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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/09
 LAST UPDATED 03/19/09 HB CS/434/aSJC

SPONSOR HJC

SHORT TITLE Domestic Abuse Protection Order Enforcement SB

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 New Mexico Sentencing Commission (NMSC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)

No Responses Received From

New Mexico Corrections Department

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment for House Bill 434 clarifies as part of any order of protection, the court may grant to a party the exclusive "or shared" possession and control of any animal kept, owned or leased by either party or by a minor child residing in the household of either party.

Synopsis of HJC Substitute

The House Judiciary Committee Substitute of House Bill 434 allows an order of protection from domestic abuse to be issued to protect or to restrain a person under 18 years of age. It also allows a child 14 years or older to file for protection if the abuser is a dating partner, co-parent or person with whom the minor has a continuing relationship or for protection against stalking or

sexual assault. The proposed legislation expands the jurisdiction over actions brought pursuant to the Family Violence Protection Act to include the judicial district where the alleged abuser lives or where the abuse occurred, and increases the class of household members to include dating partner, defined as a person having a romantic or intimate relationship with an alleged abuser. This is a broader definition than “household member.” The proposed legislation also expands the definition of domestic abuse to include cruelty to animals when done with the intent to intimidate and allows a court to enter an order protecting the animal.

The proposed legislation amends Section 40-13-3.2 that in regard to the district court being able to issue an ex parte written emergency order of protection when a law enforcement officer “presents” to the court in person, by telephone, by facsimile “or other electronic method, a sworn petition”. If the court issues an emergency order, by the end of the next business day, the officer must provide to the court the original petition, order and return of service. Also, the proposed legislation amends 40-13-4 B to authorize a court to issue a temporary order of protection based on the facts stated in a verified petition. If the court does not find probable cause to issue a temporary order, it shall hold a hearing within 72 hours to allow the petitioner to present additional evidence.

The House Judiciary Committee Substitute of House Bill 434 requires that protection orders specify the period of time that the injunctive relief will be effective, provides for default judgments, requires local law enforcement to be provided a copy of the order. Also, the proposed legislation authorizes law enforcement to assist in enforcement of the order when requested, including placing a minor child in the custody of the party awarded custody.

The House Judiciary Committee Substitute of House Bill 434 adds a new section of the Family Protection Act regarding minors that includes direction that a minor who is taken into emergency custody of the Children, Youth and Families Department due to allegations of abuse of neglect shall be placed in accordance with the provisions of the Abuse and Neglect Act.

FISCAL IMPLICATIONS

AOC noted that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to an increase in petitions for protective orders filed by the additional categories of minors or dating partners, and in the mandatory issuance of such orders when the appropriate circumstances are established. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

NMSC and AGO reported the proposed legislation is the result of a task force created by Attorney General King in 2007 to review and propose amendments to the Family Violence Protection Act. The task force proposed amendments contained in the proposed legislation and in other legislation proposed in the 2008 legislative session. The task force conveyed that this legislation was critical to sustaining funding under the Department of Justice, Office of Violence Against Women grant programs. For the 2009 legislative session, the proposed legislation suggests amendments unanimously voted on the task force to insure the effectiveness of the Family Violence Protection Act in preventing domestic abuse. AGO noted a draft of these proposed amendments were forwarded to judicial and community stakeholders for their comments and review, and the approved comments are included.

AODA noted a concern pertaining to looking at the violation of the orders of protection from a purely criminal standpoint is that the changes in serving orders of protections may make it difficult to prosecute an offender unless the order is personally served or handed to them in court. When a criminal violation of an order of protection is filed, the offender may claim to have not received a copy of it and to be unaware of whatever provision was violated. The State must prove its case beyond a reasonable doubt and we are concerned that the jury might find this excuse to be plausible.

CYFD stated the extent to which the new material contained within the proposed legislation will be used is unknown. There are no age limitations placed with respect to whom an order of protection may be filed against, so long as the relationship meets the criteria of dating partner, co-parent, continuing personal relationship, or the petitioner makes allegations of stalking or sexual assault in the petition. The language suggests that youth aged 14 to 17 would be allowed to file for an order of protection on their own behalf against, for instance, their own parent; or against another minor. Clarification of the age of the party against whom the protection order may be brought against may be advisable.

CYFD reported the proposed legislation works to bring New Mexico's Family Violence Protection Act in line with the Federal Family Violence Protection Act, under which domestic violence funds are appropriated to New Mexico.

PERFORMANCE IMPLICATIONS

AOC stated the proposed legislation may have an impact on the following measures of the district courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

CYFD noted it has performance measures related to clients receiving domestic violence services.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CYFD reported the proposed legislation has a relationship with Senate Bill 248 regarding the Children's Code related to a minor's ability to file for an order of protection.

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