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FISCAL IMPACT REPORT

SPONSOR Sen. Candelaria **ORIGINAL DATE** 1/17/19
 Rep. Hochman-Vigil **LAST UPDATED** 1/30/19 **HB** _____

SHORT TITLE Protect Confidentiality of Crime Victims **SB** 118/aSJC/aHJC

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

Responses Requested But Not Received From

Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee’s amendment to Senate Bill 118 adds the “address, contact information, or protected personal identifier information” of a covered individual to the information SB 118 exempts from the right to inspect public records.

Synopsis of SJC Amendment

The Senate Judiciary Committee’s amendment to Senate Bill 118 effectively reverses the changes the original bill made to the Inspection of Public Records Act’s “catch all” exception from the right to inspect public records. As a result, the bill, as amended, makes no changes in the current language of the exception. See NMSA 1978, § 14-2-1(A)((8).

Synopsis of Original Bill

Senate Bill 118 amends the Inspection of Public Records Act by:

- providing that the law enforcement records exception applies to portions of law enforcement records that reveal, before charges are filed, the names of victims and non-law enforcement witnesses to specified crimes of assault, stalking, criminal sexual penetration, and criminal sexual contact. The bill provides that the presence of information covered by the exception does not exempt the record from inspection; and

- amending the “catch all” exception to protect public records from the right to inspect as otherwise provided by federal law, the New Mexico Constitution, statute, or rules promulgated by the New Mexico Supreme Court.

Senate Bill 118 adds a new section to the Inspection of Public Records Act that contains the provision governing the redaction of protected personal identifier information currently in Section 14-2-1(B) of the Act.

SIGNIFICANT ISSUES

LOPD notes that because the bill envisions protection of alleged crime victim and material witness identities only until the point when charges are filed, there appear to be no issues from the perspective of LOPD. LOPD would only be appointed as counsel in a case where this issue might arise after charges are filed. However, with respect to a person who knows s/he has been identified as a crime suspect who chooses to employ his or her own private counsel, that counsel might seek to undertake immediate investigation and judicially challenge that a person identified as a suspect of a crime, even prior to his or her being formally charged, has a due process right to full investigation and that such investigation can only be facilitated by the disclosure of the identities of these witnesses and alleged crime victims. However, subsection 1(H) of the bill does provide for disclosure “as otherwise provided by . . . the constitution of New Mexico[.]” Therefore, a potentially accused suspect could still move for and procure such disclosure if s/he can demonstrate that due process requires it.

ADMINISTRATIVE IMPLICATIONS

LOPD observes that this legislation might add to the workload of law enforcement agency staff, who would likely find themselves responsible for continuing to provide law enforcement reports and also responsible for undertaking the appropriate redactions pursuant to this amendment.

Similarly, OAG states that as a law enforcement agency, OAG would need to consider any implication that SB 118 would have on its records custodian and how to respond to requests for responsive records subject to exception under the new provision.

TECHNICAL ISSUES

Page 2 of the bill, lines 1-3: in the proviso added at the end of the last paragraph of Subsection (D)(2), the word “on” should probably be changed to “in,” and the word “entire” might be added between the words “the” and “record.”

OTHER SUBSTANTIVE ISSUES

By providing that victims and certain witness of specified crimes are excepted from the right to inspect, the bill may be susceptible to an interpretation that victims of and witnesses to crimes previously covered by the law enforcement records exception are no longer covered because they

are not expressly listed in the exception.

BG/sb