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## FISCAL IMPACT REPORT

SPONSOR Little ORIGINAL DATE 2/11/16  
LAST UPDATED \_\_\_\_\_ HB 308  
SHORT TITLE Settlements on Civil Remedies SB \_\_\_\_\_  
ANALYST Downs

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	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)  
Public Defender Department (PDD)  
Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 308 allows a civil settlement in the case of a criminal trial to be grounds for dismissal of the case if the victim appears before the court, or by affidavit, to state that he or she has received satisfaction for the injury.

These provisions would not apply under specific circumstances, including, offenses by a peace officer while on duty, intent of committing a violent felony, violation of court order, if the crime is committed on a household or family member, upon someone older than 60 or younger than 18, or by someone who has a prior felony conviction.

### FISCAL IMPLICATIONS

According to the Administrative Office of the Courts (AOC), the only expenses for the judiciary in association with House Bill 308 would be the costs to update and distribute the changes. Of course new laws have the potential to increase hearings which would increase caseloads in courts, district attorney, and public defender offices, and could require additional resources.

The Public Defender Department stated that there could be a decrease in caseload if more cases were dismissed as a result of the provisions in this bill.

## **SIGNIFICANT ISSUES**

According to AOC, three other states also have rules regarding civil compromise for criminal cases including California, Oregon, and Arizona, all slightly different than House Bill 308. AOC stated that the allowance of nonviolent felonies to be compromised would result in fewer trials and use of agency resources, but that the satisfaction of the victim does not necessarily mean the satisfaction of neither the community, nor the safety in years to come. AOC also stated that this allowance might lead to the benefit of only the wealthy, since an indigent defendant would not be able to provide a satisfactory monetary amount and avoid trial and conviction.

The Attorney General's Office (AGO) stated that it is the state's job to prosecute criminal actions regardless of whether the victim feels the reparation was satisfactory or not. It is only in a civil case which can be brought by the victim that a declaration of satisfaction would suffice. The AGO said that House Bill 308 would "disrupt the criminal system" because it would place a large proportion of power in determining a defendant's conviction on the victim. The AGO stated,

"Whether a defendant was convicted and punished for one of the crimes covered by House Bill 308 would depend unfairly on matters largely outside the defendant's control. Those matters would include whether the victim elected to file a civil case before the criminal prosecution, whether the victim prevailed in the civil case and whether the victim was sufficiently satisfied with the judgment in the civil case to make acknowledgment to the court."

The Administrative Office of the District Attorneys (AODA) stated that this bill undermines the discretion of district attorneys and other prosecutors when determining how crimes should be resolved. AODA cited a Supreme Court withdrawal of a rule allowing private citizens to file criminal complaints in magistrate and metropolitan court because of the problems lying people handling criminal cases.

Additionally, AODA indicated that there is a risk associated with this bill that dangerous people could go free if they can pay enough to the victim that it is deemed satisfaction. It expressed concern with the ease of paying restitution to get out of incarceration, stating, "...the criminal defendant's attorney could pursue that avenue and, especially if they work with imaginative and resourceful plaintiff's attorneys, could find a potential civil action for many crimes." Some defendants could use their insurance for restitution.

According to AODA, there are already provisions in New Mexico allowing for civil restitution in criminal cases. Article 2, Section 24 of the New Mexico constitution and the Victims Rights Act, Section 31-26-4 NMSA 1978, are two examples. In addition to law, many per-prosecution and probation programs allow for the dismissal of some cases with restitution.

**TECHNICAL ISSUES**

The phrase in Section 1(B), “less than 18 years of age or younger” is redundant and should be revised to state “less than 18 years of age,” or “18 years of age or younger.”

JD/jo/al