LFC Requester:	

AGENCY BILL ANALYSIS
2025 REGULAR SESSION

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SECTION I: GENERAL INFORMATION
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original ___ **Amendment** X
Correction ___ **Substitute** ___

Date 2/28/2025
Bill No: HB 190-280

Sponsor: Rep. Hochman-Vigil
Short Title: Victims of Crime Act Changes

Agency Name and Code Number: LOPD 280
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total				Likely significant	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

- HB 86, Human Trafficking Changes; HB 104, Crimes Against Peace Officer Definitions; and SB 74, Time Limit for Prosecuting Certain Crimes, and HB 231 Additional Crimes for Reparations, would also amend Section 31-26-3.
- HB 204, Refusal of Certain Pretrial Statements, would add a new section to the Victims of Crime Act.

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Updates to the analysis stemming from the **CPAC amendment** are inserted with "underline" emphasis throughout.

> **Synopsis:** HB 190 would make a number of changes to the Victims of Crime Act, which is codified at NMSA 1978, Sections 31-26-1 through 31-26-15. The bill would give victims of enumerated crimes new rights in criminal cases, including the right to file pleadings through private counsel, the right to appeal rulings made without the victim present, and the right to sue for violations of the Act. The bill would also eliminate the requirement that victims must cooperate with law enforcement and prosecutors in order to trigger their rights under the Act.

Section 1 of the bill would amend the definition of "criminal offense" in Section 31-26-3(B) to correct the citation for negligent arson, add all forms of robbery, and add the offenses of battery on a health care worker and human trafficking. Section 1 (and several of the other sections) also includes small changes to the statutory language that appear to be stylistic or cosmetic; these are addressed in "Technical Issues" below.

Section 2 of the bill would create a new subsection (D) in Section 31-26-7, which deals with designation or appointment of a representative for the victim. The proposed Section 31-26-7(D) would say that if the victim designates or the court appoints an attorney as the victim's representative, the attorney "may file pleadings or appear or otherwise speak on behalf of the victim in court proceedings."

The CPAC amendment replaces the proposed Subsection D with language added to Subsection A, expanding the enumerated powers of the victim's representative to "include" (non-exhaustive) "filing pleadings, appearing in court or otherwise speaking on behalf of the victim regardless of whether the victim's representative is an attorney authorized to practice in New Mexico; provided that a victim's representative may only file pleadings or appear in court to enforce the victim's rights pursuant to the Victims of Crime Act."

Section 3 changes the provisions for notice of hearings in Section 31-26-10. Currently, the court must give a district attorney's office notice of a scheduled court proceeding at least seven business days in advance, "unless a shorter notice period is reasonable under the circumstances." HB 190 would change that requirement to "unless the court finds exceptional circumstances and determines that a shorter notice period is reasonable under those circumstances." The CPAC amendment would specify that DA notice be sent to the victim's "last known point of contact."

Additionally, HB 190 would add a new subsection stating that if the court makes this finding and holds a hearing with less than seven business days' notice, and the victim is not present, the victim may appeal the decision to hold the hearing. The CPAC amendment changes this "may appeal" to granting an affirmative "right to immediately appeal." The bill specifies that review of the court's decision is de novo (without deference to the lower court). The CPAC amendment further clarifies this "de novo" standard of review and adds that the appeal shall be filed in accordance with Supreme Court rules of appellate procedure. If the appellate court finds that exceptional circumstances did *not* exist, "the court proceeding below and the outcome of that court proceeding shall be vacated and the court shall be ordered to reschedule the court proceeding."

Section 4 would amend Section 31-26-10.1, which addresses the victim's presence in court. Currently, the statute says that in any proceeding, the court must ask whether a victim is present in order to make an oral statement or submit a written statement. If the victim is not present, the court must ask whether anyone attempted to notify the victim about the proceeding. If not, the court must take a number of steps, including either rescheduling or reserving ruling until the victim has been notified and given an opportunity to speak.

HB 190 would add a new subsection stating that a "victim has a right to be present and make a statement . . . at all court proceedings." It also specifies that the court must provide language interpretation or similar services if necessary. The CPAC amendment would remove this proposed right to make a statement at every proceeding, reverting to current statutory language regarding notice and a court inquiry as to "whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in Section 31-26-4." It retains language regarding interpreter or other services.

