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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Protection Orders For Minors & Enforcement SB 473

ANALYST Trowbridge

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	Unknown*	Unknown*	Unknown*	Unknown*	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See “Fiscal Implications” below

Duplicates, Relates to, Conflicts with, Companion to SB 49, SB 132, SB 262, SB 429, SM 26, HM 32, HB 301, HB 326, SB 577

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Association of District Attorneys (AODA)  
 Department of Public Safety (DPS)  
 Children Youth and Families Department (CYFD)  
 Administrative Office of the Courts (AOC)  
 Attorney General’s Office (AGO)

### SUMMARY

#### Synopsis of Bill

SB 473 proposes amendments to the Family Violence Protection Act (FVPA), Sections 40-13-1, et seq., NMSA and adds a section on “minors.” Numerous amendments are proposed to clarify and make more consistent language throughout the Act. A summary of some of the more significant changes follows:

#### **Section 1, Definitions (40-13-2, NMSA):**

- The definition of “court” is broadened to include the district court 1) where the alleged abuser lives or is found and 2) where the alleged abuse occurred, in addition to where an alleged victim of domestic abuse resides or is found. The impact of this expanded definition includes allowing petitions to be filed in more venues than previously allowed.

- The following items are added to the domestic abuse definition: battery; false imprisonment; interference with communications; larceny or deprivation of property with the intent to intimidate, threaten or harass; and cruelty to a domestic pet with intent to intimidate, threaten or harass.
- Within the domestic abuse definition, the existing criminal damage to property item is expanded to include “damage to jointly owned or community property when done with the intent to intimidate, threaten or harass.”
- The definition of minor, as a person under 18, is added.

**Section 2, Petition (40-13-3, NMSA):**

- SB 473 removes the alternative option of filing a petition accompanied by a sworn affidavit, so that a petition filed under the Family Violence Protection Act must now exclusively be made under oath.
- Also, the very specific reference that a FVPA action is independent of a “proceeding for annulment, separation or divorce” is replaced by the broader and more general term “domestic action.”

**Section 3, Emergency Orders (40-13-3.2, NMSA):**

- Under this bill, a petition for an emergency order of protection may be presented by “other electronic method” in addition to in person, by phone or facsimile.
- The finding required for an emergency order of protection is changed from “reasonable grounds” to “probably cause.” This will match the finding required elsewhere in the statute for an emergency order of protection or a temporary order of protection.
- It is clarified that when law enforcement receives an emergency order of protection from the court it is to provide the 1) original petition; 2) order; and 3) return of service “to the court by the close of business on the next judicial day.”
- Also clarified is that “a district judge shall be available in each judicial district to issue emergency orders of protection.”
- The expiration time and date are also clarified as the later of 72 hours from issuance or “the end of the next day that the district court is open.”

**Section 4, Temporary Orders (40-13-4, NMSA):**

- Reference is removed to an affidavit being an alternative to a verified petition.
- This section clarifies that the court may in a temporary order of protection: 1) enjoin acts or threats of acts of domestic abuse; 2) enjoin contact or communication; 3) award temporary custody/visitation considering safety of the protected party and best interests of the child. Visitation can be unsupervised, supervised or prohibited.
- Also clarified is the process when the court does not find probable cause to believe an act of domestic abuse has occurred. A 72 hour hearing shall be held. At the conclusion of the hearing an order of dismissal or a temporary order of protection shall be issued.
- A temporary order of protection shall be filed and served at no cost to the protected party.

**Section 5, Order of Protection (40-13-5, NMSA):**

- Clarifies that the order of protection applies to the protected party or any of the protected party’s household members.
- Adds a best interest of the child standard to the temporary custody/visitation provision. Also, adds that the court may grant unsupervised, supervised or no visitation.
- Adds language providing that an order of protection may address issues relating to

domestic pets, including regarding possession or control of the pet and including stay away provisions and forbidding taking, transferring, concealing, mistreating, harming or disposing of the animal.

