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FISCAL IMPACT REPORT

ORIGINAL DATE 2/24/09

SPONSOR Adair LAST UPDATED _____ HB _____

SHORT TITLE Crime Victim Notices & Case Reconsideration SB 625

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Attorney General's Office (AGO)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 625 amends the Victims of Crime Act (ACT), Section 31-26-1 et seq., and sets forth the rights of victims of crime, and the responsibilities of law enforcement, district attorneys, and the court with respect to the victim. Under the Act, law enforcement, district attorneys, and the courts have obligations to provide victims with certain information such as notice of court proceedings.

SB 625 proposes more stringent requirements for the district attorney under modifications to the Act. The modified requirements in Section 31-26-9(B) will require written notice of scheduled court proceedings and the filing of a certificate of service, and no longer allow for oral notice. New Section 31-26-9(C) provides that failure of the district attorney to provide the written notice constitutes grounds for the victim to request reconsideration of the sentence imposed on the defendant.

SB 625 also proposes to modify Section 31-26-10.1, adding a new section (B), to provide that failure to provide written notice of the scheduled court proceeding where the victim may deliver an oral or written statement, constitutes grounds for the victim to request reconsideration of the sentence imposed on the defendant. If the request is timely filed, the court must grant the request for reconsideration.

FISCAL IMPLICATIONS

The AOC states that judicial educational resources will be devoted to ensuring judges' responsibilities regarding victim's rights are understood. The mandatory reconsideration of criminal sentences will require additional time and judicial resources. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

The AODA notes this bill places significant new responsibilities on DA offices requiring more personnel and attendant processing costs to implement mandated service procedures. Follow-up by victim advocates will require significant time expenditures to comply with new notice requirements, both in the field and in court.

SIGNIFICANT ISSUES

The AODA provided the following:

A major issue will be the standing granted to victim to request reconsideration of an accused's sentence. Such standing and mandated granting of reconsideration of an accused's sentence by the court likely will not pass constitutional muster as it infringes on rights of an accused.

The bill also takes discretion away from the court in deciding whether to grant reconsideration of a sentence.

The bill also places district attorneys and victims in an awkward adversarial position that is an anathema to justice.

The PDD provided the following:

By allowing the victim to move for reconsideration of the defendant's sentence or juvenile delinquent's disposition, the legislature is creating a party to a criminal cause of action – the victim. Although the Victim's Bill of Rights is codified in Article II, Section 24 of the New Mexico State Constitution, it does not make the victim a party to the proceeding.

On the other hand, a defendant's right to due process and a fair trial, including sentencing, is codified in the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article II, Sections 14 and 18 of the New Mexico Constitution. The current version of Sections 31-26-9 and 31-26-10.1 are consistent with the Victim's Bill of Rights. As amended, the legislation violates both the federal and state constitutions.

As it stands, the State may move for reconsideration of a defendant's sentence under New Mexico Supreme Court Rule 5-801 or a juvenile's disposition under New Mexico Supreme Court Rule 10-230.1. Although the proposed legislation contemplates assisting the victim when the State is not communicating or addressing the needs of the victim, adopting this legislation will create more harm than good; it is not an appropriate remedy for the problem.

ADMINISTRATIVE IMPLICATIONS

The provision in this bill requiring mandated reconsideration will result in significant delay and additional attorney appearance time.

TECHNICAL ISSUES

The AGO notes the following:

It is unclear what provide means. SB 625 does not provide a definition of provide in the context of a new requirement that will mandate a district attorney to provide the victim with written notice.

SB 625 specifically does not require a crime victim to be served with written notice; however, it will require the district attorney to file a certificate of service upon providing the written notice.

The term service denotes service of process signifying the delivery to or leaving with the party to whom or with whom they ought to be delivered.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AODA states that The district attorneys' offices currently have significant victim responsibilities mandated by law that are carried out everyday in every office, while maintaining a spirit of cooperation and advocacy with victims to achieve justice. Victims will continue to receive the primary care and attention necessary for the fair administration of justice.

DW/mt