

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: January 30, 2025

Check all that apply:

Bill Number: HB 190

Original Correction
Amendment Substitute

Sponsor: Rep. Dayan Hochman-Vigil

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Victims of Crime Act Changes

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1: The first section amends NMSA 1978, Section 31-26-3. Although the Victims of Crime Act (VCA) currently provides rights to victims of “armed robbery,” HB 190 would expand the scope of the VCA to cover victims of un-armed robberies. Further, the bill would provide the VCA’s rights to victims of “battery upon a health care worker” and “human trafficking.”

The bill also rewords “individual” to “person” and corrects Section 31-26-3(B)(1)’s reference to NMSA 1978, Section 30-17-5, which was amended in 2006. *See* H.B. 80, 47th Leg., 2d Sess., § 16 (N.M. 2006).

Section 2: HB 190 would amend NMSA 1978, Section 31-26-7, and permit an attorney representing a victim to file pleadings, appear, or speak on behalf of the victim in all court proceedings.

The bill provides for technical rewording of certain terms used in NMSA 1978, Section 31-26-7.

Section 3: The bill would amend NMSA 1978, Section 31-26-10, and permit “a clerk of a court” to provide notice of a scheduled court proceeding to the district attorney, rather than requiring “a court” to provide such notice.

The bill further clarifies that the court’s notice provided to the district attorney may be provided in a shorter period than the seven working days generally required, if the court makes a finding that “exceptional circumstances” exist and that the shorter period is reasonable.

The bill also provides that a victim may appeal a court’s decision to schedule a court proceeding after a notice period of shorter than seven working days, which may result in the vacatur of the court proceeding’s outcome and a rescheduling of the proceeding.

The bill makes technical changes (i.e., changing “the” to “those” and clearly citing Section 31-26-9 rather than identifying “Section 9 of the [VCA]”).

Section 4: HB 190 would amend NMSA 1978, Section 31-26-10.1, and permit victims to be present and make statements at all court proceedings. The bill would also require a court to

provide a victim with language interpretation services or other services necessary to observe or participate.

In circumstances where a district attorney cannot verify to a court that an attempt has been made to notify a victim of a court proceeding, the bill no longer requires, but permits, a court to reschedule the proceeding or continue the proceeding and reserve ruling until notice is provided to the victim. The bill would require the district attorney to notify the victim of any ruling and of the victim's rights under the VCA.

The bill clarifies that Section 31-26-10 does not require a court to continue or reschedule a proceeding if doing so would violate a jurisdictional rule.

The bill further makes several technical changes. First, the bill clarifies that the "proceeding" noted in Section 31-26-10.1(B) is the "scheduled court proceeding" referenced earlier in the subsection. Second, the bill clarifies that the court may either reschedule or continue a "court proceeding"—which is defined at Section 31-26-3(C) as "a hearing, argument or other action scheduled by and held before a court"—rather than rescheduling or continuing a "hearing." In doing so, the bill ensures consistent language is used throughout Section 31-26-10.1(B).

Section 5: The bill would amend NMSA 1978, Section 31-26-13, and create a right of action against the state or a political subdivision of the state, in the event of a failure to meet VCA-imposed obligations or a violation of VCA-created rights. In doing so, the bill waives sovereign immunity as a defense.

The bill also permits the New Mexico Department of Justice to seek civil penalties against the state or political subdivision of the state.

Section 6: HB 190 repeals NMSA 1978, Section 31-26-5, which would have the effect of no longer requiring victims to take certain actions in order to exercise their rights under the VCA.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The rights of victims of criminal offenses are constitutionally provided under New Mexico Constitution Article II, Section 24. Certain substantive or procedural rights afforded under the VCA and HB 190 may not be expressly afforded under Article II, Section 24. For example, Article II, Section 24(A) does not specify that victims of robbery are guaranteed the constitutional victims' rights. Also, the constitution provides that victims may make statements to the court "at sentencing and at any post-sentencing hearings for the accused," rather than at all scheduled court proceedings as contemplated by Section 4 of HB 190.

However, the constitutional provision guaranteeing victims' rights appears to operate as a floor rather than a ceiling for protecting victims' rights. Further, the constitution's clarifications that victims of criminal offenses "shall have the following rights *as provided by law*," N.M. Const. art. II, § 24(A) (emphasis added), and that "[t]he provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment," N.M. Const. art. II, § 24(C), may indicate an intent that the provisions of Article II, Section 24 are not self-executing and require enabling legislation.

The bill's requirement that a court provide a victim with language interpretation services also ensures that to the extent the New Mexico courts receive federal funding, they provide more "meaningful access" to court proceedings as required by Title VI of the Civil Rights Act of 1964.

In implementing Title VI, the United States Department of Justice clarified that recipients of federal funding "are required to take reasonable steps to ensure meaningful access to their programs and activities by [Limited English Proficient (LEP)] persons." *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455, 41459 (June 18, 2002). The standard for recipients of federal funding is intended to be "flexible and fact-dependent," but requires consideration of "four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs." *Id.* The USDOJ emphasized that courts receiving federal funding should take "every effort . . . to ensure competent interpretation for LEP [parties and witnesses] during all hearings, trials, and motions during which the LEP must and/or may be present." *Id.* at 47471.

Section 4(A)'s requirement that courts provide all "other services necessary for the victim to observe or participate in a court proceeding" is not defined. HB 190 may be clarified by, for example, drawing upon Title II of the Americans with Disabilities Act and requiring courts to provide services to ensure "equality of opportunity" and "full participation" in the courts' proceedings by persons with disabilities. *See* 42 U.S.C. § 12132 (providing that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by such entity"); 42 U.S.C. § 12101(a) (explaining that Congress finds that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity [and] full participation").

PERFORMANCE IMPLICATIONS

Section 5's provision authorizing the NMDOJ to petition for civil penalties against the state may conflict with the NMDOJ's general authority to "defend all causes in the supreme court and court of appeals in which the state is a party or interested," and to "defend in any other court or tribunal all actions and proceedings, civil or criminal, in which the state may be a party or interested when, in his judgment, the interest of the state requires such action or when requested to do so by the governor." *See* NMSA 1978, § 8-5-2(A), (B).

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 86 attempts to correct Section 31-26-3(B)(1)'s citation to Section 30-17-5. HB 86 also adds "human trafficking" as a criminal offense covered by the VCA, but further adds "sexual exploitation" as a covered offense as well.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

Consider amending Section 3(B) by replacing the word “hearing” with “court proceeding,” to ensure consistency of terminology used in this section and throughout the bill. *See* H.B. 190, § 3, page 6, lines 22, 24.