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## FISCAL IMPACT REPORT

SPONSOR: Picraux DATE TYPED: 03/01/03 HB 626

SHORT TITLE: Domestic-Violence Protection Orders SB \_\_\_\_\_

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General (AG)  
 Department of Public Safety (DPS)

No Response

Public Defender Department (PDD)  
 Administrative Office of the District Attorneys (AODA)

### SUMMARY

Synopsis of Bill

House Bill 626 enacts the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (UIEDVPOA). The Act includes requirements for enforcement of orders, also stipulating procedures for enforcement of foreign (i.e. those of other states or Indian tribes) orders.

“State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders; and

Tribunal means a court, agency or other entity authorized by law to issue or modify a protection order.”

A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. A tribunal shall enforce the terms of the order, **including terms that provide relief that a tribunal of this state would lack power to provide but for this section.**

A law enforcement officer shall enforce an order upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated. Presentation of a current protection order that identifies the protected individual and the respondent constitutes probable cause. The order may exist in any medium as long as it is retrievable in perceivable form.

The bill strikes the provisions of 40-13-6 NMSA that relate to full faith and credit for foreign orders.

### Significant Issues

The provisions of this bill remove legislative oversight of domestic violence protection orders. The bill provides that a tribunal shall enforce provisions of a foreign order that New Mexico laws would not authorize, if they are authorized by the laws of the foreign jurisdiction issuing the order of protection.

If it is the Legislature's intent that courts be required to enforce the provisions contained in orders of other states, regardless of what they may be, the bill makes adequate provisions. If the Legislature intends to enact legislation requiring courts to enforce the domestic violence protection orders of other states, but not to enforce orders whose provisions run counter to New Mexico law, the bill should be amended to reflect that intent.

The Attorney General (AG) reports that the Act does not present conflicts with New Mexico law.

AG notes that the bill provides more specific direction for courts and law enforcement relating to enforcement of foreign protective orders than the full faith and credit provisions of current law found in 40-13-6 NMSA. The agency notes that Article IV of the United States Constitution has been the basis for a number of Congressional actions designed to improve enforcement of foreign judgments of states; however, the domestic violence protection order may not ultimately be determined to fall within the purview of the Full Faith and Credit Clause of Article IV, because it may not qualify as a "final" order. AG indicates that the bill provides an alternate legal basis for enforcement, eliminating the risk that future U.S. Supreme Court decisions would eviscerate the enforcement of foreign orders of protection.

AG notes that probable cause is a new standard for this area of law but one that is well tested and adequately defined in other areas of law.

AG and the Administrative Office of the Courts (AOC) report that the UIEDVPOA was approved by the National Conference of Commissioners on Uniform Laws in 2000 and has since been enacted in Texas, California, Montana and Indiana. The act is written to incorporate the requirements of jurisdiction over the person and subject matter jurisdiction into a format that is enforceable for a field police officer. The act also incorporates the requirements of the federal Violence Against Women Act, 18 U.S.C. Sec. 2265©, that limit the enforcement of a mutual or-

der issued in favor of a respondent to circumstances where a written pleading was filed by the respondent seeking such an order, or when the court has made specific findings in favor of the respondent in response to the respondent's request for relief.

The Department of Public Safety (DPS) notes that the presentation of a certified copy of a protection order is not required for enforcement, and that in the absence of a certified copy of a protection order, a law enforcement officer may consider other information to determine if there is probable cause to believe that a valid foreign protection order exists.

Additionally, registration or filing of an order in New Mexico is not required for enforcement of a valid foreign protection order pursuant to the Act.

The Act contains a liability clause for agencies and law enforcement officers.

DPS notes that in addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.

### **FISCAL IMPLICATIONS**

DPS and AOC notes that there is potential for a significant increase in numbers of arrests of domestic abuse offenders as a result of foreign protection order service and violations. As a result, law enforcement agencies, courts, district attorneys and the Public Defender Department will likely see an increase in costs.

### **CONFLICT, RELATIONSHIP**

Conflicts with SB 521 (Increase Penalties for Domestic Violence); Relates to SB 555 (Minors at Petition for Protection Proceedings)

**JCF/njw**