In the existing list of steps that the court must take if the victim is not present, HB 190 would change "shall" to "may," apparently making it optional for the court to reschedule or reserve ruling.

Section 5 currently contains a disclaimer that the Victims of Crime Act does not create a cause of action against the state or any public employer, public employee, or public agency. HB 190 would eliminate that disclaimer. It would replace it with a section specifying that a victim may sue "the state or a political subdivision of the state for a violation of duties or deprivation of rights provided for in the Victims of Crime Act and may recover actual damages and be awarded equitable or injunctive relief." The section includes a waiver of sovereign immunity.

An additional subsection authorizes the attorney general to "file a petition against the state or a political subdivision of the state to seek a civil penalty for a violation of the Victims of Crime Act." Civil penalties are limited to $500 per violation or $500 per day for an ongoing violation.

The CPAC amendment adds limitations to "state district court" throughout, and replaces the phrase "file a petition" with "bring an action in state district court."

Section 6 would repeal Section 31-26-5 in its entirety. Currently, this section says that a victim may exercise rights under the Victims of Crime Act *only* if the victim meets three criteria: A) reports the crime within five days ("unless the district attorney determines that the victim had a reasonable excuse for failing to do so"); B) gives the district attorney up-to-date contact information; and C) "fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys." HB 190 would eliminate any requirements that victims must fulfill to trigger the protections of the Act.

FISCAL IMPLICATIONS

HB 190 authorizes victims to file pleadings in criminal cases and to appeal rulings that they believe violated the Act's notice requirements. This would be wholly new; victims cannot currently participate in criminal cases as litigants—that is, they cannot file standard motions, responses, or appeals. Allowing victims to litigate in criminal cases would complicate and slow down proceedings. Because these would be new procedures, there would be litigation not only about the issues in each particular case, but also about the scope of litigation authorized by the statute and how these procedures should work. Some of this would happen in the trial court, and some would necessarily happen on appeal. Taken as a whole, this litigation would impose costs on the courts, on district attorneys and the NMDOJ, and on the LOPD.

Engaging in additional and more complicated litigation could require additional funding for LOPD in order to protect the Sixth Amendment Rights of defendants. A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, "A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment." *See* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf

Additionally, the new causes of action in Section 5 specifically waive sovereign immunity, authorize victims to sue the state and its subdivisions, and authorize the attorney general to seek civil penalties. It is, however, unclear what actions would be required by the various state actors involved in the court system to make out the causes of action contemplated by this bill, particularly given the breadth of judicial immunity and prosecutorial immunity. *See Bolen v. New Mexico Racing Comm'n*, 2024-NMCA-056, ¶ 14 (describing judicial immunity as near absolute immunity for public bodies and agencies and the individual employees "for their actions taken in performance of their roles as integral parts of the judicial process"); *Abalos v. Bernalillo Cnty. Dist. Atty's Off.*, 1987-NMCA-026, ¶ 36 (reinforcing prosecutorial immunity of district attorneys while performing various functions that if performed my law enforcement agencies are not subject to immunity).

Although Analyst presumes the causes of action in this bill are intended to be raised against the district attorney or the court, who have delineated responsibilities to victims, it is not at all clear that LOPD would not be also subject to lawsuits under HB 190. It is not difficult to imagine a scenario where the constitutionally mandated zealous defense of a criminal defendant is at odds with a victim and their asserted rights. In addition to any litigation around the extent over possible prosecutorial and judicial immunity, there would likely be litigation around whether a cause of action could be maintained based on LOPD's alleged interference with a victim's rights.

LOPD maintains that such claims would be barred by its statutory immunity under the Indigent Defense Act, but without clarity, litigation will follow. NMSA 1978, § 31-16-10 ("No attorney assigned or contracted with to perform services under the Indigent Defense Act shall be held liable in any civil action respecting his performance or nonperformance of such services"); *Coyazo v. State*, 1995-NMCA-056 (regarding applicability of immunity to contracted public defenders, the state agency, and employed public defenders).