- Adds that the order of protection shall contain notice that violation by the restrained party is a criminal offense.
- Clarifies that temporary custody and child support issues can be addressed when the petition for an order of protection is heard, but long term issues of support and custody shall be addressed in a “domestic matters action.”
- Adds the following provision: “An order of protection may be issued against a party restrained by a temporary order of protection if, without good cause and after being served with notice or receiving actual notice, the restrained party fails to appear at the hearing to determine whether an order of protection should be issued. If an order of protection is thus issued, a copy of the order shall be mailed to the restrained party.”

**Section 6, Service, Duration, Penalty, etc. (40-13-6, NMSA):**

- Changes the requirement for service of the order of protection to a requirement to provide the order to the parties or their attorneys.
- Clarifies that the portion of the order addressing custody and support shall be effective for 6 months and can be extended for another 6 months. And clarifies that the injunctive portion of the order shall be effective for a fixed period of time identified by the court. The order of protection may be extended for good cause upon motion and hearing.
- Changes reference to “program of professional counseling” to “domestic violence offender treatment or intervention program or other appropriate counseling.”
- Changes reference to charging a “person” with violating an order of protection to charging “the restrained party” with violating.

**Section 7, Minors (New Material):**

- SB 473 proposes to add a new section to the FVPA providing that an order of protection may be issued to protect or restrain a minor.
- A minor 14 years old or older may petition for an order of protection on their own behalf if the minor files the petition for protection 1) against a co-parent; 2) against someone with whom the minor has had a continuing personal relationship; 3) containing allegations of sexual assault or stalking.
- This new section of the FVPA recognizes that a minor taken into CYFD emergency custody due to allegations of abuse or neglect shall be placed according to the Abuse and Neglect Act.

**Section 8, Law Enforcement, Emergency Assistance, etc. (40-13-7, NMSA):**

- Adds that law enforcement shall upon request of a victim provide or arrange for transportation to a family advocacy center (in addition to a medical facility or a shelter).
- Adds a provision that law enforcement shall assist in the enforcement of the terms of an order of protection including placing a party in possession of a residence and placing any minor child with the party awarded custody in accordance with the order.

**Section 9, Domestic Violence Commissioners (40-13-9, NMSA):**

- Clarifies that a domestic violence commissioner may interview “the parties” rather than just the “petitioner” as the language currently provides.
- Clarifies that the domestic violence commissioner’s recommendations are not effective

until they are reviewed and adopted as an order of the court.

The amendments under SB 473 would take effect on July 1, 2013.

## **FISCAL IMPLICATIONS**

The Association of District Attorneys (AODA) states that by expanding the basis for seeking an order of protection, this bill creates the possibility of additional cases that fall under the Family Violence Protection Act. This will also increase the number of restrained persons who might violate the order of protection which is a criminal act, thus increasing the number of cases that will be prosecuted by DA offices.

There are no discernable fiscal implications on the Department of Public Safety (DPS) from passage of the proposed legislation. Presumably, the safeguards provided for in the act will increase the safety and security of victims of domestic violence and create a more understandable and accessible system for these victims.

The Administrative Office of the Courts (AOC) indicates that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Additionally, the AOC states that since SB 473 expands various aspects of the Family Violence Protection Act, there may be an increase in the number of petitions filed for orders of protection. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and filed petitions for orders of protection. 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**

The Attorney General's Office (AGO) identified several significant legal issues concerning SB 473:

1. This bill allows minors ages 14 to 18 to petition for an order of protection against a co-parent or a person with whom the minor has had a continuing personal relationship, and to petition against sexual assault and stalking. Some are concerned that teens could use this section to file petitions against their own parents, however, as written, the section is directed to "dating" or "former dating" relationships. In the 2012 FIR, reference is made to CYFD concerns that allowing a child to be target of a protection order could be used as a retaliatory measure or misused in custody battles or other domestic matters. The new material acknowledges that a child taken into emergency custody of CYFD shall be placed in accordance with the Abuse and Neglect Act. NMSA 32A-4-6.
2. This section of the bill intends to address the problems of property damage which is community property or is co-owned; for example, abuser breaks all the windows of the couple's vehicle, causing victim to be deprived of property, essential transportation or means of getting to work. In the criminal code, NMSA 30-15-1, property damage is intentionally damaging the property of another. The conflict between the property damage statute and domestic violence cases was illustrated in St. v. Powels, 2003 NMCA 90. The New Mexico Court of Appeals ruled that the legislative intent of the criminal property statute did not include community property or co-owned property.

