

Duplicates/Conflicts with/Companion to/Relates to: HB 86, HB 104, SB 74
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 190 amends Section 31-26-3 NMSA 1978, the definitions section of the Victims of Crime Act, to add battery upon a health care worker and human trafficking to the definition of “criminal offense”. The bill also removes the word “armed” from the line item for robbery in the same definition, therefore including unarmed as well as armed robbery in the list of criminal offenses.

HB 190 also amends Section 31-26-7 NMSA 1978, regarding the designation or appointment of a victim’s representative, to allow that a victim’s representative who is an attorney authorized to practice in New Mexico may file pleadings and appear on behalf of the victim in court proceedings.

The bill goes on to amend Section 31-26-10 NMSA 1978, regarding the procedures for providing victims with notice of a court proceeding, to specify that “extraordinary circumstances” are required to justify a notice period shorter than seven working days, and to provide a procedure to appeal a finding of extraordinary circumstances.

HB 190 amends Section 31-26-10.1 NMSA 1978, regarding crime victim presence at court proceedings, to add that a victim has a right to be present and provide a statement at all scheduled court proceedings, and that a court shall provide language interpretation or other services as necessary.

The bill also amends Section 31-26-13 NMSA 1978 to remove the Victims of Crime Act’s disclaimer that nothing in the Act creates a cause of action against a public employer, public employee, public agency, the state, or any agency responsible for the enforcement of rights or provision of services under the Act. The bill instead adds to Section 31-26-13 that a victim may bring an action against the state for a violation of duties or deprivation of rights provided for in the Act, and that sovereign immunity shall not be a defense to such an action. The bill also provides that the attorney general may file a petition to seek a civil penalty for a violation of the Act, and that the civil penalty shall not exceed \$500 per violation, or \$500 per day for an ongoing violation.

HB 190 repeals Section 31-26-5, which sets out requirements a victim must comply with in order to exercise their rights under the Act.

HB 190 also makes minor clarifying and grammatical changes throughout each section it amends.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be

reported in this section.

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission’s analysis focuses only on the criminal law related aspects of HB 190 and, as such, does not address the civil penalties or procedures included in the bill.

Decades of studies on victims’ rights and their impact on the justice system demonstrate the benefits of victim participation and include recommendations to extend victims’ rights to as many affected individuals as possible. *See, e.g.*, Susan W. Hillenbrand & Barbara E. Smith, *Victims Rights Legislation: An Assessment of Its Impact on Criminal Justice Practitioners and Victims, A Study of the ABA Criminal Justice Section Victim Witness Project* (1989), available here: <https://www.ojp.gov/pdffiles1/Digitization/124014NCJRS.pdf>; Dean G. Kilpatrick, David Beatty, and Susan Smith Howley, *The Rights of Crime Victims—Does Legal Protection Make a Difference?* (1998), available here: <https://www.ojp.gov/pdffiles/173839.pdf>; “Primer: Crime Victims’ Rights” published by the United States Sentencing Commission, 2023, available here: https://www.ussc.gov/sites/default/files/pdf/training/primers/2023_Primer_Crime_Victims.pdf.

HB 190’s changes to the Victims of Crime Act regarding crime victim presence at court proceedings, the victim’s right to language interpretation and other services as necessary, and its repeal of the requirements a victim must comply with in order to exercise their rights under the Act, all would likely reduce barriers to crime victims’ participation in the justice process and increase the number of crime victims who are willing and able to take part.

As noted below, there are several other bills this session that propose to add various existing offenses to the Victims of Crime Act. There are also a number of other offenses analogous to those that are already in the Act but that have not (yet) been included. Examples include Section 30-3-7 NMSA 1978 (injury to pregnant woman), Section 30-3-9 NMSA 1978 (assault; battery; school personnel), and Section 30-3-9.1 NMSA 1978 (assault; battery; sports officials). The legislature may want to consider undertaking a review of the state’s Criminal Code to identify and consider adding these and other like offenses collectively rather than through individual legislation.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship: HB 86, HB 104, and SB 74 all propose to amend Section 31-26-3 NMSA 1978, the definitions section of the Victims of Crime Act, to add offenses to the list of offenses included in the definition of “criminal offense”, which would potentially change the enumeration of the list of offenses included in HB 190.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
AMENDMENTS**