The CPAC amendment does not alter the immunity provisions except to limit causes of action to state court. However, this does not limit the expansive potential for any state actor to be named as a civil defendant – including the DA's office, Department of Justice (if acting as the trial prosecutor), Law Offices of the Public Defender, the presiding judge, the entire Judicial District Court, investigating law enforcement agency, or even individuals like the bailiff, court clerk, or prosecutor's victim advocate. Victims could sue prosecutors for agreeing to a plea; sue public defenders for a zealous cross-examination; sue court staff for enforcing reasonable limitations on victims' participation in purely legal proceedings, or hold their assigned victim advocate personally responsible for notice requirements. Eliminating sovereign immunity exposes absolutely every state actor in the system to suit. Even if eventually denied on its merits, the need to answer every complaint and mount a defense to the civil claim in every single case presents serious resource concerns.

While the penalties that the attorney general may seek are capped, the penalties that victims may seek are not (although they appear to allow only actual money damages, not punitive damages). **The state and its subdivisions would have to pay these awards, and they would also have to pay the costs of litigating these suits. Without the ability to predict a dollar figure, the impact of this provision on the general fund would likely be significant.** The complications posed by this section of the bill are particularly important to resolve given the reported shortfalls in the Public Liability Fund. *See* https://sourcenm.com/2024/02/26/20m-new-mexico-liability-fund/.

SIGNIFICANT ISSUES

Analysis addressing the CPAC amendment appear at the end of the "Significant Issues" section.

The overall effect of HB 190 would be to treat crime victims as parties, to some extent, in criminal cases. This would be a sea change in how the criminal justice system functions.

Victims are not parties in criminal cases, and prosecutors do not represent them. *See* ABA Criminal Justice Standards for the Prosecution Function, 4th Ed. (2017), Standard 3-1.3 ("The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim."). Instead, prosecutors represent all of the people of the state, and they have an obligation to seek justice, which is not necessarily the same as doing what the victim wants; they do not have an attorney-client relationship with the victim. It is not unusual either for a prosecutor to pursue a case that a victim would prefer to drop, or for a prosecutor to drop charges or seek a plea bargain when a victim would prefer to go to trial. A prosecutor's discretion is written into the Victims of Crime Act at Section 31-26-10.1(B): "The provisions of this section shall not limit the district attorney's ability to exercise prosecutorial discretion on behalf of the state in a criminal case."

The complications below arise from trying to add a victim as an additional party that is neither the plaintiff nor the defendant.

Allowing litigation by victims' attorneys

Section 1 of the bill would allow a victim's attorney to "file pleadings or appear or otherwise speak on behalf of the victim in court proceedings." It is not at all clear how this would work; the bill does not specify (or limit) the types of pleadings the attorney could file or the contexts in which she could speak. For example: Would this allow a victim to file a motion for pretrial detention, even if the state had determined that litigating such a motion was not a good use of state resources? Could the victim file his own response to a defense motion to suppress? Could the victim contest the prosecutor's decision to drop a charge? In each of these cases, would both the prosecutor and the defense need to respond to the victim's pleading? Could the victim's attorney cross-examine witnesses during a hearing or trial?

The bill answers none of these questions, and they would have to be resolved through litigation. Furthermore, in all of these examples, the victim's filings would intrude on the purview of the prosecutor and limit prosecutorial discretion.

Under current law, nothing prevents victims from hiring lawyers and asking the lawyers to speak on their behalf to the judge. Section 31-26-7(A) specifically allows a victim to designate a representative to exercise the victim's rights. The problem with Section 1 of HB 190 is that it authorizes *litigation* by a non-party's attorney.

Indeed, this degree of interference with court procedures likely constitutes an unconstitutional violation of Separation of Powers. *See State v. Valles*, 2004-NMCA-118, ¶ 14, 140 N.M. 458, 143 P.3d 496 ("The Supreme Court is vested with the exclusive power to regulate pleading, practice, and procedure in the courts under N.M. Const. art. III, § 1 and art. VI, § 3.") (citing *Ammerman v. Hubbard Broad., Inc.*, 1976-NMSC-031, ¶ 11, 89 N.M. 307, 551 P.2d 1354). "Thus, when a statute conflicts with a Supreme Court rule on a matter of procedure, the Supreme Court rule prevails, and the statute is not binding." *Id.*

Changing notice requirements

Section 3 of the bill would change the exceptions to the notice requirement for hearings. Instead of allowing less than seven business days' notice if "a shorter notice period is reasonable," the bill would require the court to find "exceptional circumstances."

