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## FISCAL IMPACT REPORT



SPONSOR: Sanchez DATE TYPED: 02/01/02 HB \_\_\_\_\_

SHORT TITLE: Waive Fees for Certain Crime Victims SB 294/aSPAC

ANALYST: Wilson

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY02	FY03			
		(\$0.1) Minimal		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AG)  
 Administrative Office of District Attorneys (ADA)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment adds victims of "domestic abuse" to the list of crime victims who do not incur costs associated with the prosecution of the crimes listed in SB294.

#### Synopsis of Original Bill

SB 294 amends current law so that victims of sexual offenses, stalking, harassment, crimes against a household member and violations of restraining orders do not incur costs associated with the prosecution of those crimes, or costs associated with securing a protective order. SB 294 also amends the Family Violence Protection Act to provide legislative intent relating to domestic abuse investigations. SB 294 contains an emergency clause.

#### Significant Issues

SB 294 will bring New Mexico into compliance with the requirements in the federal Violence Against Women Act of 2000. The US Department of Justice refused to continue funding grants of

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about \$1 million, citing several problems including discouraging arrests. Section 1 of this bill appears to tighten up another requirement of the Violence Against Women Act relating to charging fees.

Under current law, a citizen can file criminal misdemeanor complaints in magistrate court. Citizens will file these complaints when the police have decided, for whatever reasons, not to file the case. Often police will not file because there is no probable cause to file the complaint. In the vast majority of domestic violence cases, police departments or the district attorney's offices are involved in filing the case and no filing fees are charged.

Unless there is some qualifying language limiting the section on harassment and stalking, the \$20 fee will also be waived in non-domestic violence situations such as when a citizen files a criminal complaint against his or her neighbor for harassment.

### **FISCAL IMPLICATIONS**

The courts will lose a small amount of money when a person files a misdemeanor citizen complaint under NMRA 6-108. The rule allows a citizen to file criminal misdemeanor complaints in magistrate court.

### **ADMINISTRATIVE IMPLICATIONS**

There will be a small administrative impact on the courts in devising procedures and training clerks on when to assess fees.

### **RELATIONSHIP**

Relates to HB 242, Waive Crime Fees for Crime Victims. HB 242 amends the section on arrest without a warrant while SB 294 bill declares a state policy that dual arrests are discouraged and that domestic violence training shall be part of the basic law enforcement curriculum.

### **TECHNICAL ISSUES**

The amendments to the Family Violence Protection Act do not cite where they would be inserted. The AG recommends that page 2, lines 20-25; and page 3 lines 1-3 be inserted at NMSA 40-13-7 B

The amendments to the Law Enforcement Training Act do not cite where they would be inserted into the act. The AG recommends that the amendment on page 3, lines 4-8, be revised for inclusion in either: NMSA 29-7-6 A. (9) or in NMSA 29-7-7 B. The remaining sections on page 3, lines 3-6 and lines 9-11 could be revised and incorporated into NMSA 29-7-7 F. or NMSA 29-7-7.1 C.

### **OTHER SUBSTANTIVE ISSUES**

SB 294 removes the possibility that victims will incur the cost of prosecuting sexual crimes, stalking or harassment, crimes against household members, and violations of protection orders. The bill also makes it possible to seek a protective order against an offender in those crimes without cost to the victim.

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The costs of the prosecution of crimes is typically a cost borne by the State, and this bill creates a safety net to insure that none of these costs are misdirected at a crime victim in those instances where inadequate funding or inadequate staffing might lead to such a result.

Currently, “domestic abuse” victims are entitled to protective orders without charge. This bill clarifies the type of crime victims who could receive free protective orders. Those victims who could receive a protective order without charge under the terms of this bill include victims of “crimes against a household member”, stalking or harassment, sexual offenses and victims of violations of protective orders.

SB 294 directs law enforcement to analyze the crime of domestic disturbance in such a manner as to determine who the primary physical aggressor is, and to consider self-defense issues in the course of the investigation. The bill states the legislative intent for the State is to discourage dual arrests in domestic disturbance investigations. This bill follows a growing national trend to codify a public policy that law enforcement must determine when an individual has engaged in a self-defensive activity, as opposed to an individual is violent and deserving of criminal justice sanctions. When both parties present to law enforcement with evidence of physical altercation or injury, a mutual arrest results in both parties being subjected to potential criminal justice sanctions, even though one party may have acted in self-defense.

DW/ar