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FISCAL IMPACT REPORT

SPONSOR Beam DATE TYPED 2/07/05 HB 555

SHORT TITLE Crime Victim Restitution As Permissible Lien SB _____

ANALYST Peery

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

Attorney's General Office (AGO)

Administrative Office of the Courts (AOC)

No Responses

New Mexico Corrections Department (NMCD)

Crime Victims Reparations Commission (CVRC)

SUMMARY

Synopsis of Bill

House Bill 555 establishes crime victim restitution as a permissible lien. A court order requiring an offender to pay restitution constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the court order. A judgment of restitution may be enforced by the state, the victim entitled to receive restitution, a deceased victim's estate or any other beneficiary.

PERFORMANCE IMPLICATIONS

PDD states if a probationer violates the conditions of probation by failing to pay and the victim seeks to attach property, it may create a new realm of cases for the attorneys. PDD reports that public defenders do not have the expertise necessary to assert the available defenses in a civil

collection action, nor do they have the time. The criminal action is an action by the state against the defendant, and the only remedy is the punishment prescribed by the statute violated. Public defender attorneys work only in this area.

AOC states the proposed legislation may impact the performance based budgeting measures identified for fiscal year 2006, which may result in a need for additional resources. For example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains leading to the increase of time for judges and clerks to dispose of cases.

FISCAL IMPLICATIONS

PDD states the proposed legislation could result in extensive change in the way public defender attorneys conduct their practice as all civil defenses to a civil judgment will have to be asserted in the criminal action. PDD reports this will be a second trial in which fiscal implications could be great.

AOC states there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and prosecutions. AOC reports new laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts requiring additional resources.

TECHNICAL ISSUES

AGO states the bill as drafted does not make specific reference to other applicable statutes. For example, NMSA 1978, Section 39-1-1 et seq. (judgments); NMSA 1978, Section 39-4-1 (execution of judgment liens); NMSA 1978, Section 48-3-1 (liens on personality); NMSA 1978, Section 48-3-13 (enforcement of liens). AGO reports this may not be absolutely necessary, the legislature may want to clarify the specific manner in which any such victim restitution judgment or lien may be enforced.

OTHER SUBSTANTIVE ISSUES

PDD reports offenders cannot be deprived of defenses regarding civil collection actions because the order was rendered in a criminal case. PDD states the bill is unclear as to whether such defenses could be presented in a criminal action. Also, PDD reports the defenses of joint property owners are not considered in the bill.

RLP/sb