

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/13
 SPONSOR Cervantes LAST UPDATED 03/08/13 HB _____
 SHORT TITLE Uniform Enforcement Of Domestic Violence Act SB 132/aSJC/aSFI#1
 ANALYST Trowbridge

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown*	Unknown*	Unknown*	Unknown*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (AGO)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SFI Amendment #1

The Senate Floor amendment #1 to Senate Bill 132 relates to law enforcement. It seeks to enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. This act establishes uniform methods of enforcement to increase enforcement of valid orders of protection issued in other jurisdictions.

Senate Floor Amendment #1, 1 changes Section 6 of the Bill which deals with limits on internet by inserting “pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act” after “injunction” on page 7, line 16,

Senate Floor Amendment #1, 2 inserts “However, the provisions of the preceding sentence shall not apply to a filing or issuance on the New Mexico state judiciary’s statewide case management and e-filing system, but the address of a protected person shall be redacted from

any such filing or issuance” before “A” on page 7, line 19. Therefore information regarding filing of a petition for or issuance of a protection order, restraining order or injunction pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, whether the filing or issuance occurred in New Mexico or any other state, may be included on the New Mexico state judiciary’s statewide case management and e-filing system, even if this publication would be likely to publicly reveal the identity of the protected party, so long as the address of a protected person is redacted from any such filing or issuance.

The Administrative Office of the Courts (AOC) reports this amendment does not change the substance of the proposed legislation but does clarify potentially ambiguous language that, if not explained, could lead to some confusion in the application of the statute.

Synopsis of SJC Amendment:

The Senate Judiciary Committee amendments to SB 132:

- remove conditions placed on the internet publication of any information related to the registration of, filing of a petition for or issuance of a protection order, restraining order or injunction, whether the filing or issuance occurred in New Mexico or any other state;
- clarify language guiding peace officers who have probable cause to believe a restrained party has violated an order of protection that is issued pursuant to the Family Violence Protection Act to make an arrest without a warrant; and
- delete the bill’s severability clause.

Synopsis of Original Bill:

This bill creates the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.” It has a definition section, sections for judicial and nonjudicial enforcement of foreign protection orders, registration of such orders, limits on what information can be made public and what orders can be enforced under this act.

The Administrative Office of the District Attorneys (AODA) reports that New Mexico courts must enforce the protection order in its entirety, including custody and visitation, even sections that would not be enforceable under New Mexico law, but for this new act. A foreign protection order is valid if: 1) it identifies the protected individual and the respondent, 2) it is currently in effect, 3) it was issued by a court that had jurisdiction over the parties and subject matter, and 4) it was issued after the respondent was given notice and an opportunity to be heard; or in the case of an *ex parte* order, the respondent was given notice and will have an opportunity to be heard.

According to AODA, New Mexico law enforcement shall enforce foreign protection orders as if they had been issued by a New Mexico court. Presentation of a certified copy of the order is not required for enforcement. It is also not necessary to register the foreign order for it to be enforced by the police.

AODA reports the protected person MAY register a foreign protection order in New Mexico. A certified copy of the order from the issuing state shall be presented to the district court clerk, along with an affidavit stating that the order is still in effect. Once the order is registered, the clerk shall provide a registered copy to the person registering the order and shall send a registered copy to local law enforcement. The clerk shall not notify the respondent, unless requested to do so by the protected person.

AODA adds the information contained in the protection order, whether issued by another state or by New Mexico, shall not be put on the internet where the public can access the information. The information may be provided on a secure site for the purposes of enforcement. This act applies to all protection orders issued or commenced before 7-1-13 and for all such orders sought after 7-1-13 for violations of the protection order that occurred before that date. SB 132 also amends Section 40-13-6, NMSA 1978, by deleting subsection E (1) and E(2) which dealt with foreign orders of protection.

The Public Defender Department (PDD) reports similar legislation already has been adopted by a number of States, including Alabama, California, Delaware, District of Columbia, Idaho, Indiana, Kansas, Mississippi, North Dakota, Oklahoma, Rhode Island, and Texas.

FISCAL IMPLICATIONS

AODA states the Act has no fiscal implications for District Attorneys, adding that the bill just spells out in greater detail how to enforce foreign protection orders. It does not add or increase the penalties for violations of those orders; so the prosecution of the defendants will remain the same.