This would limit judicial discretion (particularly given the appeal provisions discussed below) and would create hardship for defendants. The hearings in criminal cases are often time-sensitive; for example, they include hearings on whether a defendant may be released from jail. Under current law, if the parties are in court and realize that they cannot proceed with a hearing, but must reset it, the court has some flexibility about how to do that. The judge can ask the lawyers and victim when they are free, and then the judge can schedule the hearing for the next date that works. HB 190 would eliminate that flexibility and require the judge to wait seven business days or more, even when the delay prejudices the defendant and is not necessary.

Creating a right for victims to appeal

Section 3 would also create the right for victims to appeal in criminal cases. Under Section 3 of the bill, if a court finds exceptional circumstances and holds a hearing in less than seven business days without the victim present, the victim can appeal the court's decision to hold the hearing.

Like the provision allowing victims' attorneys to litigate in trial court, this would be extraordinarily disruptive and likely constitute an unconstitutional violation of Separation of Powers. *Valles*, 2004-NMCA-118, ¶ 14. Typically, a non-party may not appeal a ruling, and it is not clear how this would work. Would the victim, state, and defendant all be parties? Appellate briefing is designed to have two sides of an argument, not three; there is no structure in place for three entities to respond to each other's pleadings. As an alternative to an "appeal," the writ process allows a "real party in interest" who is not actually a party to seek review of actions taken (or not taken) by a court. The writ procedures in Rules 12-503 and 12-504 NMRA (Writs of error and Extraordinary writs, respectively) are thus the existing mechanism for a victim to seek review from a higher court.

As a practical matter (and in contrast to writs), appeals are slow. An appeal from district court to the Court of Appeals takes months and sometimes years to be resolved. During that time, the defendant's district court case will move forward. The defendant might have a trial or might take a plea deal before the appellate courts have addressed the victim's appeal. When the victim's appeal is resolved, months or years after the fact, it will not make sense to remand and re-do a hearing from the beginning of the case. The appeal would be a waste of the attorneys' and the appellate courts' time.

The alternative would be to stay proceedings while the victim's appeal is pending. That means that the defendant's case would linger on the trial docket for the length of the appeal. This kind of delay in a criminal case can have serious and destructive consequences. Defendants are sometimes incarcerated pretrial while an appeal is pending. Evidence can be lost during appellate delay, and witnesses can die or move away. This kind of delay can violate a defendant's constitutional right to a speedy trial, which in extreme cases can require dismissal of the charges.

It is worth noting how much power this provision gives to victims. Not every victim covered by the Victims of Crime Act will be cautious and rational. Some victims struggle with psychiatric issues, including addiction, and may not act rationally. Others may be confused, and they may file appeals even where the lower court *did* comply with the Act. (Resolving even a simple case on appeal can still take many months.) HB 190's repeal of Section 31-26-5 means that even victims who did not share their contact information with prosecutors would be entitled to notice, and would have the right to appeal proceedings that were conducted in their absence.

Still other victims may not be victims at all. It is not unheard of for a victim of domestic violence to be charged with crimes against her abuser. This provision would allow the "victim" in such a case to maliciously complicate the case against the defendant.

Creating a right for the victim to be present and make a statement

Section 4 would create a right for a victim "to be present and make a statement, personally or through the victim's representative, at all scheduled court proceedings." Related rights already exist in the Act: Section 31-26-10.1 requires the judge to check at every proceeding whether the victim is present "for the purpose of making an oral statement or submitting a written statement," and the judge must reschedule the hearing or reserve ruling if the victim has not been notified. A victim also already has the right to "attend all public court proceedings the accused has the right to attend," § 31-26-4(E), and to "make a statement to the court at sentencing and at any post-sentencing hearings for the accused," § 31-26-4(G). Therefore, a victim already has significant rights to be present and to make statements.

The issue with Section 4 is that it creates a new statement of a right with broader language and no exceptions. It applies to "all scheduled court proceedings," not merely public proceedings that the defendant has a right to attend. A court could read this section to permit the victim to attend *all* hearings, even when the courtroom is closed. (Most criminal proceedings are open to the public, but courts occasionally close the courtroom to protect the identity of a witness or to allow an attorney to explain a conflict to the court.)

