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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/07
 LAST UPDATED 03/06/07 HB 583/a HJC

SPONSOR Maestas

SHORT TITLE Victims of Crime Act Effective Dates SB _____

ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.1 see narrative			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 Attorney (AODA)
 Attorney General’s Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The first part of the House Judiciary Committee amendment expands the definition of “formally charged” to allow for the possibility that a criminal information may be filed and not dependent upon whether the reviewing court found probable cause to have the charges bound over for trial; therefore, making the provisions of the Act applicable sooner.

The second part of the House Judiciary Committee amendment (presumably directed at the first “a” as opposed to the second “a” on line 24) further expands the definition of “formally charged” to include only misdemeanors where the district attorney has filed an “entry of appearance”. This will make the applicability of the Act for certain misdemeanors dependent upon whether the AODA exercised its discretion to enter a case charged by criminal complaint

SIGNIFICANT ISSUES

The AGO notes the first amendment has no significant impact on the proposed legislation. The AODA further notes the change within the first amendment will eliminate a gap in the notification procedures on certain misdemeanors enumerated in the Act.

The AGO and the AODA report the second proposed amendment will significantly reduce the

number of cases covered by the Act by excluding all misdemeanors where the AODA has not filed an “entry of appearance”; therefore, excluding victims of those misdemeanor offenses from the provisions under the Act.

ADMINISTRATIVE IMPLICATIONS

The AODA will need to provide for procedural changes to ensure only victims of specific misdemeanor crimes for which the AODA files an entry of appearance receive the information to which they are entitled to under the Act.

Synopsis of Original Bill

House Bill 583 amends Section 31-26-3 NMSA 1978, the Victims of Crime Act, by expanding the definition of “formally charged” to include the filing of a criminal complaint for a misdemeanor by the District Attorney for a number of offenses subject to the Act. The amendment is intended to clarify that victims of the misdemeanor crimes are entitled to the same treatment as are victims of felony crimes enumerated in the Victims of Crimes Act.

FISCAL IMPLICATIONS

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 commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

The AODA states that Article II, Section 24 of the New Mexico Constitution does not include Stalking, Battery against a Household Member or Aggravated Battery against a Household Member crimes in the list of crimes it specifies. Also, NMRA Rule 11-615 permits the Court to exclude witnesses so they cannot hear testimony of other witnesses and ordinarily victims are necessary witnesses at trial. That rule conflicts with the constitutional and statutory provisions which state that victims have the right to attend all public court proceedings the accused has the right to attend. Since three of the enumerated crimes in the statute are not included in the constitutional provision on victim’s rights the conflict might be more difficult for a court to resolve in proceedings involving those misdemeanors. Even on the two misdemeanors in the Act that are included in the Constitution there is a potential conflict with the Supreme Court rule.

PERFORMANCE IMPLICATIONS

The courts are participating in performance based budgeting. This bill may impact the courts’ performance based budgeting measures, which may result in a need for additional resources. The change will also require Victims’ Advocates within AODA offices to carefully monitor the filing of criminal complaints alleging any of the above misdemeanors.

ADMINISTRATIVE IMPLICATIONS

There may be an increase in the amount of work that needs to be done by the courts, thus

requiring additional resources to handle increase. Specifically in establishing and implementing procedures to insure that victims of the specific misdemeanor crimes are receiving the information to which they are entitled under the Act.

OTHER SUBSTANTIVE ISSUES

Article II, Section 24 of the New Mexico Constitution provides for the following; “*A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:*

- *the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;*
- *the right to timely disposition of the case;*
- *the right to be reasonably protected from the accused throughout the criminal justice process;*
- *the right to notification of court proceedings;*
- *the right to attend all public court proceedings the accused has the right to attend;*
- *the right to confer with the prosecution;*
- *the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;*
- *the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;*
- *the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;*
- *the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and*
- *the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.”*

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Victims of enumerated misdemeanors will not have the added procedural protections afforded under the Victims of Crime Act.

AHO/mt