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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/10/25

SPONSOR Hochman-Vigil

BILL
NUMBER House Bill 190

SHORT TITLE Victims of Crime Act Changes

ANALYST Chavez

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Fines and Forfeitures	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Indeterminate but minimal gain	Recurring	Common School Fund (General Fund)

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	No fiscal impact	Indeterminate but substantial	Indeterminate but substantial	Indeterminate but substantial	Recurring	General Fund
District Attorneys	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
LOPD	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMAG	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relates to House Bills 86, 104, 204, 216, and 231 and Senate Bill 74

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Department of Health (DOH)
 Crime Victims Reparation Commission (CVRC)

Agency Declined to Respond

Health Care Authority (HCA)

SUMMARY

Synopsis of House Bill 190

House Bill 190 (HB190) amends the Victims of Crime Act, codified as NMSA 1978, Sections 31-26-1 through 31-26-15, to expand victim protections, clarify court procedures, and introduce legal remedies for violations of victim's rights.

Section 1: HB190 would expand the scope of the crimes covered by the Victim of Crimes Act by correcting the citation for negligent arson and adding all forms of robbery, battery upon a health care worker, and human trafficking.

Section 2: HB190 would amend section 31-26-7 NMSA 1978 to allow a victim's attorney to file pleadings, appear, and speak on behalf of the victim in court proceedings.

Section 3: HB190 would amend section 31-26-10 NMSA 1978 to have the court, specifically a clerk, notify the district attorney's office of a court proceeding with at least seven working days' notice except under exceptional circumstances. If a court finds exceptional circumstances and schedules a court proceeding with less than seven working days' notice and holds a hearing without a victim present, the victim may appeal the court's decision. If the appeal is successful, the prior court ruling is vacated, and the court is ordered to reschedule the court proceeding.

Section 4: HB190 would amend section 31-26-10.1 NMSA 1978 to give a victim the right to be present and make a statement, either personally or through their representation, at all scheduled court hearings. If a victim chooses to be present or give a statement, the court will provide language interpretation or other services necessary to do so. Currently, statute says that in any proceeding, the court must ask whether a victim is present to make an oral statement or submit a written statement. If the victim is not present, the court must ask whether anyone attempted to notify the victim about the proceeding. If not, the court must take several steps, including either rescheduling or reserving the ruling until the victim has been notified and given an opportunity to speak. In the list of several steps to take, HB190 removes "shall" and replaces it with "may," possibly making it optional for the court to take on these steps if the victim is not present.

Section 5: HB190 would amend section 31-26-13 NMSA 1978 by replacing the current disclaimer with one giving a victim the right to sue the state or political subdivisions for violations of their rights under the Victims of Crime Act and waives sovereign immunity. This section would also allow the New Mexico Attorney General (NMAG) to seek civil penalties of up to \$500 per violation or \$500 per day for ongoing violations.

Section 6: HB190 would repeal section 31-26-5 NMSA 1978, which sets out specific criteria that a victim must meet to exercise the rights under the Victims of Crime Act. The bill would eliminate any requirements that victims must fulfill to exercise the rights under the Victims of Crime Act.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

HB190 would impose significant new duties on the courts and district attorney's offices to ensure the victim's rights, with the courts specifically tasked to provide notice to the district attorney's office. Additional resources for courts, district attorney's offices, and public defenders may be necessary as the right for the victim to be present and make a statement, as well as the ability to appeal court decisions, could impact court dockets, assigned caseload numbers, and other judicial efficiency statistics. The courts are specifically tasked with providing a victim with language interpretation and other services meaning an additional cost the courts would have to incur. The courts, during the FY26 budget request cycle, expressed concerns over the rising costs of interpretation and availability of interpreters. The fiscal impact on the courts is indeterminate but substantial because the courts must both provide communication and accessibility services for victims and handle appeals from victims. Calculating the number of appeals that would stem from this bill is extremely difficult; however, HB190 would likely have a significant fiscal impact on the courts as appeals can take long periods of time and could affect caseloads and clearance rates.

Since NMAG could seek civil penalties for violations of the Victims of Crime act, the bill could result in revenue, albeit of an indeterminate but minimal amount, because of the difficulty of estimating the number of violations as well as the duration of a violation. NMAG could need additional resources to track violations to understand their duration, the number of violations, and other relevant information to accommodate the expansion of the Victims of Crimes Act.

