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| <b>LFC Requester:</b> | <b>Eric Chenier</b> |
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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**      
**Correction**     **Substitute**   

**Date** February 23, 2015  
**Bill No:** HB 528-305

**Sponsor:** Rep. Zachary J. Cook  
**Short Title:** Sex Crime Victim Rights and Reparations

**Agency Code:** Attorney General's Office  
**Person Writing:** Jennifer Armijo Hughes, AAG  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY15          | FY16 |                           |               |
|               |      |                           |               |
|               |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY15              | FY16 | FY17 |                           |               |
|                   |      |      |                           |               |
|                   |      |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

|              | <b>FY15</b> | <b>FY16</b> | <b>FY17</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates: HB 528

Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis:

HB 528 is an act amending the Sexual Crimes Prosecution and Treatment Act to provide for additional rights for victims of sexual crimes and also enumerating additional crimes in the Crime Victims Reparations Act for which reparations may be made.

HB 528 amends Section 29-11-3 NMSA 1978, by adding the definition of “active case” which is defined as a felony sexual assault crime reported to law enforcement that includes a sexual assault kit as evidence, has remained unsolved for less than two years, or is requested by the law enforcement investigating agency or is requested by a prosecutor for a pending prosecution. It changes the definition of “administrator” to the director of the behavioral health services division of the human services department or such person or office as the administrator may designate to act in the administrator’s stead. The bill adds the definition of “cold case” which is a sexual assault examination kit from an alleged felony crime reported to law enforcement that has remained unsolved for over two years after the crime was initially reported to law enforcement and for which the statute of limitations has not expired. It changes the definition of “sexual crime” to include any act or attempt under the provision of Sections 30-9-10 through 30-9-14.3 and 30-10-3. It also adds the definition of “unreported sexual assault examination kits” which are sexual assault examination kits that are being held while the victim decides if they will report the alleged crime. “Victim” is defined as a person against whom a sexual crime has been committed and for purposes of the victim’s right to notification, “victim” includes the parent or guardian of a minor victim, or if victim is killed or incapacitated includes the spouse, parent, adult child, grandparent, sibling or any other person related to the second degree or any other lawful representative to the victim. The act specifies that this does not include the accused, even if it is one of the above persons listed. Lastly, the act defines “victim advocate” as a person who is employed or authorized by a public or private entity to provide counseling, treatment or other supportive assistance to crime victims.

HB 628 amends Section 29-11-7 NMSA 1978 by adding a section for active cases which mandates that law enforcement shall assist the victim, upon request, in obtaining medical treatment, including assistance in obtaining transportation to a health care facility offering post-sexual crime medical care or medical forensic exams. It also mandates that law enforcement and victim advocates shall notify the victim of their right to be accompanied by a victim advocate at

any proceeding, including a sexual crime medical forensic exam. Another section is added which requires the statewide sexual assault coalition to develop standards for the following: (1) consent for the collection, testing and release of test results of the forensic medical evidence; (2) consent forms that notify victims of the potential effects of each step of the process; (3) who may give consent and when it is required; (4) who may withdraw consent and when it may be withdrawn; and (5) when, how, to whom and for what purposes the results of any tests may be released. The act also requires law enforcement to adhere to the standards placed upon the sexual assault coalition and specifies that law enforcement and medical personnel shall not, for any reason, discourage a victim from receiving a medical forensic exam.

HB 628 adds a new section to the Sexual Crimes Prosecution and Treatment Act which regulates the victim's right to notice regarding active case investigation and forensic evidence. It states that at the time of initial contact, the law enforcement agency shall provide the victim notice of the victim's rights and after initial contact shall provide the victim written notice of their rights. Upon request, the victim shall have the right to receive a free copy of the initial incident report and the right to be informed of the status of any DNA evidence. All requests must be made in writing through the law enforcement agency's investigating officers.

Newly added Section 5 deals with the victim's right to notice in cold cases and requires the investigating law enforcement agency to provide the victim in a cold case with information concerning any change in status, including the reopening of the case, unless such disclosure would unreasonably interfere with the investigation. It specifies that upon written request of the victim, the agency shall provide an annual update concerning the status of a cold case.

Newly added Section 6 mandates that no law enforcement agency or crime lab shall process cold case kits or forensic evidence until a victims' rights task force for sexual assault cold cases is formed. No later than January 1, 2016 a "victims' rights task force for sexual assault cold cases" shall be formed and include 14 specific members of the community. No later than July 1, 2016, the victims' rights task force for sexual assault cold cases shall (1) establish, implement and complete a process for conducting an inventory of all exam kits and forensic evidence; (2) report the results of the inventory to the appropriate legislative interim committee; (3) create standards for what evidence must be submitted by any crime lab in NM; (4) create time frames for when the evidence must be submitted, analyzed and compared to the DNA databases; (5) create victim notification and consent procedures and forms; (6) create recommendations on how long to store unreported sexual assault examination kits; (7) create recommendations on how to destroy unreported sexual assault examination kits; (8) create recommendations on how to destroy sexual assault examinations kits from other cases; (9) and create recommendations concerning any changes or clarifications to the procedures set forth in Section 30-9-19 NMSA 1978. On or before January 1, 2017, each law enforcement agency in the state shall comply with the standards established by the victim's rights task force for sexual assault cold cases. Failure to comply shall not affect the authority of the agency to submit evidence to crime labs or the admissibility of evidence in any court. All medical facility personnel performing forensic medical examination in sexual assault cases and all persons having custody of forensic medical evidence collected in connection with an alleged sexual assault shall comply with the standards established by the victim's rights task force for sexual assault cold cases.

Newly added section 7 provides victims with the requirements of requesting information pursuant to the act and allows a victim to designate someone to receive notice on their behalf.

Newly added section 8 specifies that the rights enumerated in the Sexual Crimes Prosecution and Treatment Act shall be supplemental to the rights included in the Victims of Crime Act.

Section 9 of the act amends Section 31-22-8 NMSA 1978, by adding aggravated assault against a household member, assault against a household member with intent to commit a violent felony and aggravated battery against a household member to the list of enumerated crimes to which the Crime Victims Reparation Act applies.

The effective date of the act is July 1, 2015.

#### **FISCAL IMPLICATIONS**

N/A

#### **SIGNIFICANT ISSUES**

N/A

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

N/A

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 645 is a duplication of HB 528.

#### **TECHNICAL ISSUES**

Both Sections 5 and 6 are titled "RIGHT TO NOTICE IN COLD CASES". Section 5 clearly encompasses that topic. Section 6 does not and should be titled accordingly.

#### **OTHER SUBSTANTIVE ISSUES**

N/A

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

**Status quo**

#### **AMENDMENTS**

Section 6 mandates that no cold case kits or forensic evidence shall be processed until a victims' rights task force is formed and after specific procedures and protocols have been implemented. This prohibition could cause a statute of limitations problem in certain cases and/or interfere with the timely disposition of a case depending on the circumstances. Perhaps this section should include exceptions to the rule such as: (1) unless the case is indicted; (2) unless testing is necessary due to the statute of limitations; (3) or unless the State must comply with a court rule or deadline.