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FISCAL IMPACT REPORT

ORIGINAL DATE 3/3/15

SPONSOR Cook LAST UPDATED _____ HB 569

SHORT TITLE Victims of Crime Act Actions and Damages SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Crime Victims Reparations Commission (CVRC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 569 would add a new section to the Victims of Crime Act (Section 31-26-1 NMSA 1978 et seq.) regarding enforcement of the act's provisions and allow enforcement of the act by the victim or the victim's representative. A district court may issue a writ of mandamus, an order of injunction or other appropriate remedy.

Pursuant to HB 569, the court shall award damages, costs and reasonable attorney fees to any person whose rights under the Victims of Crime Act have been denied or violated by a prosecuting attorney in a crime covered by that act as well as the prosecuting attorney's office, jointly and severally.

FISCAL IMPLICATIONS

AODA stated that HB 569 purports to make individual prosecutors and district attorney's offices jointly and severally liable for damages, costs and attorney fees in actions brought by victims or victims' representatives to enforce the provisions of the Victims of Crime Act. It is not known how many cases will be brought under the provisions of HB 569, or what expenses will be

incurred in defending those cases and paying damages, costs and fees in those cases that are successful. In addition, individual prosecutors and the district attorney's offices may incur costs associated with preventing violations and insuring against possible lawsuits.

AGO stated that the proposed bill creates the new possibility of defending against alleged violations of the Victims of Crime Act and the new possibility of monetary damages costs and attorney's fees to be paid by the prosecution agency but with no appropriation. Minimal costs for the Office of the Attorney General would include a full time attorney and staff to defend against allegations of a violation for all prosecutions involving victims statewide. A minimal first time appropriation for attorneys and staff to the Office of the Attorney General would be at least \$150,000, and appropriations to each District Attorney for each judicial district would be essential if HB 569 is signed into law.

Attorneys working for the state do not generally carry malpractice insurance or other forms of professional liability insurance, because they are not subject to such suits. If HB569 makes them subject to civil suits for their conduct in carrying out their duties under the Victims of Crime Act, then prosecutors will need to determine if they are covered through Risk Management (not only for representation, but for any damage awards) or if additional insurance is needed. If the state provides coverage through Risk Management or through the purchase of insurance, that is a cost to the state.

SIGNIFICANT ISSUES

AGO stated that if the statutory violation involves a non-discretionary duty (such as failing to deliver a notice within the required time frame), a complainant could obtain a writ of mandamus to compel performance of such non-discretionary duty under existing law. Accordingly, since the complainant has a remedy under existing law, the provisions of the proposed bill relating to mandamus or injunctions are unnecessary. To the extent that the proponent is intending to provide a remedy in a circumstance where compliance with statutory duties is subject to interpretation, prosecutorial discretion could be significantly compromised, contrary to the existing provisions of the Act.

AODA provided the following:

Sovereign immunity bars tort claims against government entities and against public employees acting within the scope of their duty unless that immunity has been waived by the Tort Claims Act, Section 41-4-1 NMSA 1978, et seq. The Tort Claims Act is the exclusive remedy for such claims. Tort claims include claims of a violation of duty owed to the victim, such as a claim that a prosecutor violated a duty to a victim under the Victims of Crime Act. HB569 does not amend the Tort Claims Act to provide for claims under the Victims of Crime Act. And HB569 does not delete or amend this existing provision in the Victims of Crime Act: "Nothing in the Victim of Crimes Act creates a cause of action on behalf of a person against a public employer, public employee, public agency, the state or any agency responsible for the enforcement of rights or provision of services set forth in that act." See Section 31-26-13 NMSA 1978.

If HB 569 is made part of the Tort Claims Act, and if Section 31-26-13 is deleted, the following issues will remain:

- There is no need for a statute telling the district court that it can issue a writ of mandamus, an order of injunction "or other appropriate remedy." It already has those

- powers.
- HB 569 sets up an adversarial relationship between crime victims and the prosecutor, because every victim is now a potential plaintiff in a civil suit against the prosecutor.
 - The Victim of Crimes Act implements N.M. Const. Article II, Section 24, which sets out broad duties, such as “timely disposition” of cases, the “right to confer” with the prosecution, and treatment with fairness and respect for dignity and privacy. Narrowly defined rights, such as the right to be informed of court proceedings, can be difficult to implement when court proceedings are set on short notice, or when the victim is difficult to locate. Making these rights enforceable through civil lawsuits makes prosecutors and their offices liable for what are often difficulties inherent in the criminal justice system, or difficulties that are the result of underfunded, overworked offices.
 - Some duties under the Victim of Crimes Act, such as keeping the victim informed of case proceedings, may currently be handled by support staff. If the individual prosecutor may be liable for a breach of that duty, the prosecutor may take on those duties personally, leaving less time for preparing cases. (After all, you can’t be sued for doing a bad job in a case, but you can be sued for failing to make a phone call to a victim.)

CVRC stated that this bill does not provide a procedural outline as to the steps a victim would have to take should their rights be violated, nor propose a reasonable time frame for each step. Notification may be given by mail or phone but many victims change their addresses or numbers without providing this changed information to the District Attorney’s Offices, thereby making it extremely difficult to notify them in a timely manner. There are issues in the Victims of Crime Act that do not clearly define this responsibility of the victim and those of the District Attorney’s Office that would make fully implementing this bill problematic.

TECHNICAL ISSUES

AGO provided the following:

1. The proposed bill does not strike the language of, ¶31-26-13 which specifically negates a cause of action by a private party ‘against a public employer, public employee, public agency the state or any agency responsible for the enforcement of rights or provision of services set forth in [that] act.’, thus making the proposed legislation internally inconsistent.

EC/bb