



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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

Section 1 amends Section 31-26-3 entitled “Definitions” of the Victims of Crime Act

Subsection B defines “criminal offense” for purposes of the Act and the following changes are made: subsection (B)(1) corrects the statutory subsection for arson to correctly reflect negligent arson resulting in death or bodily injury as a qualifying criminal offense under the Act; subsection (B)(13) is amended to include “robbery” rather than just “armed robbery” as a qualifying criminal offense under the Act; subsection (B)(22) is added as new material to include “battery upon a health care worker, as provided in Section 30-3-9.2” as a qualifying criminal offense under the Act; and subsection (B)(23) is added as new material to include “human trafficking, as provided in Section 30-52-1” as a qualifying criminal offense under the Act.

Subsections F and G is amended to change references to “an individual” to “a person.”

Section 2 amends Section 31-26-7 entitled “Designation or Appointment of Victim’s Representative” of the Victims of Crime Act.

Subsections A, B, and C are amended to change all references from “his” to “victim’s”; all references from “the court” to “a court”; and references from “when” to “if.”

Subsection D is added as new material to provide that “[i]f a victim designates or a court appoints a victim’s representative who is an attorney authorized to practice in New Mexico, the victim’s representative may file pleadings or appear or otherwise speak on behalf of the victim in court proceedings.”

Section 3 amends Section 31-26-10 entitled “Procedures for Providing Victims with Notice of a Court Proceeding – Courts – District Attorneys” of the Victims of Crime Act.

Subsection A is amended to change “[a] court” to “[a] clerk of the court” as the entity responsible for providing written or oral notice to the district attorney no later than seven working days prior to a scheduled court hearing attendant to a criminal offense. The phrase “unless a shorter notice period is reasonable under the circumstances” is changed to “unless the court finds exceptional circumstances and determines a shorter notice is reasonable under the circumstances.”

Subsection B is added as new material to provide that

[i]f the court finds exceptional circumstances and schedules a court proceeding within a notice period shorter than seven working days and holds the hearing without a victim present, a victim may appeal the court’s decision to hold the hearing. An appeal shall be taken de novo, and if the appellate court finds that exceptional circumstances did not exist and a notice period shorter than seven working days was not required, the court proceeding below and the outcome of that court proceeding shall be vacated and the court shall be ordered to reschedule the court proceeding with at least seven working days’ notice.

Section 4 amends Section 31-26-10.1 entitled “Crime Victim Presence at Court Proceedings – Plea Agreement Notification”

Subsection A is added as new material to provide that “a victim has a right to be present and make a statement, personally or through the victim’s representative, at all scheduled court proceedings. If a victim requires language interpretation services or other services necessary for the victim to observe or participate in a court proceeding, those services shall be provided by the court.”

Subsection B (re-lettered) is amended to add the phrase “scheduled court” to modify “proceeding.”

Subsection (B)(1) is amended to change “shall” to “may” on the requirements in the event the district attorney cannot verify that an attempt has been made to notify the victim of the court proceeding: (1) the court “may” reschedule the hearing or (2) the court “may” continue with the hearing but reserve ruling until the victim is notified and given the opportunity to make a statement.

Subsection (B)(2) is amended to provide that “the court shall order the district attorney to notify the victim of the court’s ruling and the victim’s options under the Victim of Crime Act.”

Section 5 amends Section 31-26-13 entitled “Disclaimer” of the Victims of Crime Act to delete the language that “nothing in the Victims of Crime 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.

Instead, Section A is added as new material that provides that “[a] victim may bring an action against the state or political subdivision of the state for a violation of duties or deprivation of rights provided for in 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.

Section B is added as new material that provides the “attorney general may file a petition against the state or political subdivision of the state to seek a civil penalty for a violation of the Victims of Crime Act.” The penalty shall not exceed \$500 per violation or \$500 per day for an ongoing violation.

Section 6 repeals Section 31-26-5 entitled “Exercise of rights; requirements for victim” which provided that a victim could exercise the victim’s right if the victim:

- A. reports the criminal offense within five days of the occurrence or discovery of the criminal offense, unless the district attorney determines that the victim had a reasonable excuse for failing to do so;
- B. provides the district attorney with current and updated information regarding the victim’s name, address and telephone number; and
- C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.

## **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.

The bill imposes significant new duties on courts and prosecutors in ensuring that victim's rights – particularly the right to have notice of all proceedings – is honored. Additional resources for courts and prosecutor's office in the form of staff, training, or IT support may be contemplated.

## **SIGNIFICANT ISSUES**

This bill generally adds more enforcement power to the Victims of Crime Act by (1) adding two new crimes to the crimes covered by the Act (2) allowing a victim's attorney to file pleadings or appear or speak on behalf of the victim in court proceedings (3) requiring the judge to find "exceptional circumstances" before that judge can hold a hearing without giving a full seven days notice to the victim as required by the Act (4) providing an appellate remedy for victims if the court does hold such a hearing without the victim present (5) specifically allow the victim to be present and make a statement "at all scheduled court proceedings" and to provide interpretation or other services for the victim if needed and (6) allowing victims to bring a cause of action for violation of their rights.

The role of a victim's attorney in the proceeding is somewhat unclear in terms of if and how the victim will be designated as a party and how far the victim's attorney's rights extend in terms of criminal procedure (right to discovery; right to notice of pretrial interviews, etc.). Presumably, rules will need to be drafted to implement this new procedure.

The appellate provision for victims is somewhat unclear. It states the appeal should be taken "de novo" which presumably means that the appellate court is to use a de novo standard of review; that is, not give any deference to the district court's determination. It is also unclear how the case would be captioned; would it be under the underlying criminal case caption or would the victim be designated as the plaintiff? Presumably, rules will need to be drafted to implement this new appellate procedure as the bill does not state which appellate court has jurisdiction, what the time limits are, what type of briefing is required, or whether the rules of appellate procedure would apply in full.

In 2024, the New Mexico Department of Justice filed an extraordinary writ against a district court judge for failing to schedule a hearing in time for the victims to receive notice as required under the Act. The judge held a hearing to terminate a sex offender's probation early without the victims being notified or present. The NMDOJ's writ sought to vindicate the victims' rights (as well as argue that the probation termination was illegal). The New Mexico Supreme Court denied the writ, directing the district court judge to consider the State's motion to reinstate probation, but did not reach the issue of the violation of the victims' rights. *State ex rel. Torrez v. Driggers*, S-1-SC-40413 (July 18, 2024). This bill seeks to give victims a direct path to appeal such an action by a district court or file an action against the state or political subdivision for violation of rights.

## **PERFORMANCE IMPLICATIONS**

n/a

## **ADMINISTRATIVE IMPLICATIONS**

n/a

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 231 “Additional Crimes for [Crime Victims] Reparations” adds assault, battery, criminal sexual contact of a minor, and robbery while armed with a deadly weapon to the enumerated crimes in Section 31-22-8.

HB 216 “Community-Based Domestic Violence Programs” appropriates \$10,000,000 from the general fund to the crime victims reparation commission for expenditure in fiscal year 2026 for community-based domestic violence programs.

HB 204 “Relating to Criminal Procedure; Providing for the Right to Refuse Pretrial Statements for Interviews by a Child Victim, Child Witness and Adult Victim”

## **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**

n/a