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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/10
 LAST UPDATED 02/10/10 HB 154/aHJC

SPONSOR Cervantes

SHORT TITLE Enforcement of Domestic Violence Protection SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General Office (AGO)
 Children Youth and Families Department (CYFD)

No Response Received From

Department of Public Safety (DPS)

SUMMARY

Synopsis of House Judiciary Committee Amendment of House Bill 154

The amendment makes the following changes:

1. On page 5, line 6, strike “is currently” and insert “appears to be”.
2. On pages 7 and 8, strike Section 7 in its entirety. This removes new material providing immunity for civil and criminal liability for certain actions of an official if acting in good faith to enforce the provisions of the bill.

Synopsis of Original Bill

AOC offers background regarding the connection between House Bill 154 and the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

House Bill 154 enacts the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (UIEDVPOA) to establish uniform procedures that enable courts

to recognize and enforce valid domestic protection orders issued in other jurisdictions. The Model Act was last amended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in the summer of 2002 and approved by the American Bar Association in February of 2003.

The following outlines the AODA's description of the bill section by section.

- Section 2 is the definitions section of the Act. Subsection (A) defines "foreign protection order" as a protection order issued by a tribunal of another state. Subsection (E) defines "protection order" as an "injunction or other order, issued by a tribunal under the domestic violence, family violence or anti-stalking laws of the issuing state, to prevent a person from engaging in a violent or threatening act against, harassment of, contact or communication with or physical proximity to another person". Subsection (G) defines "state" to mean any of the United States, or its territories or insular possessions. It also defines "state" to include Indian tribes, pueblos, nations or bands that have jurisdiction to issue protection orders.
- Section 3 contains the heart of the Act. Subsection (A) provides that a person may seek enforcement of a valid foreign protection order in a New Mexico tribunal. New Mexico shall enforce the foreign order, even including terms that a New Mexico tribunal would lack authority to impose. New Mexico procedures are to be followed for enforcement of foreign protection orders. Subsection (B) provides that New Mexico will not enforce a foreign protection order of a state that doesn't "recognize the standing of a protected individual to seek enforcement of the order". Subsection (C) mandates that New Mexico will enforce valid foreign protection orders governing custody and visitation. Subsection (D) sets forth what makes a foreign protection order valid. The order is valid if identifies the parties, is currently in effect, was issued by a tribunal that had both personal and subject matter jurisdiction under the law of the issuing state, and was issued after appropriate notice and opportunity to be heard was afforded to the respondent, and was issued "in a manner consistent with the due process rights of the respondent". Subsection (E) provides that a foreign protection order which appears valid on its face is *prima facie* evidence of the validity of the order. Subsection (F) provides that it is an affirmative defense if any of the requirements for a valid order set forth in subsection (D) are absent. Finally, subsection (G) addresses *mutual* foreign protection orders and provides that they may only be enforced if both parties filed a written pleading seeking protection from the other, and the tribunal of the issuing state made specific findings that each party was entitled to a protection order.
- Section 4 pertains to actions by law enforcement in relation to foreign protection orders. A New Mexico law enforcement officer shall enforce a foreign protection order as if it were issued by a New Mexico tribunal if there is probable cause to believe it is valid. Presentation of a foreign protection order that appears valid on its face is probable cause to believe the order is valid and to take appropriate action. A certified copy is not required, and a copy made from an electronic medium is acceptable. (Subsection (A)). Even if an actual order of protection is not presented to a law enforcement officer, the officer may consider "other information" to determine whether a valid foreign protection order exists. (Subsection (B)).

If the law enforcement officer determines that a foreign protection order cannot be enforced because the respondent was not properly served or notified of the order, the

officer shall inform the respondent of the order, make a reasonable effort to serve the respondent with the order, and allow reasonable opportunity for compliance with the order before taking enforcement action against the respondent. (Subsection (C)). Registration or filing of a foreign protection order is not required for enforcement action to be taken. (Subsection (D)).

- Section 5 pertains to registration or filing of foreign protection orders. The orders may be registered by presenting a certified copy of the order to the district court clerk. The person that has obtained the protection order shall also file an affidavit stating that to the best of their knowledge, the protection order is still in effect. Once the order is registered, the clerk shall give the person registering the order a certified copy of the order, and shall send a copy of the order to "the local law enforcement agency". There is no fee for registering a foreign protection order.
- Section 6 prohibits publication on publically-accessible sites on the internet any information pertaining to requests for, or issuance of, protection orders, whether the filing or issuance occurred in New Mexico or in another state, if such publication "would be likely to publicly reveal the identity or location of the party protected under such an order."
- Section 7 provides civil and criminal immunity for any government official acting in their official capacity and acting in good faith for any act or omission in regard to a foreign protection order.
- Section 8 makes clear that a person seeking remedies under the Act is not precluded from seeking other legal or equitable remedies against the respondent.
- Section 9 provides that the Act is to be construed and interpreted in a way so as to promote uniformity of interpretation among the states that adopt the Act.
- Section 10 makes clear that the provisions of the Act would apply to any requests for enforcement made after its effective date (July 1, 2010)--whether or not the actions complained of occurred before the effective date of the Act.
- Finally, section 11 would amend current NMSA 40-13-6 to delete subsection (E), which pertains to full faith and credit being required for orders of protection issued in other states. Presumably the provisions of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act proposed in this bill would supersede and replace subsection (E).

FISCAL IMPLICATIONS

There are only fiscal implications to the degree that the extension of protection from other states would increase overall costs for the New Mexico judicial system and law enforcement. However, it seems likely there that most if not cases would ultimately require action in New Mexico with or without this bill.

SIGNIFICANT ISSUES

AOC notes the following commentary regarding the bill.

While both the federal Violence Against Women Act and the New Mexico Family Violence Protection Act already require State courts to give full faith and credit to orders of protection issued by other States and Tribal courts, they do not sufficiently explain the core requirements of interstate enforcement of such orders. For example, despite requiring that courts and law enforcement officers enforce the orders of other States as if they were protection orders of the enforcing State, the current laws typically do not answer the question of whether state courts and officers are required to enforce provisions of foreign protection orders that would not be authorized by the laws of the enforcing state. HB 154 provides procedures to be used by the enforcing entity, and resolves issues left unanswered in existing laws and provide for a more uniform scheme for enforcement of protection orders.

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is one of many Model Acts promoted by the Uniform Conference of Commissioners on Uniform State Laws, which seeks to secure uniformity of state laws where diversity obstructs the interests of all the citizens of the U.S. In regards to domestic violence protection orders, the lack of uniformity in State laws has served to obscure interstate enforcement rather than promote it, causing confusion rather than enforcement.

MW/mew