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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**SPONSOR** SPAC **LAST UPDATED** 02/17/15 **HB** \_\_\_\_\_

**SHORT TITLE** Family Violence Permanent No Contact Orders **SB** 134/SPACS

**ANALYST** Daly

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates CS/HB 123.

### 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 Senate Public Affairs Committee Substitute for Senate Bill 134 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. At any point, a victim may seek to have an order modified or rescinded.

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 fails 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 asserts that an order of protection issued pursuant to this bill does not apply to Children's Court proceedings; even in situations where a permanent order of protection exists between the parents, they will still jointly attend those court hearings. It expresses concern, however, that counsel for a protected party may argue that the language in these new provisions indicate that a parent does not have to personally attend hearings in the Children's Court proceedings.

Both AOC and CYFD comment on the limited nature of the permanent order of protection authorized in CS/SB 134, which is only available to victims of criminal sexual penetration. AOC 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.

### **PERFORMANCE MEASURES**

CYFD has performance measures regarding the health, safety, and permanency of children which may be affected by this committee substitute. If the order of protection permanently restrains a parent from contact with their child, CYFD would not be able to work toward reunification with that parent. When a child is in CYFD custody, the typical course of action is for the family members to have a case plan arranged that will assist them in curing the causes and conditions that brought the child into CYFD custody. Even in cases with severe abuse, it is likely that the offending parent will be given the opportunity to work toward reunification through successful completion of the case plan. A permanent order of protection indicates that that parent cannot or will not be rehabilitated to a position that they can safely parent the child, thus preventing CYFD from developing and implementing a case plan with the goal of reunification. This would not be an issue in cases wherein CYFD requests a finding of aggravated circumstances pursuant to NMSA 1978 32A-4-22(C), NMSA 1978.

### **DUPLICATION**

CS/HB 123 duplicates this bill.

**POSSIBLE QUESTIONS**

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

MD/bb/je