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FISCAL IMPACT REPORT

SPONSOR <u>Castellano/Rehm/Borrego</u>	LAST UPDATED <u>2/24/23</u>	ORIGINAL DATE <u>2/10/23</u>
SHORT TITLE <u>“Criminal Offense” Definition</u>	BILL NUMBER <u>House Bill 225/aHCPAC</u>	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)
 Law Offices of the Public Defender (LOPD)
 New Mexico Adult Parole Board (NMAPB)
 New Mexico Attorney General (NMAG)
 New Mexico Corrections Department (NMCD)
 New Mexico Crime Victims Reparation Commission (NMCVRC)

SUMMARY

Synopsis of HCPAC Amendment to House Bill 225

The House Consumer and Public Affairs Committee amendment to HB 225 provides an expanded notice under VOCA be provided to the victim of a crime under the listing of rights afforded a victim. As amended, the notice by the district attorney concerning the availability of and procedures regarding crime victim’s reparation shall include the fact that any recovery shall be offset by recovery or eligibility for recovery from third parties (such as worker’s compensation, private insurance or settlement from lawsuits), consistent with the provisions of the Crime Victim’s Reparation Act.

Synopsis of Original House Bill 225

House Bill 225 amends the Victims of Crime Act (VOCA) to add four new offenses against peace officers within its scope: 1) aggravated assault upon a peace officer; 2) assault with intent to commit a violent felony; 3) battery upon a peace officer; and 4) aggravated battery upon a peace officer.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Responding agencies report, at most, minimal fiscal impact. Significantly, NMCVRC reports none.

SIGNIFICANT ISSUES

The purpose of VOCA, as stated in Section 31-26-2, is to assure that

- The full impact of a crime is brought to the attention of a court;
- Victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process;
- Victims' rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants; and
- The provisions of Article 2, Section 24 of the constitution of New Mexico are implemented in statute.

Certain rights are granted to a crime victim under VOCA, including the right to

- Be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- Timely disposition of the case;
- Be reasonably protected from the accused throughout the criminal justice process;
- Notification of court proceedings;
- Attend all public court proceedings the accused has the right to attend;
- Confer with the prosecution;
- Make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- Restitution from the person convicted of the criminal offense that caused the victim's loss or injury;
- Information about the conviction, sentencing, imprisonment, escape or release of the accused;
- Have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;
- Promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and
- Be informed by the court at a sentencing proceeding that the offender is eligible to earn

meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender.

AOC questions whether the intent, purposes, and rights afforded crime victims under VOCA are applicable to peace officers acting within the scope of their duties, and suggests that if there are specific rights within VOCA that do not already extend to those officers, HB 225 might be tailored to address those rights. On the other hand, AODA believes the inclusion of the additional crimes contained in HB225 into VOCA will assure that peace officers are granted the same rights as non-peace officers who are victims of a crime covered under VOCA. NMCD comments that peace officers would be afforded VOCA rights under HB225, including the right to attend parole board hearings and receive inmate release notifications. NMAPB reports that the number of hearing notifications it sends out would likely increase. NMCD reports its Victim Services program would be responsible for assisting an officer through the parole board hearing process.

There appears to be some confusion over the intent of HB225. DPS posits that the bill's intent is to allow law enforcement officers to receive victim benefits distributed by the NMCVRC "under VOCA". It appears, however, that the purpose of VOCA and the rights afforded under it, as set out above and including restitution from the offender, are separate from the scope and intent of the Victims of Crime Reparation Act, Section 31-22-1, et seq, NMSA 1978 (VCRA). Each act reads as stand-alone pieces of legislation. Each contains its own listing of crimes to which its provisions extend and affords separate rights or benefits to victims of those crimes. Compare VOCA's definition of criminal offenses to which it applies, at Section 31-26-3(B), to VCRA's at Section 31-22-8(A) (which is the subject of HB225's amendments), enumerating the crimes for which a victim may be entitled to an award of reparation under Section 31-22-7 of VCRA. Seemingly, reparations may be made only as to those crimes listed in VCRA, under the procedures outlined in that act.

OTHER SUBSTANTIVE ISSUES

NMAG provides this additional comment concerning the relationship between the constitutional provision concerning crime victims' rights and VOCA, the legislation implementing that provision:

The four new offenses proposed to be added to the definition of a "victim" under Victims of Crime Act are not listed in Article II, Section 24 of the New Mexico Constitution. However, Section 31-26-3 has been amended twice since N.M. Const. art. II, § 24 was passed in 1992 to add crimes not specifically mentioned in the constitutional provision and there does not appear to be a case challenging those changes. *See* NMSA 1978, § 31-26-3 (1997) (adding armed robbery and stalking or aggravated stalking); NMSA 1978, § 31-26-3 (2003) (adding aggravated assault against a household member, assault against a household member with intent to commit a violent felony, battery against a household member, and aggravated battery against a household member).