Furthermore, the right to make a statement at all proceedings is not currently in the law. In practice, a judge who inquires whether the victim is present (as required by Section 31-26-10.1) is very likely to let the victim make a statement. But one could imagine a case in which a victim wanted to make a twenty-minute statement at every five-minute pretrial conference, or yelled abuse at the defendant or prosecutor, or otherwise could not behave appropriately. HB 190 appears to create a blanket right for victims to address the court, without discretion for the court to limit that right. Under HB 190, a judge seeking to manage the court's docket with reasonable limitations could potentially incur civil damages without immunity from suit.

Authorizing enforcement actions

Section 5 would allow victims to sue "the state or a political subdivision of the state" for violations of the Victims of Crime Act. The bill does not define "political subdivision of the state," and it is not entirely clear whether this is limited to counties and municipalities, or whether it would also allow victims to sue district attorneys' offices, courts, or other entities.

Creating a cause of action would—as with previous provisions—allow some number of troubled, abusive, or simply angry people to file frivolous lawsuits that the state and its subdivisions would have to spend money fighting. Additionally, the scope of the suits is not clear. HB 190 allows victims to sue for "equitable or injunctive relief." Nothing in the Act gives victims the right to override prosecutorial discretion, but because the language in the bill is broad, victims might use that provision to sue prosecutors or judges over decisions with which they disagreed.

Section 5 would also allow the attorney general to "file a petition against the state or a political subdivision of the state to seek a civil penalty for a violation of the Victims of Crime Act." Again, it is unclear whom the attorney general would be petitioning. The word "petition" here is also confusing—is this limited to a particular type of special writ?

CPAC Amendment: Significant Issues

The CPAC amendment in Section 2 purports to limit a victim representative's litigation role to "pleadings or appear[ances] in court to enforce the victim's rights pursuant to the Victims of Crime Act." However, it also grants an affirmative "right to immediately appeal." It also retains a wholly separate ability to file civil suits for violations, *waiving* sovereign immunity when victims sue the state and its subdivisions. LOPD's concerns with waiving immunity are outlined above in *Fiscal Implications*.

Unfortunately, the CPAC amendment do not address LOPD's primary concern that the bill would give victims litigation roles akin to a party *within the criminal case*, when they are not a party to a criminal case. In civil cases, victims are *the plaintiff*; they are an actual party to the proceeding and they can file motions, object to evidence, and must be present for proceedings so that they can actively participate. This is simply not true in criminal cases where the two parties

are "the people of the State of New Mexico" and the defendant accused of criminal conduct. The State is often (but not always) vindicating harms suffered by a victim, but they represent *the people*, not the victim.

Creating a Right to an Immediate Appeal

Creating a statutory right to an "immediate appeal" exacerbates the problems outlined above, and presents a whole slew of new concerns. The law does not recognize the ability of a non-party to appeal and appellate procedure recognizes only three types of appeal: (1) appeal from a final order; (2) appeal by an aggrieved party; and (3) appeals from interlocutory orders (like exclusion of evidence). An appeal is a procedural animal that requires appellate jurisdiction; this bill does not adequately create appellate jurisdiction for a non-party on a non-final order or decision of the district court. As discussed in the original analysis above, the proper avenue for appellate court review in these types of situations is a writ, not an appeal.

An appeal from a decision *to hold a hearing* is not only unprecedented, it is a practical impossibility. Appeals take months if not years to resolve. Would HB 190 require the criminal case to be stayed during the course of the victim's "immediate" appeal?

Furthermore, if a court hearing was held without the victim present because of a lack of notice, what remedy can the appellate court possibly provide? This question is crucial, because if there is no remedy a court can grant, the appeal is not "justiciable" and must be dismissed. Would the appellate court require the trial court to do the entire hearing over again so that the victim can *be present*? To what end?

Most criminal hearings are on legal matters on which a victim does not get to weigh in; they must rely on the State's attorneys to argue the law in the interests of justice. Even if the hearing were held again with the victim present, nothing about the hearing would be different except the victim would be able to observe. But they are not permitted to weigh in on constitutional law, evidence admissibility, or matters of court procedure. For example, in a hearing to determine whether a search of the defendant's home was constitutional (and whether evidence found during that search can be admitted at trial), the victim would have no relevant information nor standing to provide input. Nevertheless, under HB 190, if a victim did not get notice of such a hearing, they could appeal *the decision to hold the hearing* – to what end? With what remedy? Would the appellate court order district courts to re-do the entire hearing with the victim present? Require the district court to consider a victim's impact statement in deciding whether a search was constitutional? None of these remedies are viable.

