

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 190 amends the Victims of Crime Act by expanding the list of criminal offenses included in the Act to include battery upon a health care worker (Section 30-3-9.2 NMSA 1978) and human trafficking (Section 30-52-1 NMSA 1978). HB 190 also creates the following new sections to the Victims of Crime Act:

1. Representation. Allowing a crime victim to appoint a representative who is an attorney to file pleadings or otherwise speak on behalf of the victim in court proceedings.
2. Notice. Requiring the court to provide the district attorney's office with notice 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.
3. Appeal. An appeal shall be de novo, and if the appellate court finds that exceptional circumstances did not exist, the lower court's proceeding shall be vacated and the court shall be ordered to reschedule the court proceeding with at least seven working days' notice.
4. Accommodations. A victim has a right to be present and make a statement at all scheduled court proceedings. The court shall provide language interpretation services or other services necessary for the victim to observe or participate in a court proceeding.

Finally, HB 190 repeals and replaces Section 31-26-13 NMSA 1978 which currently bars "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 the act." HB 190 would replace the current language in Section 31-26-13 NMSA 1978 with:

1. Cause of Action by a Victim. A victim "may bring an action against the state or political subdivision of the state for violation of . . . the Victims of Crime Act and may recover actual damages and be awarded equitable or injunctive relief. Sovereign immunity shall not be a defense to an action brought pursuant to this subsection."
2. Civil Penalty. The attorney general is allowed to "file a petition against the state or a political subdivision of the state to seek a civil penalty for violation of the Victims of Crime Act. A civil penalty awarded pursuant to this subsection shall not exceed five hundred dollars per violation or per day for ongoing violation."

House Bill 190 does not contain an effective date and would be effective on June 20, 2025, 90 days following adjournment of the Legislature, if signed into law.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for the statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law. **The changes described in HB 190 have a significant potential for fiscal implications to the Judiciary** (see Significant Issues below).

SIGNIFICANT ISSUES

1. HB 190 changes the notice provisions under Section 31-26-10. The Crime Victims Act already requires the court to provide seven working days' notice prior to a scheduled court proceeding attendant to a criminal offense. This legislation carves out a limited exception of the court finding "exceptional circumstances" and determines that a shorter notice is reasonable. 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.
2. **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 HB 190 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.

3. Section 4 of HB 190 adds a new subsection A to the Crime Victims Act that gives the victim the right to be present and make a statement at all scheduled court proceedings. Currently, Section 31-26-10.1 states that the victim can make “an oral statement or . . . a written statement respecting the victim’s rights enumerated in Section 31-26-4 NMSA 1978. The Crime Victims Act currently give victims the following rights:
 - 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;
 - 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; and
 - be notified by the district attorney of the availability of and procedures to apply for crime victims reparation.

As currently drafted, HB 190 drastically expands when a crime victim has the right to make a statement “at all scheduled court proceedings” rather than the current statutory provision of making a statement to the court “at sentencing and at any post-sentencing hearings”. Section 31-26-4(G) NMSA 1978 Again, these proposed changes in this legislation would have a significant impact on the criminal justice process and would will likely have the unintended consequence of slowing down the entire criminal justice system.

4. Finally, HB 190 repeals and replaces Section 31-26-13 NMSA 1978 which currently bars “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 the act.” HB 190 creates a new process that allows victims of crimes to recover monetary damages from the state or a political subdivision of the state. HB 190 also creates another new process for the attorney general to seek civil

penalties against the state or a political subdivision of the state. No other state has adopted the specific text proposed in HB 190, and no other state allows the attorney general to seek monetary penalties for violations of crime victims' rights.

Only two other states create a private right of action for victims against the state, and only in limited circumstances. Arizona allows victims to recover damages from a governmental entity if the entity is "responsible for the intentional, knowing or grossly negligent violation of the victim's rights." A.R.S. § 13-4437(B) (2019). Utah allows victims to bring an action for injunctive relief against a government entity if the entity "willfully or wantonly fails to perform duties" under Utah's victims' rights laws, but does not allow victims to seek monetary relief. U.C.A. § 77-38-11(2) (2024).

HB 190 proposes to allow both crime victims and the attorney general to recover significant monetary penalties. The majority of local government entities in New Mexico are self-insured, meaning that they bear their own monetary risks and do not use an insurance company to process claims. This puts local government entities at risk for larger payouts for claims that would have a liability cap under a typical insurance plan.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS - none identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP - none identified.

TECHNICAL ISSUES

Section 3 of HB 190 describes the procedure for providing victims notice of court proceedings. HB 190 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".

OTHER SUBSTANTIVE ISSUES - none identified.

ALTERNATIVES - none.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL – none.

AMENDMENTS – none.