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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/19/11  
**LAST UPDATED** 02/11/11    **HB** \_\_\_\_\_

**SPONSOR**    Rue

**SHORT TITLE**    Damage Awards for Children Damaging Property    **SB** 99/aSPAC

**ANALYST** Peery-Galon

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*Minimal	*Minimal	*Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See FISCAL IMPLICATIONS

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Public Defender Department (PDD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 99 reduces the amount of recoverable damages from \$10,000 to \$7,500.

#### Synopsis of Original Bill

Senate Bill 99 amends Section 32A-2-27 NMSA 1978 the delinquency section of the Children's Code. The proposed legislation raises the current maximum amount of \$4,000 to \$10,000 a victim can recover in actual damages from the parent or guardian having custody and control of a child who has maliciously or willfully injured a person or damaged, destroyed or deprived use of real or personal property. Also, the proposed legislation adds language providing the courts discretion to order the child to perform community service regardless of whether any damages are awarded against a parent or guardian.

## **FISCAL IMPLICATIONS**

AODA reported the number of cases filed in civil court could increase slightly because it would now be possible to recover a maximum of \$7,500 instead of the \$4,000 that is in current law. If there is an increase in cases, it will impact our already overloaded magistrate and metropolitan courts.

The proposed legislation increases the award caps only affecting civil lawsuits between plaintiffs and the parents of delinquent children. PDD noted the only fiscal implication for New Mexico arises from possible increased incentive for lawsuits which affects the judiciary, especially the magistrate courts.

AOC noted there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. 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**

CYFD reported many of the families whose children are involved with the juvenile justice system are receiving public assistance and do not have the means to pay restitution. Many courts order community service hours rather than financial reimbursement to victims. When matters of a high dollar amount are identified, deductibles have been ordered as to cover actual cost to property in the range of \$250 to \$1,000 per delinquent youth committing property violations. CYFD noted increasing the statutory recoverable amount for a civil action may not, in light of the public assistance status of many of these families, result in any actual increased in recovered damages.

CYFD noted the proposed legislation states, “The court in its discretion may order the child to perform community service regardless of whether any damages are awarded against a parent or guardian pursuant to this section.” CYFD reported that in Section 32A-2-3 NMSA 1978 “restitution” is defined as a financial reimbursement by the child to the victim or community service imposed by the court. Section 32A-2-27 NMSA 1978, Subsection C, states “Nothing in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by the child when the child has been found to be within the provisions of the Delinquency Act.” Current statute already gives the court discretion in ordering community service as restitution.

## **PERFORMANCE IMPLICATIONS**

AOC noted the proposed legislation may have an impact on the following measures of the district courts: cases disposed of as a percent of cases filed and percent change in case filing by case type.

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