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## FISCAL IMPACT REPORT

SPONSOR: Lopez DATE TYPED: 3/1/03 HB \_\_\_\_\_

SHORT TITLE: Minors at Petition For Protection Proceedings SB 555

ANALYST: Chavez

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
NFI	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Attorney General's Office (AG)  
 Administrative Office of the District Attorney (AODA)  
 Children Youth & Families (CYFD)  
 LFC Files

### SUMMARY

#### Synopsis of Bill

Senate Bill 555 enacts a new section of the Family Violence Protection Act, Section 40-13-1, et.seq. The bill provides that:

- minors (14 through 17 years) may appear in court without being accompanied by a parent, guardian or guardian ad litem to petition the court for an order of protection or to oppose an order of protection;
- the court may upon its own motion, appoint a representative for a minor to assist with the petition;
- if an order of protection is issued, the court will send a copy of the order to a parent;
- if sending an order of protection to a parent or guardian of a minor is not in the best interest of the minor, the court may elect not to provide a copy.

The effective date of the provisions of the act is July 1, 2003.

Significant Issues

Currently, under Section 40-13-3 a victim of *domestic abuse* may petition the court under the Family Violence Protection Act for an order of protection. "*Domestic abuse*" means any incident by a *household member* against another *household member* resulting in:

1. physical harm;
2. severe emotional distress;
3. bodily injury or assault;
4. a threat causing imminent fear of bodily injury by any household member;
5. criminal trespass;
6. criminal damage to property;
7. repeatedly driving by a residence or workplace;
8. telephone harassment;
9. stalking;
10. harassment;
11. harm or threatened harm to children as set forth in the paragraphs of this subsection.

"*Household member*" means a spouse, former spouse, family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.

Thus, minors would be able to file actions for orders of protection against a variety of individuals including: spouses, aunts, and uncles, mother in laws, boyfriends and girlfriends. According to the Administrative Office of the District Attorneys (AODA), minors would also be allowed to *intervene* as parties in their own right in actions where some other party with whom they have a continuing personal relationship is seeking an order of protection against some other person with whom they have a continuing personal relationship. Currently, according to Children Youth and Families (CYFD), a minor is able to contact Protective Services Division (PSD) of CYFD in cases where protection is needed.

According to the Attorney Generals Office (AG) the bill provides for a unique authorization for a minor to pursue this particular cause of action in district court.

Section 40-13-3 provides that if the petition is accompanied by an affidavit showing that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as an indigent without payment of court costs. This would allow a minor to be entitled to file documents without cost. In determining the financial status of the petitioner for the purpose of this subsection, the income of the respondent shall not be considered.

Further, in accordance with Section 40-13-3, standard simplified petition forms with instructions for completion shall be available to petitioners not represented by counsel.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation. There may be fiscal implications in terms of the representatives that may be appointed by the court to assist the minor with the petition.

## **ADMINISTRATIVE IMPLICATIONS**

District Courts may be required to take on new responsibilities and this may increase their current workload.

## **CONFLICT**

House Bill 507 makes it a delinquent act to violate a protective order. This would appear to assume that a protective order could be entered against a juvenile respondent.

CYFD indicates that this change to the Family Violence Protection Act could create a conflict with the Children's Code (Chapter 32A NMSA). This change could allow minors to file actions against their parents without basis.

## **OTHER SUBSTANTIVE ISSUES**

The AG stated that as a public policy matter it would seem that minors need, and are entitled to, the same protections as adults in matters that similarly affect them.

The AG indicates that it is not clear if the bill would authorize issuance of an order of protection restraining a respondent who is a minor. The AG further adds that with the exception of a juvenile who is transferred to stand trial as an adult for certain specific criminal violations, this would be a unique legal status for a juvenile. Additionally, the AG suggests that if the bill is to apply to juvenile respondents, the language "or to oppose an order of protection" be amended to clarify that a juvenile may have more at stake than simply appearing as an adverse witness to the petitioner.

AODA indicates that there may be an abuse of the system because no limitation of scope exists. Therefore, AODA suggests that a consideration to limit the scope be considered to allow for the child to file to prevent abuse or to allow a court authority to accept or dismiss petitions prior to hearing on an expedited basis.

CYFD states that it could be problematic for a minor to appear in court without a parent or guardian, where a legal guardian, custodian or guardian ad litem has already been appointed by a court, as in a domestic relations case or an abuse/neglect case. Further, CYFD indicates that the bill does not deal with situations where a child is in state custody in foster care, or situations where the child has a court appointed legal custodial or guardian with whom they may or may not be living.

**FC/sb**