to raise those concerns in the proceedings.

It is impossible for a court to cover every consequence of a plea or to have knowledge of every collateral effect of a plea. Requiring the court to inform the defendant of the effect his or her plea will have on employment possibilities would be speculation. Further a defendant who later felt he/she was not warned of a particular collateral effect of their plea could file a motion to set aside their conviction. The results of such a motion would include an increase in court resources, public defender resources and district attorney resources; all are which are currently overburdened. The motions would also result in lengthier resolutions to cases which cause additional emotional harm to victims.

The Higher Department offers some interesting insight from their perspective.

According to the U.S. Department of Justice individuals with criminal records who remain unemployed are more likely to commit more crimes. It is evident that postsecondary educational attainment increases an individual's employment earnings over their lifetime, lessens the likelihood of unemployment, and increases the likelihood of a healthy lifestyle. Education is not only for personal fulfillment, it is a major contributor to societal well-being. Providing educational opportunities to at-risk people not only provides them with a chance to succeed, but also reduces rates of criminal activity.

Barriers in financial aid availability for those convicted of felonies can make these opportunities difficult however, particularly drug convictions. The United States Higher Education Act's (HEA) Drug-Free Student Aid Provision denies federal aid to anyone convicted of possessing or selling controlled substances. This provision, originally added in 1998, was modified in 2006 to affect only students convicted while enrolled in school. Prior to this change it is estimated to have affected more than 180,000 individuals convicted of drug offenses since July 2000. (NASFAA, 2006)

The Coalition for Higher Education Act Reform (CHEAR), National Association of Student Financial Aid Administrators (NASFAA) and the congressionally appointed Advisory Committee on Student Financial Assistance, have recommended completely removing the drug conviction question from the Free Application for Federal Student Aid (FAFSA). But the current modified version remains, making federal aid, such as the Pell Grant and student loans, unavailable to students with drug convictions. It should be noted, however, that some New Mexico Higher Education institutions include questions of related to arrest and conviction on the application for admissions. These questions may serve as a barrier for education and career opportunities.

At the state level, many states deny or delay financial aid to prospective students with drug convictions. While states are not bound to mimic federal criteria in assessing an applicants eligibility for state financial aid programs, some states make use of the U.S. Department of Education's FAFSA determinations to decide eligibility for state financial aid programs.

House Memorial 26 – Page 4

In New Mexico, state financial aid grants and loan-for-service programs are available to students irrespective of drug convictions. In addition, the New Mexico Legislative Lottery is available to qualifying individuals with a New Mexico High School diploma or GED regardless of drug convictions.

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