Cruelty to animals or “custody” of family pets has long been recognized as an area of emotional abuse and /or violence by the domestic violence prevention community. See Duluth Model, Wheel of Power and Control, 1984. This bill acknowledges the role pets have in families and the impact abuse or possession of a pet can have on a family in domestic violence circumstances. The amendments in this bill give the court authority to make reasonable orders regarding pets. This section is consistent with animal cruelty statutes, NMSA 30-18-1.

3. Several sections of the proposed bill provide authority for the court to act in the best interests of the children, including granting unsupervised, supervised or no visitation (P.10), temporarily addressing child custody and child support(p. 12) and permitting law enforcement to place the minor children with the party awarded custody in accord with the order. NMSA 40-13-7,Section C,( p. 19)
4. This bill clarifies that temporary orders of protection may enjoin acts of abuse against petitioner, enjoin communication with protected party, and grant custody and visitation giving primary consideration to safety of the protected party and the best interests of the children.

The AOC observes that in Section 1 of SB 473, several types of incidents are added to the definition of domestic abuse. However, for example “false imprisonment” is added, but the more serious and related crime of kidnapping is not listed.

AOC also states that SB 473 proposes in Section 7 to make orders of protection available to protect or restrain minors, with minor being a newly added defined term meaning a person under 18. While not specifically providing for this protection for minors, the current FVPA does not prohibit such orders of protection. This portion of the new language would clarify the availability of orders of protection involving a minor.

The next portion of this new section provides that for a minor 14 or older, the minor may file a petition for an order of protection on their own behalf. Again, while not specifically providing for this, the current FVPA does not prohibit such filing. In this instance, however, the new language goes on to provide that the 14 or older minor is limited to filing only against: 1) a co-parent; 2) a person with whom the minor has had a personal continuing relationship (a defined term meaning a dating or intimate relationship); or 3) if there are allegations of stalking or sexual assault. If, in fact, minors can currently already file for an order of protection under the FVPA, this language significantly narrows the persons against whom a minor (14 or older) can file for protection. Except as specifically provided, the remaining range of household members against whom an order of protection can otherwise be obtained are not available to the minor (14 or older) who files on his or her own behalf. Thus, if someone files for a protective order on behalf of a minor the full range of household members can be filed against, but if the minor files on their own behalf the range is significantly reduced.

AOC notes that this new section provides cross reference to the Abuse and Neglect Act for purposes of emergency custody placement, but does not address questions of how other aspects of the Abuse and Neglect Act would be applied in light of the potential existence of an order of protection among parties (child and parent) to an Abuse and Neglect case.

Several provisions of this bill seem to relax requirements to “serve” orders of protection on the

parties. New language in Section 5 of the bill (40-13-5(H), NMSA) allows an order of protection to be “mailed” to the restrained party. And, amended language in Section 6 of the bill (40-13-6(A), NMSA) changes the terms served or personally served to “provided.” It would seem that careful consideration needs to be made about whether these orders need to be served and if so what manner of service. The term “provided” may produce confusion about what the legislature intends.

Finally, AOC indicates that an important clarification is made in Section 6 of the bill regarding the time periods for the custody/support portion of an order and the injunctive portion of the order. The intent is that each portion of the order may have a different period of time for which it is effective. It might be helpful to go even further to specifically state that the injunctive portion of the order may have a different effective date than the custody/support portion. This issue has produced considerable confusion in the past, so careful clarification will be very helpful to reduce that confusion.

The AODA reports that the language “intimidate, threaten or harass” is added to some of the definitions in this Act. These words also need to be defined. Additionally, AODA Section 40-13-3 refers to “a petition made under oath”. Section 40-13-4 refers to “a verified petition”. Either “verified petition” needs to be defined in the definitions section or the wording of these two sections needs to be made the same. The AOC makes similar observations (see “Technical Issues” below).

