

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11

SPONSOR Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Order of Protection Filing & Enforcement SB 474

ANALYST Segura

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	none		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to  
 Duplicates Appropriation in the General Appropriation Act  
 Relates to Appropriation in the General Appropriation Act

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office District Attorney (AODA)  
 Department of Public Safety (DPS)  
 Children, Youth and Families Department (CYFD)  
 Attorney General's Office (AGO)  
 Public Defender Department (PDD)

### SUMMARY

Senate Bill 474 amends NMSA 1978 Section 40-13, the Family Violence Protection Act. This legislation proposes multiple changes to the Act including expanded definition of "court", adding several new crimes within those covered as domestic abuse including damage to jointly owned community property when done with the intent to intimidate, threaten or harass; false imprisonment; interference with communications; larceny or deprivation of property with the intent to intimidate, threaten or harass; and, cruelty to domestic pet with the intent to intimidate,

threaten or harass.

The CYFD states that Senate Bill 474 amends the Family Violence Protection Act by revising standards and procedures around petitions for orders of protection, ex parte emergency orders of protection, temporary orders of protection and the content and scope of orders of protection. The bill also allows minors to file for orders of protection or to be restrained by an order of protection.

The DPS identifies the following sections with major changes in the proposed legislation:

Section three- Senate Bill 474 amends NMSA 1978, Section 40-13-3.2 creating the ascertainable standard of probable cause for the issuance of the ex parte emergency order of protection. This change is beneficial in that it gives law enforcement an absolute knowable standard in the field to enable presentation to the judge for the obtaining of an ex parte emergency order of protection;

Section four- proposes to amend NMSA 1978, 40-13-4 to include an exhaustive list of additional actions a court may take including prohibiting additional threats to a protected party, enjoining communication altogether with a protective party, and an award of temporary custody of children. In a final order of protection, the court may grant exclusive or shared possession of any domestic pet kept, owned or leased by either party or by a minor child residing in the household of either party;

Section eight- the Act modifies NMSA 1978, 40-13-7 regarding law enforcement officer responsibilities and now specifically states that “an officer shall in addition to providing assistance pursuant to this act assist in the enforcement of the terms of the order including placing a party in possession of a residence, and placing any minor child with the party awarded custody in accordance with the order.

## **FISCAL IMPLICATIONS**

Senate Bill 474 does not contain an appropriation.

## **SIGNIFICANT ISSUES**

The CYFD indicates that in a nationwide survey, 9.8 percent of high school students report being hit, slapped, or physically hurt on purpose by their boyfriend or girlfriend in the 12 months prior to the survey. Results from the 2007 NM Youth Risk and Resiliency Survey (YRRS), showed that 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. According to a 2005 report by the National Center for Victims of Crime, studies show that most teen victims refrain from telling anyone, especially their parents, about the violence experienced in dating relationships. For such victims, a requirement of parental or guardian consent becomes an obstacle to accessing the justice system.

The CYFD identifies the amendments to the Act as follows:

1. Expands the courts that could have jurisdictions to include the judicial district where the alleged abuser lives or is found or where the alleged abuse occurred.
2. Expands the definition of domestic abuse.
3. Includes a definition for the term “minor”.

4. Eliminates the option of using a sworn affidavit for an order of protection.
5. Broadens options for law enforcement to present to the court the sworn petition for an ex parte written emergency order by including other electronic methods.
6. Changes the standard for ex parte emergency orders from reasonable ground to probable cause.
7. Allows law enforcement to receive an emergency order of protection from the court through other electronic methods.
8. Requires law enforcement to provide return of services notice to the court.
9. Clarifies that an emergency order of protection expires 72 hours after issuance or at the end of the next day that the district court is open whichever is later.
10. Requires that a district judge be available in each district to issue emergency orders of protection.
11. Specifies the content of the temporary order of protection and requires that it include information on custody and visitation of any children when appropriate.
12. Provides that there is no cost to the protected party for filing and serving the temporary order of protection.
13. Expands orders of protection to include consideration the best interest of the children and allows the court to make orders concerning visitation.
14. Addresses the possession and control of any domestic pet kept by the parties or minor child residing in the household of either party.
15. Clarifies that criminal offenses related to violations of provision of an order of protection apply only to the restrained party.
16. Allows for an order of protection to be issued against a party restrained by a temporary order of protection if the restrained party fails to appear at the hearing.
17. Provides that the court identified a fixed period of time for the effective period of portions of an order of protection addressing injunctive relief rather than requiring parties to motion the court.
18. Allows an order of protection to be extended.
19. Specifies the type of counseling to be received by persons who violates an order of protection.
20. Allows for a minor who is fourteen years of age or older to petition the court for an order of protection and clarifies that a minor who is taken into the emergency custody of children, youth and families department due to allegations of abuse or neglect are placed in accordance with the provisions of the Abuse and Neglect Act.
21. Allows law enforcement to provide or arranging for transportation of the victim to a family advocacy center as well as a medical facility or shelter.

The AGO states that Senate Bill 474 is the result of a task force created by Attorney General King in 2007 to review and propose amendments to the Family Violence Protection Act.

### **PERFORMANCE IMPLICATIONS**

The DPS indicates that the Act further requires law enforcement officers to assist in the enforcement of the domestic violence protection order including assisting the victim to obtain the possession of a house or minor children so stated in the order.

According to DPS, it is currently not known whether these slight changes will increase law enforcement officer time on scene or involved in these issues, as domestic violence situations are already very time consuming. It is believed that the changes in the proposed legislation will not impact the DPS significantly.

RS/mew