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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/10

SPONSOR HJC LAST UPDATED _____ HB 199/HJCS

SHORT TITLE Domestic Violence Orders for Minors SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1.0-\$2.0		\$1.0-\$2.0	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)

Based on Responses to Original Bill

Administrative Office of the District Attorneys (AODA)
Attorney General's Office (AGO)
Human Service Department (HSD)
Department of Finance Administration (DFA)
Department of Public Safety (DPS)

No Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of HJC Substitute

The House Judiciary Committee Substitute for House Bill 199 allows an order of protection from domestic abuse to be issued to protect or to restrain a person under 18 years of age. It also allows a child 14 years or older to file for protection if the abuser is a co-parent or person with whom the minor has a continuing relationship or for protection against stalking or sexual assault.

The bill expands the jurisdiction over actions brought pursuant to the Family Violence Protection Act to include the judicial district where the alleged abuser lives or where the abuse occurred, and increases the class of household members to include a person having a dating or intimate relationship with an alleged abuser. The bill also expands the definition of domestic abuse to include cruelty to animals when done with the intent to intimidate and allows a court to enter an order protecting the animal.

The bill amends Section 40-13-3.2 in regard to the district court being able to issue an ex parte written emergency order of protection when a law enforcement officer presents to the court in person, by telephone, by facsimile or other electronic method, a sworn petition. If the court issues an emergency order, by the end of the next business day, the officer must provide to the court the original petition, order and return of service. The bill also amends 40-13-4 to authorize a court to issue a temporary order of protection based on the facts stated in a verified petition. If the court does not find probable cause to issue a temporary order, it shall hold a hearing within 72 hours to allow the petitioner to present additional evidence.

The bill requires that protection orders specify the period of time that it will be effective, provides for default judgments, including awarding of temporary custody, visitation, and support of children and exclusive or shared possession of any animal. The bill requires local law enforcement to be provided a copy of the order. The bill also authorizes law enforcement to assist in enforcement of the order when requested, including placing a minor child in the custody of the party awarded custody.

Finally, this bill adds a new section of the Family Protection Act regarding minors that includes direction that a minor who is taken into emergency custody of the Children, Youth and Families Department due to allegations of abuse or neglect shall be placed in accordance with the provisions of the Abuse and Neglect Act.

FISCAL IMPLICATIONS

AOC noted there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

AGO stated the most significant issues the bill raises are the protection of animals of the parties or minors in the household, and allowing orders of protection or temporary orders to protect or restrain minors. Both are significant domestic violence issues worthy of protection.

HSD stated the bill relates to intervention by law enforcement and the judicial system, including the court system, in domestic abuse cases. It should be noted that many individuals involved in domestic violence situations will seek services from HSD. HSD has provisions in place to further serve domestic violence victims. Under the Temporary Assistance for Needy Families (TANF) Block Grant, HSD has chosen to comply with the Family Violence Option, a federally-approved waiver from participation, which allows TANF clients receiving monthly benefits to be exempted from work participation due to domestic violence situations. HSD also provides domestic violence victims receiving TANF cash assistance the option of a good cause exemption from work requirements. Additionally, HSD provides funding to the Children, Youth and Families Department in the amount of \$3.6 million in FY10 to provide for statewide domestic violence services to TANF and TANF-eligible populations. Services may include participant access to emergency shelter, food, clothing or gas cards, domestic violence counseling and treatment services, legal advocacy and direct legal referrals.

HSD noted the bill provides that child support may be awarded on a temporary basis with a permanent order of support to be addressed by a domestic relations case. This update will have no impact on the current operations of the Child Support Enforcement Division.

AOC reported that many cases of teenage dating violence are currently heard by New Mexico courts, and these young people should be protected from harm. According to a Fact Sheet published by the Centers for Disease Control each year one in eleven adolescents reports being a victim of physical dating abuse, and one in five high school girls had been physically or sexually abused by a dating partner, a figure that far exceeds victimization rates for other types of violence affecting youth.