The Administrative Office of the Courts believes, however, that outside of the fiscal implications on legal proceedings, there would be a minimal administrative cost for the statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

The Administrative Office of the Courts provides the following analysis on factors to consider regarding the appellate piece of HB190:

Appeals Process: HB 190 provides for a "de novo" appeal. A "de novo" appeal means the appellate court reviews the trial court record and decides the issue without reference to any legal conclusion or assumption made by the previous court (judge). The appellate court substitutes its judgement for that of the trial court. However, HB 190 does not clearly state where these appeals will be taken. See Section 3(B). Assuming that "the appellate court" in Section 3(B) is referring to the Court of Appeals, the following concerns should be considered:

A. Section 3(B) grants the crime victim an interlocutory appeal as of right of every decision to set a hearing with less than seven working days' notice. Speaking generally, interlocutory appeals are disfavored; and, even when they are permitted, our review at the appellate level is often discretionary. See, e.g., NMSA 1978, Section 39-3-4; Rule 12-203 NMRA. Interlocutory appeals tend to be disfavored because they disrupt the trial level proceedings and they bog down the appellate courts with piecemeal appeals. These concerns hold true in this context.

B. Section 3(B) creates a new appeal of right and the Court of Appeals would not have discretion to simply decline review. HB 190 may impact the Court of

Appeals' docket. At this juncture and without having access to relevant case data, it is impossible to know the impact this new class of appeals could have. If there are a number of these new appeals, which would likely need to be expedited, this could very well negatively impact the Court of Appeals' performance, especially if the Court of Appeals is not provided additional resources to address these new expedited appeals.

C. Section 3(B) provides that the "appeal shall be taken de novo"--a standard of review normally reserved for legal questions or mixed questions of fact and law. The decision about when to set a hearing (and whether an exception to the notice requirement exists) seem like discretionary decisions that an appellate court would normally review for an abuse of discretion. It is unclear what kind of record would be available on appeal; and in light of a likely limited appellate record, it would be difficult for the Court of Appeals to assess whether the trial court erred.

D. New Supreme Court rules would likely be necessary if HB190 goes into effect to make clear to trial courts what kind of findings must be put on the record and how these appeals should proceed. Also, a number of crime victims will likely be self-represented and complying with expedited appellate deadlines will likely pose a challenge.

E. HB 190 does not specify a time period for a victim to bring such an appeal. As HB 190 is written, requiring the outcome of the court proceedings vacated if an appellate court does not agree with the trial court's "exceptional circumstances" would also have a tremendous impact on the judiciary's already overburdened criminal dockets and will likely have the unintended consequence of slowing down the entire criminal justice system

The Administrative Office of the Courts provides the following:

Section 3 of HB190 describes the procedure for providing victims notice of court proceedings. HB190 has changed the responsibility of the court providing "a district attorney's office with . . . notice" to the "clerk of a court". Typically, the judge's chambers are responsible for sending out notice of a hearing, so changing this responsibility to the "clerk of a court" is not technically how this process works. The language should remain "A court shall provide . . . notice".

The Law Office of the Public Defender provides the following analysis related to complications that could arise from HB190 having the possible effect of having to treat crime victims as parties, to some extent, in criminal cases:

Section 1 of the bill would allow a victim's attorney to "file pleadings or appear or otherwise speak on behalf of the victim in court proceedings." It is not at all clear how this would work; the bill does not specify (or limit) the types of pleadings the attorney could file or the contexts in which she could speak. For example: Would this allow a victim to file a motion for pretrial detention, even if the state had determined that litigating such a motion was not a good use of state resources? Could the victim file his own response to a defense motion to suppress? ... Could the victim's attorney cross-examine witnesses during a hearing or trial?

The bill answers none of these questions, and they would have to be resolved through litigation. Furthermore, in all of these examples, the victim's filings would intrude on the purview of the prosecutor and limit prosecutorial discretion.

Under current law, nothing prevents victims from hiring lawyers and asking the lawyers to speak on their behalf to the judge. Section 31-26-7(A) specifically allows a victim to designate a representative to exercise the victim's rights. The problem with Section 1 of HB 190 is that it authorizes litigation by a non-party's attorney.

