

LFC Requester:	Eric Chenier
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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:

Date February 23 , 2015

Prepared: _____

Bill No: House Bill 569

Original **Amendment** _____

Correction _____ **Substitute** _____

Sponsor: Rep. Zachary J. cook

Agency Code: Attorney General's Office

Short Title: Victim of Crime Act Actions & Damages

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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)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

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: House Bill 569 purports to expand the remedies provided under the Victims of Crime Act by providing for the issuance of a writ of mandamus, order of injunction or ”other appropriate remedy” to enforce the provisions of the Victims of Crime Act. The proposed bill further provides for a private right of action for damages, costs and attorneys’ fees to a person who has suffered damages under the Act, but limits that private right of action only to violations of the Act by a prosecuting attorney. The proposed bill also provides that the prosecuting attorney’s office will be jointly and severally liable for damages in any successful action. A private right of action for violations is expressly excluded under ¶31-26-13 of the current Victims of Crime Act and the current Act also provides that none of the requirements in the Act are to be construed as limiting a District Attorney’s ability to exercise prosecutorial discretion on behalf of the State.

FISCAL IMPLICATIONS:

The proposed bill creates the new possibility of defending against alleged violations of the Victims of Crime Act and the new possibility of monetary damages costs and attorney’s fees to be paid by the prosecution agency but with no appropriation. Minimal costs for the Office of the Attorney General would include a full time attorney and staff to defend against allegations of a violation for all prosecutions involving victims statewide. A minimal first time appropriation for attorneys and staff to the Office of the Attorney General would be at least \$150,000, and appropriations to each District Attorney for each judicial district would be essential if HB 569 is signed into law.

SIGNIFICANT ISSUES: If the statutory violation involves a non-discretionary duty (such as failing to deliver a notice within the required time frame), a complainant could obtain a writ of mandamus to compel performance of such non-discretionary duty under existing law. Accordingly, since the complainant has a remedy under existing law, the provisions of the proposed bill relating to mandamus or injunctions are unnecessary. To the extent that the proponent is intending to provide a remedy in a circumstance where compliance with statutory duties is subject to interpretation, prosecutorial discretion could be significantly compromised, contrary to the existing provisions of the Act (§ 31-26-10.B.).

PERFORMANCE IMPLICATIONS

Note: N/A

ADMINISTRATIVE IMPLICATIONS

Note: N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Note: N/A

TECHNICAL ISSUES

1. The proposed bill does not strike the language of, §31-26-13 which specifically negates a cause of action by a private party ‘against a public employer, public employee, public agency the state or any agency responsible for the enforcement of rights or provision of services set forth in [that] act.’, thus making the proposed legislation internally inconsistent.
2. The proposed bill could potentially expand the categories of damages and circumstances under which a claim may lie beyond that set forth in the current law enforcement conduct exception to the New Mexico Tort Claims Act. The exception provided in §41-4-12 sets forth the extent to which the State of New Mexico has waived sovereign immunity for damages resulting from constitutional and statutory violations “caused by law enforcement officers acting within the scope of their duty.” The drafter’s intention of creating a private remedy could be accomplished by merely striking §31-26-13, (which would reinstate whatever liability exists under §41-4-12 of the New Mexico Tort Claims Act), without expanding upon the existing waiver of sovereign immunity for law enforcement conduct currently provided in the Tort Claims Act..

OTHER SUBSTANTIVE ISSUES

1. It is unclear why the bill specifies a unique remedy against prosecution personnel and prosecution offices, when the Victim of Crimes Act imposes duties on all personnel involved in the criminal justice process, including law enforcement, courts, correctional facilities and parole boards.

ALTERNATIVES

Note: See technical issue No. 2 above.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

Note: N/A