AOC also noted that a 2007 report by the National Center for Victims of Crime states that all 50 states and the District of Columbia have laws against dating violence-associated crimes such as sexual assault, domestic violence, and stalking. However, the specific term “dating violence” is rarely used in these laws. Thirty-five (35) states allow minors to obtain civil protection orders against dating partners, with various restrictions depending upon the age of the minor.

AOC reported that allowing the courts to communicate with law enforcement, and vice versa, by electronic means or e-mail would provide some additional convenience to law enforcement in the field in the dead of night, although most of the communications are currently made via telephone or fax. Time is of the essence in emergency cases, to ensure that a victim is protected from further harm and the alleged abuser commits no further violence.

AOC stated that the proposed legislation clarifying the next judicial day to mean “the next day the district court is open” acknowledges that the courts may be closed because of inclement weather, or because the courts have reduced their public hours, as a few have in some circumstances due to the current shortage of resources, to enable court personnel to enter data and manage case files and the other processes necessary to handle the court’s business in a timely fashion.

AOC noted that in regards to the proposed legislation’s clarifying language in Sections 9 and 10 regarding Domestic Violence Special Commissioners, these judicial officers address current practice in the courts, as are working directly with one or more family court judges in making decisions on issuing orders of protection.

DPS reported the proposed bill was created by a multidisciplinary task force under the auspices of the New Mexico Attorney General’s Office.

CYFD reported that according to a 2005 study by the American Bar Association between one in four and one in five teens nationally experience physical or sexual violence by their dating partner. According to the 2007 New Mexico Youth Risk and Resiliency Survey, 12.6 percent of New Mexico high school students reported being hit, slapped or physically hurt by their boyfriend or girlfriend within the past 12 months.

CYFD noted dating violence is a major public health concern among adolescents ages 10-19, and teen dating violence is associated with an increased risk for teen pregnancy and suicide. The New Mexico Youth Risk and Resiliency Survey demonstrated strong correlations between being hit by a boyfriend or girlfriend and other risk behaviors. High school students who reported being victims of teen dating violence were more likely than other students to report suicidal ideation, disordered eating behaviors, substance use and behaviors associated with violence.

Recommendations from the 2009 House Memorial 53 included having membership from the Attorney General’s Office conduct a policy analysis of other state strategies regarding access for minors to orders of protection and develop a set of recommendations for improving New Mexico’s laws governing minors’ rights to orders of protection.

CYFD noted the proposed bill works to bring New Mexico’s Family Violence Protection Act in line with the federal Family Violence Protection Act, under which domestic violence fund are appropriated to New Mexico.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the following performance measures for the district courts: cases disposed of as percent of cases filed and percent change in case filings by case type.

CYFD has the following performance measures regarding domestic violence: percent of adult victims or survivors receiving domestic violence services who have an individualized safety plan, percent of domestic violence offenders who complete a batter’s intervention program, and percent of adult victims or survivors receiving domestic violence services who are made aware of other available community services.

ADMINISTRATIVE IMPLICATIONS

AGO noted the bill may result in additional hearings at temporary order of protection stage. Courts would need to create procedure for petitions filed by or against minors that mirror the adult procedures.

DPS stated there will need to be training for law enforcement and judicial staff on the changes made to the Family Violence Protection Act.

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

House Bill 199 has a relationship with Senate Bill 2 which changes the definition of “household member” and House Bill 154 which establishes uniform procedures that enables courts to recognize and enforce valid domestic violence protection orders issued in other jurisdictions.

TECHNICAL ISSUES

DFA noted there are not age limits placed with respect to whom an order of protection may be filed against, so long as the relationship meets the criteria of dating partner, co-parent, continuing personal relationship, or the petitioner makes allegations of stalking or sexual assault in the petition. The language suggest that a youth between 14-18 years of age would be allowed to file for an order of protection on their own behalf against, for instance, their own parent; or against another minor. Clarification of the age of the restrained party on the protection order may be advisable.

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