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## FISCAL IMPACT REPORT

	<b>LAST UPDATED</b>	2/3/23
<b>SPONSOR</b> <u>Sedillo Lopez</u>	<b>ORIGINAL DATE</b>	1/31/23
	<b>BILL</b>	Senate Bill
<b>SHORT TITLE</b> <u>Rename Family Violence Protection Act</u>	<b>NUMBER</b>	18/aSHPAC
	<b>ANALYST</b>	<u>Daly</u>

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No Fiscal Impact	No Fiscal Impact	No Fiscal Impact			
<b>Total</b>						

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

- Administrative Office of the District Attorneys (AODA)
- Children, Youth & Families Department (CYFD)
- Law Offices of the Public Defender (LOPD)
- New Mexico Attorney General (NMAG)
- New Mexico Sentencing Commission (NMSC)

## SUMMARY

### Synopsis of SHPAC Amendment to Senate Bill 18

The Senate Health and Public Affairs Committee amendment to SB18 adds an effective date of July 1, 2023. It also corrects a typographical error.

### Synopsis of Original Senate Bill 18

Senate Bill 18 extensively rewrites existing law (the Family Violence Protection Act) which governs the issuance of orders of protection. CYFD advises it is the product of a task force created by Senate Memorial 50 adopted in the 2020 legislative session. The new short title is Protection Against Abuse and Violence Act. Abuse that may be a basis for a protection order is expanded to include kidnapping, false imprisonment, interference with communication, threats to disclose immigrant status; harm or threats to harm animals to intimidate, threaten or harass a person; and unauthorized distribution of sensitive images.

Provision is made for parties who do not understand English. A protection order now may be issued to protect or restrain a minor under 18. The bill allows a minor who is 13 or older to seek a protection order from a co-parent or another with whom the minor has had a continuing personal relation, or when stalking or sexual abuse is alleged.

SB18 clarifies that a criminal complaint does not need to be filed before a law enforcement officer can request an emergency protection order. An officer must inform a victim that the officer may petition a court for an emergency on the victim's behalf, which petition shall describe the need for that order and information about the alleged perpetrator's location and telephone number if known. A district judge in each judicial district must be available at all times to hear a petition for an emergency order. SB18 allows for temporary orders restraining the perpetrator from committing or threatening to commit acts of abuse against the protected party or a household member, and prevents any contact or communication with the protected party.

Temporary custody and visitation of any children involved may also be addressed, although limited to a period of six months, subject to a six month extension. If a temporary protection order is not immediately issued, a hearing must be held within 72 hours, with no requirement for personal service. Provisions regarding any animal owned by either party or a minor in the household also may be included. SB18 specifically directs that an order cannot require a protected party to participate in treatment or counseling related to abuse.

Orders of protection may be for a fixed period of any length, as appropriate to protect the safety of the protected party, and may be extended. The existing six month cap is removed. The bill adds new language prohibiting a restrained party from owning or possessing a firearm while an order of protection is in effect.

Emergency assistance provided by a local law enforcement officer is expanded to include other household members as well as the protected party, and when making arrests, the officer must identify whether a party acted in self-defense, as well as identifying and documenting in the criminal complaint and incident report the names and relationships between people present during the incident, including additional victims and witnesses. Detention centers and jails must make reasonable efforts to notify the victim when a restrained party or an alleged perpetrator of abuse, stalking, or sexual assault is released from custody, escapes or is transferred to another facility.

SB18 clarifies that petitions, orders, injunctions, and other pleadings and documents can remain on the judiciary's case management and e-filing system as long as the address of a protected person is redacted.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

Responding agencies report that any additional fiscal impact from SB18 as amended likely would be absorbed by existing resources.

## **SIGNIFICANT ISSUES**

CYFD explains SB18 and its amended version is the product of two years of work by the SM50 task force, which itself was composed of members including the judiciary, CYFD, law enforcement, and representatives of agencies and advocacy groups involved in healthcare, domestic violence issues, animal protection, and social services. The National Center for State Courts provided a technical assistance team with knowledge of national best practices. It notes the change in the short title recognizes that orders of protection are not limited to family members, but encompasses a broader range of relationships and vulnerable victims, including non-family household members, sexual assault victims, and children who are victims. Additionally, CYFD advises that an essential change to the act, recognized in many definitional and procedural changes, is the recognition of abuse as a pattern of behavior over time. Definitions and criteria for orders are updated to allow for a broader range of coercive and controlling tactics. Loopholes – such as a perpetrator’s failure to appear at a hearing – are removed as barriers to being granted protection by a court. Changes that clarify that orders may be issued to protect or restrain minors and authorizing those between 13 and 18 to directly petition a court for a protection order are of particular importance to CYFD.

As to specific provisions of SB18, AODA points out an apparent conflict arising from new language in Subsection C of Section 40-13-5 NMSA 1978, which prohibits restrained parties from owning or possessing a firearm. AODA notes that before a court can so prohibit, subsection (A) (2) of that same section requires a determination by the court that the restrained party presents a credible threat to the safety of the household member, after notice and hearing. Only then could the court order relinquishment and prohibit possession. Further, Subsection (B) requires the court to specifically describe the acts a restrained party may or may do not do in the order of protection. In addition, existing Section 40-13-13 NMSA 1978 addresses relinquishment of firearms. AODA concludes that there is no need for the new language in Subsection C.

LOPD points to another section it believes to be problematic. Section 10 of the bill requires an officer making a warrantless arrest for abuse to “identify whether one of the parties acted in self-defense,” and retains existing language that the officer must indicate in writing that the party arrested was “the predominant aggressor.” This determination, LOPD points out, is made with very limited information, typically based on the allegations of only one party and although well-intended, LOPD believes it could actually have a negative effect on a truth-seeking process by adopting assumptions made with limited information.

## **TECHNICAL ISSUES**

The error in the original bill on page 17, line 15, “possession” is fixed in the amendment to “possessing.”

## **OTHER SUBSTANTIVE ISSUES**

NMSC reports:

There were over 20 thousand domestic violence incidents reported by law enforcement to the New Mexico Interpersonal Violence Data Central Repository in 2021, the most recent year for which data is available. (See “Fact Sheet: Interpersonal Violence in New Mexico 2021”, p. 13, published by the New Mexico Interpersonal Violence Data Central

Repository, [https://nmcsap.org/wp-content/uploads/DV\\_Report\\_2021\\_Betty\\_Caponera\\_dec22web.pdf](https://nmcsap.org/wp-content/uploads/DV_Report_2021_Betty_Caponera_dec22web.pdf).) This number is likely far lower than the actual occurrence of interpersonal violence in the state, as the U.S. Department of Justice’s Bureau of Justice Statistics estimates that less than half of all violent victimizations were reported to the police in 2021. (See “Crime Victimization, 2021” published by the Bureau of Justice Statistics, available here: <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf>.)

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