

LFC Requester: Emily Hilla

AGENCY BILL ANALYSIS  
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.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 22 JAN 2024

Bill No: SB 12

Sponsor: Sen. Antoinette Sedillo Lopez  
Short Title: Rename Family Violence Protection Act  
Agency Name and Code: 790 Department of Public Safety  
Number:  
Person Writing: Joan M. Waters  
Phone: 505.365.3531 Email: Joan.waters2@dps.nm.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI		

(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>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: (Very similar to 2023 SB18)  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Renames the Family Violence Protection Act as the Protection Against Abuse and Violence Act and broadens the scope of state law to provide for protective orders against violence and abuse. Authorizes orders of protection in cases of stalking or sexual assault, whether or not the victim is a household member. Makes several procedural and some substantive changes related to protective orders. Makes conforming nomenclature and technical changes throughout.

Pages 1-28 of the bill simply makes non-substantive name changes to conform with the new name of the act; and beginning at page 29 is where substantive are made.

**PETITIONS FOR ORDERS OF PROTECTION.** Five changes are made to the section relating to petitions for protective orders:

- No compulsory mediation is required, even if another domestic action is pending between the parties, unless the court finds that fair and appropriate safeguards exist.
- Any action brought under the act is independent of actions for divorce or separation or any other civil or criminal case involving the parties.
- Petitioner must advise the court if either party speaks a language other than English, and the clerk must must arrange for necessary translation or interpretation to be provided.
- An order may be issued to protect or restrain a minor.
- A minor 13 years old or younger who is a victim of abuse may petition for an order on the minor’s own behalf if the petition seeks protection against a co-parent or a person with whom the minor has a personal relationship; or if the minor alleges stalking or sexual assault.

**EMERGENCY ORDERS OF PROTECTION.** The process for obtaining an emergency order has been altered to include:

- A law enforcement officer may request an emergency order by written petition in person or by telephone, fax, or other electronic means. The officer must inform the victim that the officer may file the petition on the victim’s behalf. The petition must set forth the need for the order and, if known, the perpetrator’s location and phone number. A criminal complaint need not be filed. The court may issue the order when it finds reasonable grounds that the alleged victim and other household members are in immediate danger, or that an act of abuse has occurred.
- A district judge must be available at all times to hear petitions for emergency orders of protection. An order expires 72 hours after issuance or at the end of the next day the court is open, whichever is later.

**TEMPORARY ORDERS OF PROTECTION.** Changes to procedures for a temporary protective

order include:

- On filing of the petition for an order, the court shall issue an ex parte temporary order on the same day if there is probable cause to believe an act of abuse has occurred or that there is immediate danger of abuse.
- In the temporary order, the court shall (1) enjoin the restrained party from committing or threatening acts of abuse against the protected party or member of the household; (2) enjoin the restrained party from contact or communication with the protected party; and (3) when appropriate, award temporary custody and visitation or supervised visitation of a child.
- If upon review of the petition, the court lacks sufficient information or does not find cause to believe an act of abuse has occurred, it must hold a hearing within 72 hours for the petitioner to provide additional information. Personal service is not required to conduct the hearing. At the hearing, the court shall either issue a temporary order or dismiss the petition.

ORDERS OF PROTECTION. Changes in authority and procedure are as follows:

- The court shall issue an order on the same day on a finding that abuse has occurred or there is immediate danger of abuse.
- If the court, in its discretion, awards temporary custody of a child, any child custody or visitation order issued with a protection order is only effective for six months, but may be extended for good cause for an additional 6 months.
- The court has discretionary authority:
  - a) to order protection between the parties independent of any custody or property attachment order;
  - b) to order the restrained party not to initiate contact with the protected party; to restrain a party from in any way disposing of the other party's property or joint property and to require an accounting;
  - c) to control the nature of a party's access to an animal;
  - d) to order reimbursement of expenses occasioned by abuse by the restrained party;
  - e) to order the restrained party to participate in counseling or treatment at the restrained party's expense;
  - f) and other injunctive relief it deems necessary.
- However, the court may not order the protected party to participate in treatment or counseling.
- When appropriate, the order must contain notice that all restrained parties are prohibited from owning or possessing a firearm while the order is in effect.
- Provision for mutual orders of protection has been removed from the act.
- In situations where the respondent had an opportunity to participate in the original proceeding and, after being duly noticed, failed to appear at a subsequent hearing to extend the terms of the order, the court is given authority to mail the final order to the respondent.

