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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/15/11

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB 209

SHORT TITLE Uniform Enforcement of Domestic Violence Act SB \_\_\_\_\_

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*See Below				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 209 enacts the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (act) to establish uniform procedures that enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions. The model act was last amended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in the summer of 2002 and approved by the American Bar Association in February of 2003.

### FISCAL IMPLICATIONS

\*This bill will make it easier for the New Mexico courts to enforce protective orders from tribal and foreign jurisdictions.

### SIGNIFICANT ISSUES

HB 209 tracks the act with three exceptions, noted below:

Because domestic violence (DV) and stalking protection orders are not necessarily uniform in character as is the usual case with other judgments and orders of courts from state to state, an enforceable order must be defined broadly enough to ensure that any kind of order that prohibits

personal contact or proximity when there is a threat of domestic violence is enforced. The need for a uniform mechanism is founded on the widespread understanding the states have not consistently or effectively enforced DV protection orders issued by other states or tribes.

The act defines protection order to be “an injunction or other order, issued by a tribunal under the domestic-violence, family-violence, or anti-stalking laws of the issuing State, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.” The fact that the order has terms and conditions that are different from orders issued in the enforcing state, or comes from tribunals that are not organized in the same fashion as the tribunals of the enforcing state, does not mean that the enforcing state may refuse enforcement. Any kind of a foreign order that is intended to prevent violence must be enforced.

There are essentially three enforcement tracks that a foreign protection order may take in any enforcing state under the act, including:

- (1) direct enforcement by a tribunal;
- (2) direct enforcement by law enforcement officers; and
- (3) registration of foreign protection orders as a prelude to enforcement.

The term tribunal is used in the act, consistent with the usage of the Uniform Interstate Family Support Act which has been enacted in every U.S. jurisdiction, and refers to a court or an administrative agency authorized by law to issue or modify a protection order.

A tribunal with jurisdiction to enforce may enforce a foreign protection order without any other prior validating procedure. A valid foreign protection order from any State or Tribe must be enforced, pursuant to provisions of the federal Violence Against Women Act requiring that States accord full faith and credit to Tribal protection orders. A valid protection order is one that identifies the protected individual, the potential victim and the respondent, the potential victimizer is currently in effect, and was issued by a tribunal with full jurisdiction. An order must meet due process standards. An *ex parte* order is enforceable if the respondent was provided notice and has had or will have opportunity to be heard within a reasonable time after the order was issued. Terms of an order respecting custody and visitation must be enforced, if the issuing state has jurisdiction. An order valid on its face establishes a prima facie case for its validity.

It is not necessary for the protected individual to petition a tribunal to enforce a valid foreign protection order. A law enforcement officer with “probable cause to believe that a valid foreign protection order exists and that the order has been violated” must enforce the order “as if it were the order of a tribunal of this State.” The presence of an order that identifies the protected individual and the respondent that is current constitutes probable cause to believe that a valid foreign protection order exists. Law enforcement officers, who are not presented with an actual order, may still act to enforce upon other information that provides probable cause to believe that a valid order exists. Even if an order appears not to have been served on the respondent, a law enforcement officer must inform the respondent of the order and make a reasonable effort to serve it. The respondent must then have a reasonable time to comply, before further enforcement is initiated. Registration is not a pre-condition for enforcement by a law enforcement officer.

Registration of orders and judgments for enforcement purposes has long been a part of American law. Registration is provided for in the Uniform Enforcement of Foreign Judgments Act and the Uniform Interstate Family Support Act. Registration is an assist to enforcement. A registered

order that is certified in the issuing state sets aside possible challenges to the order. A registered order provides substantial assurance to a tribunal or law enforcement officer in an enforcing state that the order is valid. Registration allows a protected individual to prepare for enforcement of an order before there is any actual threat from the named respondent.

The act provides for registration -- a fairly simple procedure that requires a certified order and an affidavit from the protected individual that the order is current. The protected individual may receive a certified copy of the order which then may be presented for enforcement either in a tribunal or by a law enforcement officer.

HB 209 differs from the model act by setting forth limits on internet publication. A state agency, court or political subdivision of the state shall not make available publicly on the internet any information regarding the registration of, filing or 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, if such publication would be likely to publicly reveal the identity or location of the protected party under such an order. However, a state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

Also, HB 209 strikes the model act language relating to immunity for any state agency, law enforcement officer, prosecuting attorney, clerk of a court or any state or local governmental official when enforcing an order under the Act in good faith.

Finally, HB 209 differs from the model act in Section 10 of the bill by amending Section 40-13-6, NMSA 1978 governing orders of protection under the Family Violence Protection Act, to remove conflicting language regarding enforcement of foreign orders of protection issued by tribal courts and courts of other states.

Domestic violence is a concern in every state in the United States, and New Mexico is no different. Death and personal injury have led every state to provide for domestic violence protection orders. Protection orders serve to prevent domestic violence by putting an enforceable shield around its potential victims against those who will harm them. The order, which generally prohibits the victimizer's personal contact and proximity to potential victims, gives law enforcement and the courts a means of either warning off victimizers by weight of the law or by getting them into custody before actual harm occurs.

### **ADMINISTRATIVE IMPLICATIONS**

Agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities. This bill should stream the processes for handling protective orders.

### **OTHER SUBSTANTIVE ISSUES**

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is one of many model acts promoted by the Uniform Conference of Commissioners on Uniform State Laws, which seeks to secure uniformity of state laws where diversity obstructs the interests of all the citizens of the U.S. At last count, seventeen other jurisdictions have adopted the model act, including the states of Alabama, California, Delaware, Idaho, Indiana, Kansas, Mississippi, Montana, Nebraska, Rhode Island, South Dakota, Texas, Utah, Virginia, West Virginia, the

District of Columbia and the U.S. Virgin Islands.

In addition, five Tribal Courts in the Pueblos of Laguna, Nambe, Santa Clara, San Felipe, and Zuni and the Navajo Judicial Branch have adopted a similar standard first page for their protection orders, again providing assurance to law enforcement that the order can be easily enforced.

The New Mexico Supreme Court in 2008 promulgated amendments to its forms for protection orders, instituting the use of a uniform first page that clearly identifies both the protected party and the respondent party. The uniform first page ensures that due process for the restrained party has been met or will be met in the near future. The Supreme Court mandated that the district courts use these forms on their protection orders, which will allow courts in other jurisdictions and law enforcement to more easily enforce the order.

In 2006, the AGO received a Department of Justice Grant to Encourage Arrest and Enforcement of Protection Orders (2006-WE-AX-0050). Under this grant, the NMAGO 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

The AGO notes this bill provides better guidance to law enforcement officers in the field to understand the components of a valid foreign order of protection, 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.

DW/mew