

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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:
Original **Amendment**
Correction **Substitute**

Date 1-24-17
Bill No: SB149

Sponsor: Jacob R. Candelaria
Short Title: Crime Victim & Witness Confidentiality

Agency Code: 264
Person Writing: Gail MacQuesten
Phone: 466-0532 **Email:** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB149 amends NMSA 1978, Section 14-2-1 of the Inspection of Public Records Act to exempt from the right to inspect public records the records of law enforcement that reveal individuals who are victims of or witnesses to the following crimes:

- Aggravated assault
- Assault with intent to commit a violent felony
- Assault against a household member with intent to commit a violent felony
- Harassment
- Stalking
- Aggravated stalking
- Criminal sexual penetration
- Criminal sexual contact

Existing language in the statute defines law enforcement records to include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

The district attorneys, as a “prosecuting agency,” will be responsible for complying with the provisions of SB149 when responding the public records requests. This will require reviewing records and removing or redacting documents that contain information not subject to the public records act. This will result in additional costs to the district attorneys, and to other law enforcement and prosecuting agencies.

SIGNIFICANT ISSUES

As discussed above, the district attorneys and other law enforcement and prosecuting agencies

will be responsible for complying with SB149 when responding to public records requests, which will require reviewing records and removing or redacting documents that contain information not subject to the public records act. The Act does not give guidance on when removal of a document, rather than redaction, is appropriate. Because the information described in SB149 is not otherwise confidential, there is no penalty for revealing the information even if it is not subject to the Inspection of Public Records Act.

The identity of victims and witnesses to the crimes listed in SB149 is not otherwise confidential, and will likely become public record if the matter goes to trial, and may already be public due to media reports. SB149 may therefore be protecting information from public inspection that is already available to the public.

It is not known why SB149 protects victims and witnesses of only the crimes it lists. It does not include all violent crimes (murder, attempted murder, and battery, for example, are not included), all crimes that may involve particular threats to victims (kidnapping, for example), or crimes involving particularly vulnerable victims (crimes against minors, for example).

PERFORMANCE IMPLICATIONS

Law enforcement agencies and prosecuting agencies will have to review documents when responding to public records requests to comply with SB149. Redaction versus removal is not clear. It is also not clear whether the information still must be treated as non-public record material even when it has become public through the media or is public record in a different format, such as a trial transcript.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, and Significant Issues, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Law enforcement records revealing the identity of victims or witnesses to the listed crimes will remain public record.

AMENDMENTS

None proposed.