Indeed, this degree of interference with court procedures likely constitutes an unconstitutional violation of Separation of Powers. See *State v. Valles*, 2004-NMCA-118, ¶ 14, 140 N.M. 458, 143 P.3d 496 (“The Supreme Court is vested with the exclusive power to regulate pleading, practice, and procedure in the courts under N.M. Const. art. III, § 1 and art. VI, § 3.”) (citing *Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, ¶ 11, 89 N.M. 307, 551 P.2d 1354). “Thus, when a statute conflicts with a Supreme Court rule on a matter of procedure, the Supreme Court rule prevails, and the statute is not binding.” *Id.*

Section 3 of the bill would change the exceptions to the notice requirement for hearings. Instead of allowing less than seven business days' notice if “a shorter notice period is reasonable,” the bill would require the court to find “exceptional circumstances.”

This would limit judicial discretion (particularly given the appeal provisions discussed below) and would create hardship for defendants. The hearings in criminal cases are often time sensitive; for example, they include hearings on whether a defendant may be released from jail. Under current law, if the parties are in court and realize that they cannot proceed with a hearing, but must reset it, the court has some flexibility about how to do that. The judge can ask the lawyers and victim when they are free, and then the judge can schedule the hearing for the next date that works. HB190 would eliminate that flexibility and require the judge to wait seven business days or more, even when the delay prejudices the defendant and is not necessary.

The issue with Section 4 is that it creates a new statement of a right with broader language and no exceptions. It applies to “all scheduled court proceedings,” not merely public proceedings that the defendant has a right to attend. A court could read this section to permit the victim to attend all hearings, even when the courtroom is closed. (Most criminal proceedings are open to the public, but courts occasionally close the courtroom to protect the identity of a witness or to allow an attorney to explain a conflict to the court.)

Furthermore, the right to make a statement at all proceedings is not currently in the law. In practice, a judge who inquires whether the victim is present (as required by Section 31-26-10.1) is very likely to let the victim make a statement. But one could imagine a case in which a victim wanted to make a twenty-minute statement at every five-minute pretrial conference, or yelled abuse at the defendant or prosecutor, or otherwise could not behave appropriately. HB190 appears to create a blanket right for victims to address the court, without discretion for the court to limit that right. Under HB190, a judge seeking to manage the court's docket with reasonable limitations could potentially incur civil damages without immunity from suit.

Section 5 would allow victims to sue “the state or a political subdivision of the state” for violations of the Victims of Crime Act. The bill does not define “political subdivision of

the state,” and it is not entirely clear whether this is limited to counties and municipalities, or whether it would also allow victims to sue district attorneys’ offices, courts, or other entities.

Creating a cause of action would—as with previous provisions—allow some number of troubled, abusive, or simply angry people to file frivolous lawsuits that the state and its subdivisions would have to spend money fighting. Additionally, the scope of the suits is not clear. HB190 allows victims to sue for “equitable or injunctive relief.” Nothing in the Act gives victims the right to override prosecutorial discretion, but because the language in the bill is broad, victims might use that provision to sue prosecutors or judges over decisions with which they disagreed.

Section 5 would also allow the attorney general to “file a petition against the state or a political subdivision of the state to seek a civil penalty for a violation of the Victims of Crime Act.” Again, it is unclear whom the attorney general would be petitioning. The word “petition” here is also confusing—is this limited to a particular type of special writ.

Section 6 would repeal the requirements in Section 31-26-5 that a victim must meet to trigger the rights in the Victims of Crime Act. Removing this requirement would mean that the provisions of the Act apply to all victims of the enumerated crimes, rather than victims who cooperate with the investigation and give the prosecutor their contact information. This would mean that the potentially disruptive new effects of HB 90 would apply more broadly than they otherwise would have.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The New Mexico Sentencing Commission provides the following:

Relationship: House Bill 86, House Bill 104, and Senate Bill 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 HB190.

The Administrative Office of the District Attorney notes that HB190 relates to House Bill 204, House Bill 216, and House Bill 231 because they relate to criminal procedure for victims, funding community-based domestic violence programs through the crime victims reparation commission, and adding crimes to the enumerated list that calls for reparations.