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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/14

SPONSOR Moores LAST UPDATED _____ HB _____

SHORT TITLE Full Restitution for Crimes SB 286

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General’s Office (AGO)
 Crime Victims Reparation Commission (CVRC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 286 amends the existing victim restitution statute in NMSA 1978, Section 31-17-1 (2005). Coverage is expanded from the Criminal Code to any crime, whether or not it is found in the Criminal code (e.g., driving while intoxicated would now be covered). Under the current statute, the requirement to order restitution only applies when a court suspends or defers part of a sentence (“exercise either of the sentencing options under Section 31-20-6”). SB 286 expands the requirement to order restitution to “every case in which a victim has suffered injury, death or economic loss as a result of a defendant’s criminal activities.”

SB 286 imposes a new requirement that the defendant execute, under oath, a financial disclosure form, identifying the defendant’s income, liabilities and any assets in which the defendant has a present or future interest. The defendant must execute the disclosure form and provide it to the defendant’s probation and parole officer and the district attorney’s office five days before the defendant is sentenced.

The sentencing court is required to hold a hearing addressing the restitution plan. Until the defendant completes all probation and parole, the restitution order can be modified, but thereafter it cannot. Prior to the conclusion of probation and parole, if restitution remains unpaid, the defendant must execute under oath an updated financial disclosure sixty days before the defendant's release from probation or parole.

The restitution order is enforceable as a civil judgment “and shall satisfy the application requirements for a writ of garnishment and a writ of attachment of a defendant's property pursuant to the Rules of Civil Procedure.” In addition, once a defendant completes probation and parole, the order of restitution may be enforced by the district attorney by recovering any amounts due by filing liens, garnishment or “other remedies available at law or equity.” A victim's ability to sue a defendant is not limited or impaired by a restitution order.

The order of restitution shall identify each victim and the loss to each victim and in amount to fully reimburse each victim for actual damages. These damages can include replacement costs of stolen property, repair costs, medical and mental health expenses, lost income and funeral expenses.

FISCAL IMPLICATIONS

There are potentially significant fiscal impacts associated with enactment of SB 286. The bill requires that filing of a financial statement prior to sentencing which would preclude a single hearing for a plea and sentencing. In magistrate courts, it is common for a sentence to be imposed immediately following a plea. Under SB 286, a hearing on the plan of restitution would be added to any criminal case in which there is a victim. The additional hearings will impose a large burden on District Attorneys, the PDD, and courts (particularly limited-jurisdiction courts) statewide but does not provide an appropriation to increase staff for agencies which will be impacted by significantly higher workloads.

Additionally, the bill requires defendants to fill out a financial disclosure form and sign that form under oath however, the bill does not provide for legal advice for a defendant filling out the form. It is likely that the PDD will provide this advice.

Additional probation and parole staff may be needed to prepare financial disclosure statements.

While the impact of enactment of this legislation will likely be significant, no estimate of the total cost of implementation was provided.

SIGNIFICANT ISSUES

The CVRC recommends that when restitution is ordered on behalf of a victim, the CVRC be listed as an additional party to the restitution for reimbursement of the expenses that the CVRC paid to victims.

PERFORMANCE IMPLICATIONS

The addition of financial disclosure statements and restitution hearings may result in an increased caseload for the courts with an increase in the amount of time to resolve criminal cases. The increase in criminal case complexity may lead to an increase in attorney caseloads for both DA's and the PDD.

ALTERNATIVES

It is common to have a delay between verdict or plea and sentencing in felony cases handled in district court. If the bill were amended to apply only to felony cases the potential fiscal impact on limited jurisdiction courts would be significantly reduced or eliminated.

CJ/svb