OTHER PROVISIONS. Changes in related matters include the following:

- Copies of protective orders must be provided to parties or their attorneys, without requirement of personal service, at no cost to the protected party.
- Orders of protection may be in effect for a fixed period of time; on motion and after hearing, an existing order may expire or may be extended for good cause.
- In addition to any other punishment, the court shall order the person "convicted of violating an order of protection" to participate in and complete a domestic violence or other offender treatment or intervention program.
- Law enforcement officers responding to a call must take whatever steps are reasonably necessary to protect the victim and other household members from further abuse. In arresting an alleged perpetrator, the officer must identify if one of the parties acted in self-defense; and must include information in the complaint and report of names and relationships of those present,

including additional victims.

- A jail or detention center must make reasonable efforts to notify victims when an alleged perpetrator of abuse, stalking or sexual assault, or a restrained party in violation of an order, has escaped from custody or is transferred to another facility.

**LIMITS ON INTERNET PUBLICATION.** No state, local or judicial agency shall make publicly available on the Internet any information regarding matters governed by the Uniform Interstate Enforcement of Domestic Violence Protection Orders, except in the state judiciary's case management and e-filing system, with addresses of protected parties redacted.

**DEFINITIONS.** Strikes the definition of "domestic abuse" and "mutual order of protection," and provides new or amended definitions, as follows:

• "abuse" to mean:

- (1) an incident or pattern of stalking or sexual assault, whether committed by a household member or not; or
- (2) an incident or pattern of behavior by a household member against another household member consisting of or resulting in:
  - a) physical harm or temporary or permanent bodily injury;
  - b) battery, assault, or threats causing imminent fear of abuse;
  - c) strangulation or suffocation;
  - d) severe emotional distress that may include fear, depression, anxiety, or loss of sleep;
  - e) harassment or intimidation that may include repeatedly driving by a residence or workplace for no lawful purpose or following in public places;
  - f) telephone harassment, internet harassment or harassment through other digital or electronic means;
  - g) kidnapping, false imprisonment or restricting or prohibiting movement;
  - h) interference with communication;
  - i) exploitation or forced criminal activity;
  - j) criminal damage to or deprivation of real or personal property or damage to jointly owned or community property;
  - k) harm or threatened harm to children;
  - l) harm or threatened harm to an animal;
  - m) unauthorized distribution of sensitive images;
  - n) criminal trespass; or
  - o) threats to disclose immigration status

• "credible threat" to mean a condition or situation that causes a reasonable person, based on the totality of the circumstances, to fear for the person's physical safety or for the physical safety of another and may be demonstrated by evidence of a statement, an act or a course of conduct attributed to the respondent and does not require the use or threatened use of a firearm.

**CONFORMING CHANGES.** The bill makes extensive conforming changes throughout, mainly to change references from the old act title to the new one, including: the Election Code; Missing Persons Information and Reporting Act; Criminal Code; Criminal Procedure Act; Delinquency Act; statutes governing court structure and administration; statutes governing trials; the Confidential Substitute Address Act; and the Promoting Financial Independence for Victims of Domestic Abuse Act

**REPEAL.** Sec. 40-13-11.1, a statement of legislative findings, is repealed.

## FISCAL IMPLICATIONS

None for DPS.

## SIGNIFICANT ISSUES

SB 12 at Section 9 proposes to amend Section 40-13-2 D. “domestic abuse” by deleting that subsection and replacing it with A. (1) “abuse”. Section 9 would further amend the current definition of “[domestic] abuse” which is (1) “an incident of stalking or sexual assault , whether committed by a household member or not” to “an incident *or pattern* of stalking or sexual assault . . .”. Stalking is defined in the Criminal Code at NMSA Section 30-3A-3 A. as “knowingly pursuing *a pattern of conduct*, without lawful authority, directed at a specific individual when the person intends that the *pattern of conduct* would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.” (Emphasis added) A “pattern of conduct” is defined for purposes of the crime of stalking at Subsection B. (2) of Section 30-3A-3 as “*two or more acts, on more than one occasion*, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, *follows, monitors, surveils, threatens or communicates to or about a person.*”) DPS believes that given that the crime of stalking is by definition a “pattern of conduct” that requiring a restraining order issue on a “pattern of stalking” is raising a new unknown to law enforcement offense which may trigger a concern that the statute is unconstitutionally vague.

SB 12 would add three new examples to the definition of what would now be called “abuse” rather than “domestic abuse”. The first is: “(m) unauthorized distribution of *sensitive* images” DPS believes “sensitive images” raises similar concerns of being unconstitutionally vague. If aimed at explicit sexual images DPS believes a more specific definition similar to the definitions included in the Sexually Oriented Material Harmful to Minors at NMSA 1978 Section 30-37-1 B. (“nudity” means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state”), C. (“sexual conduct” means acts of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast”); D. (“sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal”); E. (“sado-masochistic abuse” means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained”).

