



Legislative Council Staff

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Fiscal Note

Drafting Number: LLS 22-0628
Prime Sponsors: Sen. Gonzales

Date: February 25, 2022
Bill Status: Senate Judiciary
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Bill Topic: REMEDY FOR IMPROPER GUILTY PLEAS

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill allows a defendant to challenge a guilty plea for a municipal offense or a class 1 or 2 misdemeanor if they were not advised of the immigration consequences of a guilty plea. Starting in FY 2022-23, the bill will decrease state revenue and increases state and local workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

The bill allows defendants who pleaded guilty to a municipal offense or a class 1 or 2 misdemeanor to challenge the plea if the defendant alleges:

- as a result of a guilty plea, the defendant suffered, is suffering, or will suffer an adverse immigration consequence; and
- that the guilty plea was obtained because the defendant was not adequately advised of the immigration consequences of a guilty plea; the defendant did not knowingly waive the right to counsel; or the plea was constitutionally infirm as under current law.

When a defendant files a motion, the prosecution must respond within 21 days. If no response is filed, the court must grant the motion. If the prosecution opposes the motion and there is an issue of material fact, the court must set the matter for an evidentiary hearing. Unless the prosecution proves by a preponderance of the evidence that the defendant will not suffer an immigration consequence or that the guilty plea was constitutionally entered, the court must grant the motion. If successful in challenging the guilty plea, the court must vacate the guilty plea as constitutionally infirm.

Data and Assumptions

From January 2017 to December 2021, there were 64,036 unique criminal cases that contained a guilty plea for a class 1 or 2 misdemeanor offense that is not defined under the Victim's Bill of Rights. Based on the 2019 American Community Survey the 6.62 percent of the United States population was a non-U.S. citizen.

The fiscal note assumes that out of the 64,036 cases identified above, 6.62 percent included non-U.S. citizens, or about 4,239 cases. Of those cases, the fiscal note assumes that 60 percent, or 2,543 cases would have immigration consequences.

The fiscal note for Senate Bill 19-030 assumed that 50 percent of cases with immigration consequences would file to vacate their guilty plea after successful completion of a vacated guilty plea. The Judicial Department has insufficient data to determine the actual number of resulting cases filed under SB 19-030, but anecdotal evidence suggests that the actual rate was lower than the estimate in the previous fiscal note. Assuming that no more than 25 percent of cases with an immigration consequence file with challenge the plea, there would be up to 630 additional case filings. Based on this potential number of cases, as well as the funding previously allocated through SB 19-030, it is assumed that additional resources are not required to implement this bill.

State Revenue

Starting in FY 2022-23, to the extent that defendants are successful at vacating a guilty plea, revenue to the Judicial Department from any unpaid fines and fees issued by the court will decrease as sentences are vacated. This revenue decrease has not been determined but is expected to be minimal. Revenue from fines and fees is subject to the state's TABOR limit.

State Expenditures

Starting in FY 2022-23, workload in the Judicial Department will increase to hear additional motions to vacate guilty pleas. As explained in the Data and Assumptions section, it is assumed that this work can be accomplished within existing resources. In addition, to the extent that courts vacate any fines and fees, the department may need to reimburse defendants for any payments already made. These costs have not been determined but are expected to be minimal. Should either impact result in the need for additional appropriations, this will be addressed through the annual budget process.

Local Government

This bill will increase costs for district attorney offices to respond to motions under the bill. The fiscal note assumes that each case will require up to five hours of work to provide transcripts or recordings of the plea hearing, respond to motions, and attend hearings. Costs will vary by judicial district. District attorney offices are funded by the counties within each judicial district.

Similar to the Judicial Department, this bill may increase workload and decrease revenue to the Denver County Court, which is managed and funded by the City and County of Denver, as well as municipal courts. Overall, these impacts are expected to be minimal.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

District Attorneys

Judicial

Law