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FISCAL IMPACT REPORT

ORIGINAL DATE 01/28/13

SPONSOR Moores LAST UPDATED _____ HB _____

SHORT TITLE Criminal Restitution Requirements SB 207

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	\$1,850	\$1,850	\$3,700	Recurring	General

(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)
 Attorney General’s Office (AGO)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 207 would amend NMSA 36-1-18 to include measures for collecting on a restitution order originating from a criminal action, judgment, and sentence after the duration of a sentence, including the period of probation and parole, have fully transpired. SB 207 would implement measures for holding hearings and determining the amount of the restitution owed in each case and would also require that the sentencing order include the full restitution determined to be due a victim unless the sentencing court finds records compelling reasons for not ordering full restitution. SB 207 would also amend NMSA 31-17-1 to grant the District Attorney in each district in the state the power and the responsibility for seeking liens and other civil proceedings in cases where the restitution is not fully made prior to the completion of a sentence and probationary/parole period.

SB 207 applies to any “person who commits a crime, whether in the criminal code or not.”

The SB 207 would take effect July 1, 2013.

FISCAL IMPLICATIONS

The fiscal impact in the above table is represents a minimum cost for effective implementation of the provisions of this bill. The PDD reported the need for an additional 6 attorney FTE, 2 in the Second Judicial District (Bernalillo County), and another 4 to serve the rest of the state. The approximate cost to the PDD was reported at \$450 thousand. Because the duties of the District Attorney include enforcement beyond the term or probation or parole, and because of the on-going interaction between the DA's and the victims, it can reasonably be assumed that the DA's will require at least double the resource as the PDD, or \$900 thousand. The courts will likely see a need for additional hearing officers and pro-se services particularly in limited jurisdiction courts. The estimated cost for the courts is \$500 thousand annually to provide a budget for 6 additional court clerks (approximately \$42 thousand annual salary and benefits) and 2 hearing officers (approximately \$119 thousand annual salary and benefits).

SB 207 will lead to increased costs to the AOC, AODA, and PDD as a result of the expanded duties set forth in the legislation. The District Attorneys will be impacted by this legislation more than any other agencies as SB 207 significantly expands their mission. According to the AODA, District Attorneys, like public defenders, are already over-burdened and struggling to keep up with burgeoning caseloads and increasingly complex litigation to prove the crimes were committed. Requiring them to take on proof of damages resulting from crimes would impair their ability to perform their current responsibilities without a significant increase in human and financial resources.

Courts statewide may be impacted as well. The AOC has stated that SB 207 requires a hearing on the plan of restitution. This appears to mandate a new type of hearing be afforded in every criminal case involving a victim, which could amount to many thousands of cases in limited jurisdiction as well as general jurisdiction courts.

SIGNIFICANT ISSUES

The AODA has stated the following:

The bill, as drafted, states that restitution is due from anyone who commits a crime; it has no plain statement that they must have been charged or convicted to be subject to having an order of restitution entered against them. The bill includes any crime whether or not it is included in the Criminal Code so, presumably, even offenses like traffic violations could be included if any "economic loss" resulted. It makes no distinction between felonies and misdemeanors. It provides that restitution will be due for "injury, death or economic loss as a result of the defendant's criminal activities." Economic loss is not defined. It is very likely that expert testimony would be necessary to prove some of the potential damages listed in the bill, and there is no indication who will pay for those costs. It is also unstated what standard of proof will be required if there is a dispute over restitution due or its value.

The bill declares that compliance with order of restitution must be a condition of their probation or parole but it is well settled that no one may be incarcerated for an inability to pay.

There is no indication in the bill who would assist defendants in determining restitution

due, preparing a restitution plan or representing them in a restitution hearing. If they do not have counsel it could be a due process violation.

The bill would amend the current district attorney statute to allow them and their assistants to engage in private practice and “enforce orders of restitution and recover any amounts due to the victim or victims pursuant to those orders” by filing liens, garnishments and pursuing other legal remedies if restitution “has not been not paid in full after completion of all applicable probation or parole periods.” However the statute is permissive and doesn’t require district attorneys to participate.

There is no information in the bill on how restitution should be allocated if more than one person was responsible for the crime(s) and any resulting damages. Since sentences may last a long time, e.g. life or 18 years, and even other lesser penalties can be run consecutively if there are multiple charges and/or multiple cases, it is entirely possible that the period to enforce a civil judgment will have expired before a defendant is released from incarceration. (See, Section 39-1-6, NMSA 1978).

ADMINISTRATIVE IMPLICATIONS

The PDD, DA’s, and Courts may need to train personnel in aspects of civil law in order to render effective assistance on financial matters.

OTHER SUBSTANTIVE ISSUES

There is no appropriation contained in SB 207 so that all affected agencies would have to absorb the increases in their base budgets.

NCJ/bm