Section 9 of SB 12 would also eliminate the “mutual order of protection.”

Section 10 of SB 12 would allow an order of protection to be issued to protect or restrain a “minor” and allow a “minor . . . thirteen years of age or older and a victim of abuse” to petition for an order on the minor’s own behalf for protection from a “co-parent or a person with whom the minor has had a continuing personal relationship.” To the extent a minor is alleging and seeking relief against a co-parent or someone with whom a co-parent is requiring the child to have “a continuing personal relationship” this may be a situation which is more appropriately addressed within the context of the Abuse and Neglect Act.

Section 12 allows a law enforcement officer to file a petition for an order of protection on behalf of either an adult or minor victim of abuse. It is not clear whether this option is meant to present an alternative for the teenage minor to obtain a protective order from a co-parent or someone else the legal custodian should be charged with protecting the minor from and by-pass the Abuse and

Neglect Act and the foster parent system. The officer remains a mandatory reporter for purposes of the Abuse and Neglect Act. DPS believes clarification on the officers responsibilities in petitioning for this order and contacting CYFD and reporting under the Abuse and Neglect Act should be added.

DPS does not understand why Section 12 proposes to delete the term “ex parte” from the “emergency orders” of protection section in Section 40-13-3.2 of the Act. The procedure remains ex parte.

Section 13 of SB 12 would allow a temporary order of protection to be issued without a finding that abuse has occurred but that there is “immediate danger of abuse.” To the extent Section 14 would then allow firearms to be prohibited based solely on the threat of “immediate danger of abuse”, DPS believes their is provision overlaps and may conflict with the Extreme Risk Firearm Protection Order Act. Section 40-17-5 D. of the ERFPO Act requires a law enforcement officer to “file a petition for an extreme risk firearm protection order upon receipt of credible information from a reporting party that gives the agency or officer probable cause to believe that a respondent poses *a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.*” (Emphasis added) Since the Legislature has already provided a mechanism by which a “reporting party” may obtain an ERFPO under the ERFPO Act, DPS is concerned that creating a different standard – “immediate danger of abuse” – in the “Protection Against Abuse and Violence Act” will cause unnecessary confusion. DPS believes that it may be better to leave the removal of firearms where no “abuse” as defined in the “Protection Against Abuse and Violence Act” has occurred to the ERFPO Act and only address removal of firearms under the “Protection Against Abuse and Violence Act” where abuse has occurred.

Section 13 of SB 12 would automatically require a court who did not have “sufficient information to find or does not find probable cause to believe that an act of abuse has occurred” to hold another hearing within seventy-two hours “to allow the petitioner to provide additional information to the court.” The mandatory nature of the hearing imposes a mandatory duty on a law enforcement officer to further investigate the allegations first brought to the officer or to continue to seek an order regardless of any change in the circumstances of the alleged victim or other household members, if applicable.

Section 14 of SB 12 adds a Subsection B. (6) which allows the court to grant a party “exclusive or shared possession and control” of or an order to stay away from “any animal kept, owned or leased by either party or by the minor child or minor children residing in the household of either party.” DPS believes requiring that there be probable cause to believe the restrained party has harmed or threatened to harm the animal may make it easier for the officer to justify this request in any petition filed by an officer.

Section 17 of SB 12 would amend the Act to require a law enforcement making an arrest for “abuse” to “identify whether one of the parties acted in self-defense.” DPS believes in many cases, law enforcement officers will not have sufficient information to make this determination. It also calls for a law enforcement officer to reach an (in this Act) undefined legal conclusion. DPS believes, instead, the officer should simply include in the officers report the facts that are gathered in relation to the incident that leads to the arrest. This same section would also amend the Act to require the arresting officer to “identify[] and document[] in the criminal complaint and incident report names and relationships between people present at the incident, including any additional victims or witnesses.” Law enforcement officers already document witnesses to

incidents they are investigating in their reports and also document those with visible injuries who may reasonably be considered “victims.”

**PERFORMANCE IMPLICATIONS**

None for DPS.

**ADMINISTRATIVE IMPLICATIONS**

None for DPS.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None for DPS.

**TECHNICAL ISSUES**

None for DPS.

**OTHER SUBSTANTIVE ISSUES**

None for DPS.

**ALTERNATIVES**

None for DPS.

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

Status quo will remain.

**AMENDMENTS**

None proposed at this time.