Court proceedings are public record. Victims can always review audio transcripts of missed hearings to remain apprised in the case. Creating a path to *appeal* from any proceeding they are not present to observe is impractical and contrary to all notions of appellate review, which require *prejudice to the appellant* or the violation of a procedure so foundational to the process that the hearing itself is invalidated by the error.

Only the judicial branch can determine what issues are appealable and by whom, when a case is justiciable, and the applicable standard of appellate review. The entire "appeal" scheme outlined in HB 190 violates separation of powers and deeply misapprehends core concepts of appellate review.

Victim's Right to File Motions and Appear in Court to Enforce Their Rights

The CPAC amendment clarifies that the victim may only "enforce the victim's rights pursuant to the Victims of Crime Act" narrows the scope. However, victim's attorneys could still file motions "to enforce the victim's rights" that oppose evidentiary rulings, constitutional rulings, on motions to dismiss on speedy trial grounds, methods of presenting their testimony, or regarding the myriad trial procedures employed in the course of a trial – all on the theory that these rulings could embarrass or harm the victim, and thus impacting their statutory rights.

However, those types of rulings and procedures must be determined based on a two-party adversarial process; third-party input on evidentiary and constitutional rulings is inappropriate and courts must balance multiple interests in making their rulings without having to hear directly from victims to do so. While the CPAC amendment makes an effort to limit the scope of victim litigation, a further limitation "to enforce the victim's rights to notice, to presence, and to make a statement" would better prevent the dramatic separation of powers problem presented by this bill.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

In several places, HB 190 makes what seem to be cosmetic changes to existing statutory language—for example, changing "When the victim" to "If a victim," "the court" to "a court," etc. The legislature should be careful about making unnecessary stylistic changes to the text of a statute, because courts will frequently assume that changes in statutory language reflect an intent to change the meaning of the statute. *See, e.g.*, *Wright v. Closson*, 1924-NMSC-029, ¶ 9, 29 N.M. 546 ("A change of language in a material respect is always held to show an intent on the part of the Legislature to change the meaning of the law."); *State v. Hall*, 2013-NMSC-001, ¶ 15 ("We must assume that this change in language had meaning.").

Furthermore, some of these changes could actually affect the meaning of the statute, and it is not clear whether this is intentional. Section 1 of the bill would change "an individual" to "a person," which is not necessarily synonymous; "a person" could include a corporate person, whereas "an individual" unambiguously means a human. In Section 3, instead of requiring notice from "A court," the bill would require notice from "A clerk of court." This change would mean that a judge could no longer personally give notice of a hearing to a prosecutor.

OTHER SUBSTANTIVE ISSUES

Repeal of requirements for victim

Section 6 would repeal the requirements in Section 31-26-5 that a victim must meet to trigger the rights in the Victims of Crime Act. Removing this requirement would mean that the provisions of the Act apply to *all* victims of the enumerated crimes, rather than victims who cooperate with the investigation and give the prosecutor their contact information. This would mean that the

potentially disruptive new effects of HB 190 would apply more broadly than they otherwise would have.

Expanding number of applicable crimes

Section 1 would add crimes to which the Victims of Crime Act applies. Again, this would have the effect of applying the new provisions more broadly.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Under existing law, if a court or a prosecutor fails to comply with the Victims of Crime Act, the victim may enforce the law by petitioning for a writ of error, such as a writ of mandamus to require the court to comply. This kind of writ may be sought by a non-party, and it allows a victim to get relatively quick review of clear violations of the law. *See* N.M. Const. art. VI, § 13 ("The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise, in the exercise of their jurisdiction."); *State ex rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 19, 120 N.M. 562 (a writ of mandamus is "an appropriate means to prohibit unlawful or unconstitutional official action."); *accord Antoine v. State*, 245 Md. App. 521, 226 A.3d 1170 (2020) (remedy for violating a victim's rights by failing to permit the victim to address the court before the court imposed the sentence is a writ sought by the victim in their individual capacity).

AMENDMENTS