

LFC Requester:

Emily Hilla

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x Amendment
Correction Substitute

Date Prepared: 1/23/24

Bill No: SB 12

Sponsor: Antoinette Sedillo Lopez, Pamelya Herndon

Short Title: Rename Family Violence Protection Act

Agency Name and Code Number: 305 - New Mexico Department of Justice
Person Writing Analysis: John Duran
Phone: 505-537-7676
Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with 4 columns: Appropriation (FY24, FY25), Recurring or Nonrecurring, Fund Affected.

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Table with 5 columns: Estimated Revenue (FY24, FY25, FY26), Recurring or Nonrecurring, Fund Affected.

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Senate Bill (“SB”) 12 proposes to re-name the Family Violence Protection Act to the Protection Against Abuse and Violence Act. Multiple sections of the law are changed to amend grammatical, stylistic and pronoun corrections. Multiple sections are also amended to include new definitions, procedural changes, and changes reflecting new mandatory duties of parties, courts and law enforcement as related to this law.

Further summary below.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

The most significant change is the name change to Protection Against Abuse and Violence Act. This name-change along with statutory language changes throughout the bill indicate an expansion of legal protections against violence beyond domestic violence victims, to be more inclusive of other victims of violent acts. There are also numerous grammatical and stylistic changes reflecting non-gender specific nouns and amending language redundancies. Due to the size of the bill, this analysis will look only at the significant changes throughout the entire body of writing by relevant section.

Section 9 (A) creates a definition of the term “abuse” to replace the statutory section (D) “domestic abuse”. The definition of “abuse” includes some of the same language included in the definition for “domestic abuse” and includes additional subcategories of what constitutes abuse. Section 9 (A) adds the term, “pattern of behavior” to describe what constitutes “abuse”. Section 9 (A)(2)(a) through (o) would include within the definition of “abuse” battery, assault, bodily injury, infliction of severe emotional distress, harassment or intimidation including “driving by a residence or workplace”, internet/electronic harassment, kidnapping, false imprisonment or restraint, interference with communications, exploitation or forced criminal activity, criminal damage to property, harm or threat to animals, distribution of sensitive images,

threat to disclose immigration status.

Section 9(A)(2)(e) includes direct harassment or intimidation by a household member but does not include a third party acting at the behest of the intimidating household member, which is often addressed in an order made by a criminal court as part of conditions of release for a defendant (no direct or indirect contact with a victim).

Section 9(A)(2)(i) includes the term “exploitation or forced criminal activity” but does not define exploitation (*see* 30-6A-2, NMSA, Sexual Exploitation of Children, definitions) and excludes “human trafficking” pursuant to 30-52-1, NMSA.

Section 9(A)(2)(m) includes the term “sensitive images” but does not define that term (*see* 30-37A-1(B)(5), definition of “sensitive images” for Unauthorized Distribution of Sensitive Images Statute).

Section 9(E) defines “credible threat” and includes language that this may be “demonstrated evidence of a statement, an act or course of conduct attributed to the respondent...”. This phrase does not include “electronic or social media communications” which may be warranted.

Section 10(H) mandates that the petitioner notify the court of language access services for the respondent but is not referenced in Section 10(G) regarding petitions with instructions for completion. If this is to be mandatory for the petitioner, it may need to be explicitly included in statutory language under Section 10(G) as part of any petition forms or instructions.

Sections 10(I) includes new language which would allow an order of protection to protect *or restrain* a minor. If an order of protection was sought to restrain a minor, this may bring forth issues as to guardianship, notice and service on a minor (See Rule 1-004(I)(1) NMRA, Process; service upon a minor...) particularly in instances where the petitioner is also the guardian of the minor and the court has not designated a person to receive service on behalf of the minor respondent’s behalf.

Section 10(J) allows a minor 13 years of age or older and a victim of abuse to petition for an order of protection. This age allowance, while not in direct conflict with 32A-21-7 NMSA (Declaration of Emancipation) which allows for a minor 16 years of age or older to petition for emancipation, is certainly inconsistent and would create a potential period of limbo in which the child petitioner has an order of protection but is not yet able to be emancipated (*see Diamond v. Diamond*, 2012- NMSC- 022, where petitioner left home at the age of 13 due in part to domestic violence in the home but could not petition for legal emancipation until age 16).

Section 10(J)(1) includes the ability for a minor to petition for an order of protection against a minor’s co-parent or a person with whom *the minor* has a continuing personal relationship, but is silent as to the ability of the minor to petition for an order of protection against the significant other of a parent or co-parent, who may be the actual perpetrator of abuse and who the child petitioner (or respondent) may disavow a “continuing personal relationship”.

Section 13(A)(1) changes language of issuing emergency orders of protection from “immediately” to “on the same day” that the application is made. Though the change is minimal, it may create delay in the issuance of an order of protection for up to 24 hours based on strict compliance with the language in this bill. This, in essence, could defeat the purpose of ex parte temporary order of protection if a petitioner were forced to wait up to 24 hours for its issuance.

The same analysis can be applied to Section 14(A), which states, “Upon a finding that abuse has occurred or that there is an immediate danger of abuse or upon stipulation of the parties, the court shall enter an order of protection on the same day (of application, presumably).”

Section 17(B)(5) mandates that “[a] law enforcement officer, in making arrests for abuse, shall identify whether one of the parties acted in self-defense.” It is presumed that the arresting officer would indicate this finding in a report though the bill is not explicit as to this mandate. Moreover, rather than mandate that a law enforcement officer opine, articulate and make a specific finding of self-defense at the moment of arrest, it may be best practice and more in line with law enforcement training to describe and document all facts and circumstances surrounding the arrest, to include any facts and circumstances that may support self-defense.

## **PERFORMANCE IMPLICATIONS**

none

## **ADMINISTRATIVE IMPLICATIONS**

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

Section 30-6A-2: Sexual Exploitation of Children, definitions

Section 30-37A-1(B)(5): definition of “sensitive images”

Section 30-52-1: Human Trafficking

Section 32A-21-7: Declaration of Emancipation

Rule 1-004(I)(1) NMRA, Process; service upon a minor

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

Status quo

## **AMENDMENTS**