The PDD indicates it is not clear whether passage of this bill would have a significant effect on criminal caseloads. If caseloads were to increase as a result of passage, it is likely that the PDD would be able to absorb some new cases under the proposed law. Nonetheless, an increase in the number of prosecutions will bring a concomitant need for an increase in indigent defense funding.

SIGNIFICANT ISSUES

The Attorney General’s Office (AGO) provided the following summary of significant legal issues of SB 132 with Senate Floor Amendment 1:

Section 6:

In the original bill, this section included provisions consistent with 40-13-12 of the Family Violence Protection Act and the full faith and credit provisions of the federal Violence Against Women Act, specifically, 18 USCS §2265(d)(3), which provides that “a State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction [, restraining order, or injunction] in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.”

Senate Floor Amendment #1, 2 now makes the language in Section 6 inconsistent with the language in 40-13-12 of the Family Violence Protection Act. Further, this Amendment makes Section 6 inconsistent with the federal Violence Against Women Act, specifically, 18 USCS §2265(d)(3). Further, if the New Mexico state judiciary’s statewide case management and e-filing system is available “publicly on the internet” then this amended language violates the Full Faith and Credit Provision of the Violence Against Women Act (18 USCS §2265(d)(3)), as it

allows for only the address of the protected party to be redacted and not the name of the protected party. Even revealing the name of the Respondent on a publicly accessible website can be construed to “be likely to publicly reveal the identity or location of the party protected under such order.” For instance, a Respondent seeking to locate a victim who may have registered an Order of Protection in the location they fled to need only search for their own name on this database to surmise the victim’s new location (i.e. city, county, state).

If the New Mexico state judiciary’s statewide case management and e-filing system is not a publicly accessible internet database, then this conflicting language in SFA #1, 2 is unnecessary and creates conflicts in law where none need exist. Section 6 of SB 132, as with 40-13-12 of the Family Violence Protection Act and 8 USCS §2265(d)(3) of the Federal Violence Against Women Act were only intended to place restrictions on identifying information made available “publicly on the internet,”

Allowing ANY information which is “likely to publicly reveal the identity or location of a protected party” places that protected party at risk for further violence or death.

The Attorney General’s Office (AGO) reports the following regarding SB 132 as amended by the Senate Judiciary Committee:

This bill protects parties who have acquired orders of protection in other jurisdictions and facilitates the effective enforcement of these foreign orders of protection by law enforcement in the state of New Mexico. Sections 1- 10 of this act may be cited as the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act”.

Section 2:

Is the definition section of the bill. Section 2(E) defines “protection order” as “an injunction or other order, issued by a tribunal under the domestic violence, family violence or anti-stalking laws of the issuing state...” Under federal law, 18 USCS §2265, Full Faith and Credit Given to Orders of Protection, the definition of “protection order” includes orders or injunctions issued “for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.” SB 132 does not specifically include sexual assault. Although New Mexico provides for protection for victims of sexual assault, regardless of relationship to the offender, under the Family Violence Protection Act, other states may not specifically have their protection order provisions for victims of sexual violence titled under “domestic violence, family violence or anti-stalking laws.” This language, inconsistent with federal full faith and credit language, may lead to a gap in enforcement of orders issued to victims of sexual assault.

Section 3:

This section covers the enforcement provisions of the bill and is consistent with the enforcement provisions under the federal Violence Against Women Act. It also includes a step by step facial validity test for law enforcement to follow when verifying that an order is valid and entitled to enforcement.

Section 4:

This section clarifies procedures for law enforcement when there is probable cause to believe that a valid foreign order of protection has been violated. It specifically states

that a violation of that order should be treated exactly the same way a violation of a NM issued order of protection should be treated. This section clarifies that an actual physical order or certified order is not required. The order may be stored in electronic format or another medium, or the law enforcement officer may rely on other information to determine whether a valid order exists. This section also includes a provision, consistent with the federal Violence Against Women Act, that clearly states that registration or filing of a foreign protection order in New Mexico is not required for enforcement. All of these detailed provisions will increase enforcement of valid foreign orders of protection.

