

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**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**     **Amendment**      
**Correction**     **Substitute**   

**Date** January 22, 2024  
**Bill No:** SB 12

**Sponsor:** Sedillo Lopez  
**Short Title:** Rename Family Violence Protection Act

**Agency Name and Code Number:** NM Sentencing Commission – 354  
**Person Writing:** Keri Thiel  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(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**

**BILL SUMMARY**

Synopsis:

SB 12 proposes to rename the Family Violence Protection Act, Chapter 40, Article 13 NMSA 1978, as the Protection Against Abuse and Violence Act, and to replace “domestic abuse” with “abuse” throughout the Act. It changes the name of the Act accordingly in Sections 1-4-5.1 (in the Election Code), 29-15-2 (the definitions section of the Missing Persons Information and Reporting Act), 30-1-15 (in the General Provisions applicable to Chapter 30, Criminal Offenses), 31-12-12 (regarding the Domestic Violence Offender Treatment or Intervention Fund), 32A-2-3 (the definitions section of the Delinquency Act), 34-8A-6 (regarding rules for Metropolitan Courts), and 40-4-7.2 NMSA 1978 (regarding the Dissolution of Marriage).

SB 12 would amend Section 40-13-2 NMSA 1978, the definitions section of the Family Violence Protection Act, to make the following changes:

- Define “abuse”;
- Remove “domestic abuse” and its definition;
- Include the district court of the judicial district where the alleged abuse occurred in the definition of “abuse”;
- Define “credible threat”; and
- Remove “mutual order of protection” and its definition.

The bill would also amend Section 40-13-3 NMSA 1978, regarding petitions for an order of protection, to specify that the petitioner and the respondent shall not be compelled to mediate any aspect of the case arising from the Act, regardless of whether there is any other domestic action pending between the two. The bill also expands the list of types of proceedings of which an action brought under the act is independent. The bill further amends Section 40-13-3 to require petitioner to notify the court if the petitioner or respondent’s primary language is not English, and to require the clerk of the court to arrange for interpretation services if needed; to specify that an order of protection may be issued to protect or restrain a minor; and to list the circumstances under which a minor who is thirteen or older may petition the court for an order of protection on their own behalf.

SB 12 would also amend Section 40-13-3.2 NMSA 1978, regarding emergency orders of protection, to remove “ex parte” from the title of the Section, to modify the procedure for a law enforcement officer to request an emergency order of protection, and to specify that law enforcement can receive an emergency order of protection via electronic or digital means and

must immediately provide the protected party with a written signed copy of the order. It also amends Section 40-13-3.2 to require that a district judge be available at all times in each judicial district to hear petitions for emergency orders.

The bill would amend Section 40-13-4 NMSA 1978, regarding temporary orders of protection, to remove the procedure for when an ex parte order is not granted, and to instead require the court to hold a hearing within 72 hours to allow the petitioner to provide more information if the court does not find that a temporary order of protection is warranted by the original request. The bill also amends Section 40-13-4 to require the court to enjoin the restrained party from contact with the protected party and from committing or threatening acts of abuse against the protected party and the protected party's household, as well as to make custody decisions, when appropriate, with the safety of the protected party in mind.

The bill would also amend Sections 40-13-4 and 40-13-5 NMSA 1978 to allow both temporary orders of protection and orders of protection, respectively, to be issued upon a finding that there is an immediate danger of abuse. The existing statutes both presently require a finding that abuse has already occurred.

The bill would also amend Section 40-13-5 NMSA 1978 to limit the amount of time an award for temporary custody may be valid, and to specify that the order of protection may be issued for a period of time independent of the duration of any custody or property awards. It also allows the court to grant to a party possession or control of an animal owned by either party, and prohibits the court from ordering that the protected party participate in treatment or counseling related to abuse. The bill further amends Section 40-13-5 to require that, when appropriate, the order of protection must contain notice that the restrained parties are prohibited from owning or possessing a firearm while the order is in effect. The bill also removes the provision allowing for the issuance of a mutual order of protection, and adds a provision for issuing an order with either party in absentia.

SB 12 would also amend Section 40-13-6 NMSA 1978 to no longer require personal service upon the restrained party, and to remove the time limits on the validity of an order for protection. It would also amend Section 40-13-7 NMSA 1978, regarding law enforcement assistance to abuse victims, to extend that assistance to other members of the victim's household, and to require law enforcement officers making arrests for abuse to identify whether one of the parties was acting in self-defense and indicate which party was the predominant aggressor. It also requires law enforcement to identify and document the names and relationships between everyone present at the incident, including witnesses, when writing the criminal complaint and incident report. The bill further requires law enforcement to notify the victim when the alleged abuser is transferred to another facility, escapes, or is released from custody.

The bill also proposes to amend Section 40-13-7.1 NMSA 1978, regarding documentation of abuse, to replace "medical personnel" with "health care professional" and to modify the definition previously given to "medical personnel".

SB 12 would also amend Section 40-13-9 NMSA 1978 to require that domestic violence special commissioners conform to Canons 21-100 through 21-400 of the Code of Judicial Conduct, rather than Canons 21-100 through 21-500 and 21-700. The bill would also amend Section 40-13-10 NMSA 1978, regarding the duties of the domestic violence special commissioners, to include motions to show cause, and to require that the recommendation made by a special commissioner must be reviewed and signed the same day as the hearing on the matter.

SB 12 would also modify the limits on the internet publication of information regarding the petition for a protection order under Section 40-13-12 NMSA 1978.

The bill would also amend Section 40-13B-2 NMSA 1978, the definitions section of the Confidential Substitute Address Act, and Section 5-4A-2 NMSA 1978, the definitions section of the Promoting Financial Independence for Victims of Domestic Abuse Act, to specify that “domestic violence” means “abuse”.

SB 12 would repeal Section 40-13-1.1 NMSA 1978, containing the Legislative findings regarding domestic abuse and discouraging dual arrests.

Finally, SB 12 sets forth an effective date of July 1, 2024.

## **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**

There were over 20,000 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, available here: [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, revised July 5, 2023, available here: <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf>.)

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**