The Children, Youth and Families Department (CYFD) cites the Center for Disease Control’s National Intimate Partner and Sexual Violence Survey (2010) that shows one in five women experienced some form of intimate partner violence for the first time between the ages of 11-17 years old. The 2009 New Mexico Youth Risk and Resiliency Survey (YRRS) reported that nine-point-eight percent of New Mexico high school students reported being hit, slapped, or physically hurt on purpose by their boyfriend or girlfriend within the past 12 months.

Teen dating violence is a major public health concern among adolescents ages 10-19 years old (Foshee et al., 2004) and teen dating violence is associated with an increased risk for teen pregnancy and suicide (Silverman et al., 2000). Dating violence can have a negative effect on health throughout life (CDC Fact Sheet, 2012). Teens who are victims are more likely to be depressed, do poorly in school, engage in unhealthy and/or risky behaviors such as using drugs and alcohol, and are more likely to have eating disorders. Suicidal ideation or attempts are common for teens involved in dating relationship violence and are at higher risk for victimization during college.

Recommendations from the 2009 House Memorial (HM) 53: Prevention of Teen Dating Violence included having membership from the Office of the Attorney General conduct a policy analysis of other state strategies regarding access for minors to orders of protection and developing a set of recommendations for improving New Mexico laws governing minors’ rights to orders of protection.

Currently, all CYFD contracted domestic violence service providers offer services to victims of teen dating violence; however, there were only eight youth intimate partner victims served with CYFD funding for FY12. A major barrier providers identified involved the difficulty in obtaining parent/guardian consent for residential services.

## **PERFORMANCE IMPLICATIONS**

DPS states that there are minimal performance implications from passage of the proposed legislation. The Act proposes to create mostly changes to the court ordered process, however, it does specifically state that a new standard of probable cause is to be introduced instead of reasonable grounds, and further requires law enforcement officers to assist in the enforcement of the domestic violence protection order including assisting the victim to obtain the possession of a house or minor children so stated in an order. It is currently not known whether these slight changes will increase law enforcement officer time on scene or involvement in these issues, as domestic violence situations are already very time consuming. It is believed that the changes in the proposed legislation will not impact the DPS significantly.

CYFD maintains performance measures related to clients receiving domestic violence services.

AOC notes that the courts are participating in performance-based budgeting. It is unknown if enactment of this bill would impact performance measures as they relate to judicial budgeting.

## **ADMINISTRATIVE IMPLICATIONS**

The AOC states that new laws, amendments to existing law, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. There is an administrative impact on the court resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 49 CYFD Statewide Domestic Violence Programs  
SB 132 Uniform Enforcement of Domestic Violence Orders  
SB 262 Strangulation and Suffocation, 3<sup>rd</sup> degree felonies  
SB 429 Domestic Violence and Missing Persons  
SM 26 Reauthorize Federal Violence Against Women Act  
HM 32 One Billion Rising, In Recognition  
HB 301 Domestic Violence “at the scene”  
HB 326 Domestic Violence Case Training (tribal funding)  
SB 577 Domestic Violence Substitute Addresses

## **TECHNICAL ISSUES**

The AOC notes that in several different portions of the FVPA, different terms are used for what may be the same thing, such as: “petition shall be made under oath” in 40-13-3(B), “sworn petition” in 40-13-3.2(A), and “verified petition” in 40-13-4(A)(1). In some instances it is the newly added language of this bill that adds to the varied use of these terms; in other instances it is the existing language. If these terms all mean the same thing then perhaps one of the terms should be selected and used consistently.

## **SUGGESTED AMENDMENTS**

The AODA suggests adding definitions for “intimidate, threaten or harass” and for “verified petition”.

**OTHER SUBSTANTIVE ISSUES**

The AGO suggests amending the criminal damage to property statute to include property which is co-owned or community property, when the actor intentionally damages the property interest of the other owner or co-owner.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The AODA states that expanded definitions will not be in effect. Animals will not be protected. Joint or community property would not be able to be the basis for a petition for an order of protection. Minors would not be included in the Family Violence Protection Act.

TT/blm