Section 5:

This section clarifies the procedures to be filed when an individual chooses to register their foreign order of protection in New Mexico.

Section 6:

This section includes provision consistent with 40-13-12 of the Family Violence Protection Act and the full faith and credit provisions of the federal Violence Against Women Act, specifically, 18 USCS §2265(d)(3), which provides that “a State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction] in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.”

Section 7:

Specifies that a person seeking remedies under this Act, is not precluded from pursuing other legal remedies.

Section 8:

This section makes it clear that this Act is to be interpreted in a way that promotes uniformity among other states who have also implemented this Uniform Act.

Section 9:

This section covers the applicability of the Act to orders issued before and after July 01, 2011.

Section 10:

This section amends the portions of the Family Violence Protection Act to remove Section E relates to full faith and credit for foreign orders of protection. This section would no longer be necessary if the detailed provisions included in Sections 1-9 of this bill were enacted into law.

TECHNICAL ISSUES

The AODA states that insertion of the full name of the Act seems a bit wordy when it could just state “pursuant to this act”.

AMENDMENTS NEEDED TO IMPROVE THIS BILL

The AGO suggests removing the language that was added by SFA #1, 2.

OTHER SUBSTANTIVE ISSUES

In 2006, the New Mexico Attorney General’s Office (AGO) received a Department of Justice Grant to Encourage Arrest and Enforcement of Protection Orders (2006-WE-AX-0050). Under this grant, the AGO convened a Task Force of experts and stakeholders from agencies across New Mexico to review existing practices and to develop a set of best practices for enforcing Orders of Protection. Much of the data collected from law enforcement agencies and service providers throughout the state revealed significant barriers to the effective enforcement of orders of protection, to include:

- (1) A lack of understanding what is needed to determine if an order is valid
- (2) A lack of understanding of the proper procedures for enforcing a valid order

AGO reports that this bill provides better guidance to law enforcement officers in the field to understand the components of a valid order, as they are delineated in Section 3D and Sections 4A and 4B of the bill. This bill also provides better guidance on the proper procedures for enforcing a valid foreign order of protection as those procedures are clearly delineated in great detail throughout the bill, as opposed to the current lack of detailed procedures in NMSA 40-13-6E of the Family Violence Protection Act.

AGO adds that there are many tribal lands and tribal courts within the state of New Mexico. This increases the likelihood that valid orders of protection will not be enforced simply because law enforcement is not familiar with the format of the order of protection or do not have detailed procedures for enforcement. The uniform first page, developed by the New Mexico State and Tribal Judicial Consortium and adopted by the New Mexico Supreme Court and many tribal courts throughout New Mexico, has certainly addressed much of the format issue. However, detailed procedures, which are clearly present in this bill, will further address the issue of consistent enforcement of foreign orders and increase safety for individuals residing in New Mexico who have obtained an order of protection in tribal court.

The PDD reports that the definition of a “valid order” includes two provisions intended to protect individual rights of respondents, that is, the order must be (a) “issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and [b] issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an *ex parte* order, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued in a manner consistent with the due process rights of the respondent.” SB 132, Section 3(D)(3)-(4) (bracketed material added).

In deciding whether an order should be enforced, however, a police officer specifically does not have to, and in reality likely could not, make reliable determinations on these factors. *See* Section 4(A)-(B), quoted above.

The result is the possibility of an arrest based on an invalid order. Nonetheless, it is noted, the same possibility exists under current law, which does not define “probable cause.”

Also, Section 4(C) requires a New Mexico law enforcement officer who determines “that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order” to “serve” an otherwise valid order on a respondent and to provide “reasonable opportunity” for the respondent to comply with the order. Proof of notice or service is not one of the facts an officer must consider to determine whether an order is “valid” for probable cause purposes. Consequently, it is not clear how this determination will be made, other than incidentally. It also is unclear what kind of opportunity is “reasonable.”

These issues create potential legal issues, including potential issues regarding officer liability for false arrest.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO indicates that protected parties will continue to experience difficulties having their valid foreign orders of protection enforced within the state of New Mexico. The AODA states the enforcement of foreign orders of protection will continue to be governed by Subsection E (1) and E (2) of Section 40- 13-6 – which are not nearly as clear as the new act is.

TT/svb:blm