

LFC Requester:	Emily Hilla
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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: Date 1/22/24
Original **Amendment** **Bill No:** SB 12
Correction **Substitute**

Sponsor: A. Sedillo Lopez **Agency Name and Code** NMCVRC/78000
Short Title: Rename Family Violence Protection Act **Number:** _____
Person Writing Frank Zubia & C. Harwell
Phone: 505 553-1223 **Email** _____

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)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(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: The bill renames the Family Violence Protection Act the Protection Against Abuse and Violence Act, redefines abuse, broadens the range of protected persons, makes procedural changes, adds some clarifying language, and makes grammatical changes.

In the following NMSA statutes, the bill would insert the new act name: 29-15-2, 30-1-15, 31-12-12, 32A-2-3, 34-8A-6, 40-4-7.2, 1-4-5.1, and 50-4A-2 which would also contain a new definition of abuse.

The statute would be made gender neutral and grammatical changes are also made.

Multiple statutes are amended by the bill. See below for details.

In NMSA 40-13-2:

- the proposed definition of abuse which a petitioner could be protected from includes additional conduct and clarifying language giving examples. Abuse would include: battery, assault, temporary or permanent bodily injury, severe emotional distress which includes fear/depression/anxiety/loss of sleep, intimidation, following in public places, telephone harassment, internet/digital/electronic harassment, kidnapping, false imprisonment, restricting/prohibiting movement, interference with communication, exploitation, forced criminal activity, harm or threat of harm to an animal, unauthorized distribution of sensitive images, and threats to disclose immigration status.
- A definition of credible threat is provided and examples of proof of such a threat are provided.
- Mutual orders for protection are eliminated from the statute.
- Courts would have additional jurisdiction, where the abuse occurred.

In NMSA 40-13-3:

- the parties must now list all pending legal actions involving petitioners and respondents, including criminal cases that are not related to violations of the order for protection.

- There is a requirement to notify the court of a need for an interpreter, and the court's obligation to provide that at the court's expense.
- The bill expressly states that an order for protection may be issued for or against a minor and that a minor thirteen years old or older can seek their own order from protection against a parent or a partner if there are allegations of sexual assault or stalking in the minor's petition.

In NMSA 40-13-3.2:

- Police officers would be able to seek judicial approval of an emergency order for protection by the additional means of any digital/electronic method.
- An emergency order for protection would not require the filing of a criminal complaint in the case.
- The basis for an order may be founded on danger to other household members, a broader category than the victim and their child.
- An emergency order for protection may be based on threat of abuse or the fact of abuse having already occurred.
- Officers may receive the order from the court by the additional means of any digital/electronic method.
- A judge must be available at all times to consider requests for these orders.

In NMSA 40-13-4:

- Orders are to be granted the same day rather than immediately.
- A temporary order may now be based on immediate danger of abuse.
- A temporary custody order basis would now be explicitly based on safety.
- The personal service requirement for a hearing within 72 hours is removed.

In NMSA 40-13-5:

- Basis for title to property may be immediate danger.
- Orders on title to property under the act are to be issued the same day, rather than immediately.
- Child custody orders under the act may be for six months, with the possibility of an extension of six additional months.
- Orders under the act are to be independent of other court actions.
- The court would have the authority to issue orders on the custody of animals.
- Federal prohibitions on firearm possession would be incorporated into state court orders for both stipulated and contested orders.
- Mutual orders for protection would be eliminated from this statute.
- Proof of service would need to be placed in the record and the court would mail the final order.

In NMSA 40-13-5.1:

- Protected party is substituted for victim as the person who can ask the court to extend an expiring order for protection.

In NMSA 40-13-6:

- The order would be provided to the parties and their lawyers at no cost, also to law enforcement.
- The duration of an order for protection could be for any timeframe the court found

appropriate for safety reasons.

- An extension of an existing order might be sought by motion and a hearing showing good cause.
- Violators of orders could be sentenced to a broader range of interventions.

In NMSA 40-13-7:

- Officers would have broader protection responsibilities as they would need to protect other household members in addition to the victim.
- Officers must make a determination of use of self-defense at the scene.
- Officers would need to protect digital evidence.
- Officers would be required to identify all witnesses and their relationships.
- Jails would need to notify victims of escape or transfers of offenders.

In NMSA 40-13-7.1:

- The definition of health care providers who need to inform survivors of options and document disclosures is broadened to include students and assistants.

In NMSA 40-13-9:

- The canons governing Commissioners are changed.

In NMSA 40-13-10:

- Special Commissioners for Domestic Violence would review all pleadings related to domestic violence matters.
- The supervising district court judge would be required to sign all domestic violence orders the same day they are received.

In NMSA 40-13-12:

- Restrictions on access to domestic violence files would be increased to include registration and filing of an order.
- Case management and e-filing systems would have petitioners' addresses redacted.

FISCAL IMPLICATIONS

None for this agency.

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 current name for the Family Violence Protection Act suggests a requirement for a familial relationship and a certain type of abuse which are not actually required for relief under the Act. The bill implements recommendations from a task force of professionals. The additional conduct which would subject an individual to restraint under an order for protection are primarily taken from the criminal code statutes.

PERFORMANCE IMPLICATIONS

A court assessment of self-defense would seem to be an aspect of the existing law that would be useful to continue.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

It seems odd that the right of minors to seek an order for protection would be limited to circumstances where stalking or sexual assault are alleged. A minor experiencing physical violence doesn't have the same protection as an adult under the proposed language in NMSA 40-13-3.

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

An expansion of minors' rights to orders for protection that mirrors adult survivors' rights.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Gaps identified by the task force will continue.

AMENDMENTS