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FISCAL IMPACT REPORT

ORIGINAL DATE
SPONSOR HSCAC **LAST UPDATED** 02/14/15 **HB** 123/HSCACS

SHORT TITLE Family Violence Permanent No Contact Orders **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 134

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)
- Children, Youth & Families Department (CYFD)
- New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

The House Safety and Civil Affairs Committee Substitute for House Bill 123 enacts a new section of the Family Violence Protection Act (FVPA). In a sentencing proceeding for a person convicted of criminal sexual penetration, the prosecutor may request the criminal court grant the victim an order of protection that would remain in effect for the remaining duration of that court’s jurisdiction over the offender.

Once the criminal court’s jurisdiction has expired, the victim may petition for an order of protection against the offender if a previous order of protection was granted. . Based on the evidence submitted by the victim in the petition of the prior criminal sexual penetration conviction of the offender, the court may allow a victim not to appear in person at the hearing regarding whether or not to grant the petition. If the court allows the victim not to appear at the hearing, the victim may have another person appear on the victim’s behalf. If the court grants the petition, it may grant an order of protection for the victim’s lifetime, or any other length of time.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

AODA reported in its analysis of the earlier version of this bill that district attorneys prosecute violations of orders issued under the FVPA (which are misdemeanors). To the extent the provisions regarding permanent no contact orders are litigated in those cases, the cases will be more complex and the district attorneys will incur additional expenses.

SIGNIFICANT ISSUES

AGO advises that currently, judges can and typically do order convicted offenders to have no contact with any of the victims in a case. Under federal law, such an order contained within a Judgment and Sentence can qualify as a valid order of protection when the charges fit within a domestic violence or sexual assault category. However, law enforcement rarely recognizes this fact, and fail to treat those Judgments as valid orders of protection. This bill would fill that gap in protection for victims of criminal sexual penetration cases.

CYFD raised concerns in its analysis of the earlier version of this bill which are relevant to this substitute concerning the impact of what are now orders of protection on hearings under the Children's Code. It first noted that it believes such orders would not apply to CYFD hearings. It advised that even in situations where a permanent order of protection has been issued involving parents, both would still attend court hearings in Children's Code proceedings. CYFD expressed concern that counsel for a protected party who is a parent may argue when an order of protection has been issued under the FVPA that the protected parent does not have to personally attend a Children's Code hearing, even when the parent's testimony is necessary. AODA, in its earlier analysis, raised similar concerns as to proceedings before a parole board and in criminal proceedings to enforce an order of protection or a parole revocation hearing.

In addition, CYFD warned that an order such as a permanent order of protection under CS/HB 123 could impact constructive future co-parenting when the offender and victim have children in common and decisions have to be made regarding them, as well as carrying out custody arrangements and other parenting responsibilities. In light of concerns such as these, New Mexico courts have advised that as far as child custody matters are concerned, the FVPA (the law being amended here) is to be used only in emergency situations and as a temporary remedy that is limited in scope. See Lucero v. Pino, 123 N.M. 626, 944 P.2d 274 (Ct. App. 1974, cert. denied). CYFD recognized, however, that there may be extreme cases in which a permanent order could be appropriate. If there is grave danger for victims, their children, and family members (such as when CYFD requests a finding of aggravated circumstances under Section 32A-4-22(C), NMSA 1978), an order of the type authorized in this bill could provide legal protection if the offender continues to attempt contact.

AOC comments on the limited nature of the permanent order of protection authorized in CS/HB 123, which is only available to victims of criminal sexual penetration, and points out that other circumstances--such as child abuse resulting in injury or attempted murder--might also give rise to the need for an order of protection for the victim.

RELATIONSHIP

SB 134 is related to this bill: it provides for permanent no contact orders under the FVPA in a broader range of circumstances.

POSSIBLE QUESTIONS

Does the victim have to appear at the sentencing hearing when the prosecutor requests an order of protection?

MD/aml