

FISCAL IMPLICATIONS

There are no known fiscal impacts.

SIGNIFICANT ISSUES

The Senate Floor Substitute for Senate Bill 149 as amended modifies the Inspection of Public Record Act (IPRA) in protecting the confidentiality of victims of and witnesses to certain crimes. IPRA, as outlined in Chapter 14-2-1 NMSA 1978, provides exceptions to the information that may become available to the public from someone exercising their rights through IPRA. The provisions address those portions of law enforcement records that may reveal confidential sources, methods, information or individuals. These amendments in effect will shield victims' and witness' information and ensure confidentiality of their records of certain crimes. The Senate Floor Substitute for Senate Bill 149 as amended is applicable to those victims of or witnesses to the following alleged crimes, before charges are filed:

- assault with intent to commit a violent felony when the violent felony is criminal sexual penetration;
- assault against a household member with intent to commit a violent felony when the violent felony is criminal sexual penetration;
- stalking;
- aggravated stalking;
- criminal sexual penetration; and,
- criminal sexual contact.

This bill makes clear that such information on law enforcement records (federal law, the constitution of New Mexico, statute or court rule) in connection with a criminal investigation, prosecution or closed investigation are exempt provided that the presence of such information on a law enforcement record does not exempt the record from inspection. Furthermore, the existing language regarding “protected personal identifier information” has been moved as a new subsection of law as Chapter 14-2-1.1 NMSA 1978.

This bill has an effective date of July 1, 2017.

ADMINISTRATIVE IMPLICATIONS

The AGO's Open Government Division provides information and training to state and local government, the media, and the public on obligations and requirements under IPRA. Adoption of this legislation may necessitate additional staff time and resources to clarify the changes to statute. As a law enforcement agency, the AGO would also consider any implication that this legislation would have on its own records custodian and how to respond to requests for responsive records subject to the new provisions.

The AOC indicates that if this legislation is enacted, it is likely that the court clerks will need to undertake additional training to learn how to identify and redact or withhold law enforcement records containing the victim and witness information sought to be protected. Court resources will be impacted both in the cost of training and in providing substitute court personnel for those in training.

RELATIONSHIP

HB 267, SB 93 and SB 158 seek to provide exceptions to IPRA.

OTHER SUBSTANTIVE ISSUES

The AOC notes that currently IPRA provides an exemption to law enforcement records such as evidence in any form received or compiled in connection with any criminal investigation or prosecution by a law enforcement or prosecuting agency. This is inclusive of inactive matters or closed investigations to the extent they contain the information as proposed.

Of the many records filed with the courts, the record becomes a court record that is a public record, unless it is sealed by order of the court or deemed confidential by operation of court rules. As AOC comments, if this legislation is enacted, the clerks will be tasked with making the determination as to whether a case file contains a law enforcement record revealing a victim(s)/witness(es) of the specified crimes outlined. AOC indicates it will become an arduous task to ensure that the information in all notes or other law enforcement records in the file are appropriately redacted or withheld pursuant to these new provisions of IPRA. It is also likely, that of all the notes and/or records filed with the courts, there may be documents that may contain the identity of the victim(s)/witness(es) that are not then specified. Thus, the intent of the legislation would be defeated.

As noted by the AGO and UNM, the Victims of Crimes Act (Chapter 31-26-1 to -14 NMSA 1978) requires a victims' right to have their dignity and privacy respected. However, this does not apply during the investigation phase of an alleged crime; alleged crimes not prosecuted and do not address witnesses. It is unclear what "alleged" crime is defined as under the proposed language. The AGO suggests that if alleged is accused but not charged, it should be clarified in order to avoid subjective interpretation and inconsistencies in application across agencies.

The AGO further comments the list of crimes is not concomitant with those delineated in Article 2 Section 24 of the Constitution of New Mexico (*i.e.* the rights of crime victims.)

JMA/jle/al/jle