

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 January 22, 2024

Bill No: SB 12-280

Sponsor: Antoinette Sedillo Lopez
Short Title: Rename Family Violence Protection Act

Agency Name and Code LOPD-280
Number: _____
Person Writing: Allison Jaramillo
Phone: 505-395-2890 **Email** allison.jaramillo@lopdm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 12 makes changes to the Family Violence Protecting Act, including renaming it the Protection Against Abuse and Violence Act in various statutes that reference the Act. This bill also includes an amended definition of “abuse” as used in the Act, and makes other changes to the civil process used to obtain a restraining order, including the addition of a provision allowing a minor age 13 or older to petition for an order of protection themselves.

Section 14 also requires that notice be given to the parties that, when appropriate, all restrained parties are prohibited from owning or possessing a firearm while the order of protection is in effect.

Section 16 would amend the current statute to allow an order of protection to remain in effect for a fixed period of time of any length, rather than the current statutory language of no more than six months. It continues to allow an arrest without a warrant.

Section 17 would amend the statute to require a law enforcement officer, when making an arrest for abuse, to identify whether one of the parties acted in self-defense and also requires law enforcement to identify and document the names and relationships between people present at the incident.

FISCAL IMPLICATIONS

SB 12 makes changes primarily around the issuance of protective orders, a civil process in which LOPD is not involved. Although LOPD does not represent individuals in these civil matters, any violations of the civil orders of protections addressed in SB 18 could result in criminal charges that LOPD attorneys would be assigned to defend. As a result, the contemplated changes to how orders of protection are issued and enforced may impact LOPD, but would likely be absorbed by the current budget.

SIGNIFICANT ISSUES

Section 10 the bill would require an officer making a warrantless arrest for abuse to “identify whether one of the parties acted in self-defense,” retaining existing language that the officer must indicate in a written statement that the party arrested was “the predominant aggressor.” Analyst notes that this determination is made with very limited information, typically based on the

allegations of only one party, and the initial “conclusion” of the officer can often taint the entire investigation thereafter. Although well-intended, it could actually have a negative effect on a truth-seeking process by adopting assumptions made with limited information.

This subsection also would add that the officer can document names and relationships between the people present, including any additional victims or witnesses, although this falls within an enumerated list of options the law enforcement officer *may* pursue to reasonably protect a victim, so it does not appear to be required in every case leading to criminal charges. Certainly, documentation of potential witnesses can be useful as a case proceeds forward. Analyst would recommend making this requirement mandatory.

It is also unclear whether the firearm prohibition is constitutional under federal law. One federal circuit court found held that federal statute prohibiting possession of firearms by someone subject to domestic violence restraining order violates Second Amendment and the issue is currently pending before the United States Supreme Court. See *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), *cert. granted*, *United States v. Rahimi*, 143 S. Ct. 2688, 216 L. Ed. 2d 1255 (2023).

PERFORMANCE IMPLICATIONS

The impact of the proposed changes to the statute is uncertain, but could affect the way these cases are prosecuted, particularly based on the expanded definition of “abuse.” Any increase in prosecution for domestic violence crimes, including violations of an order of protection, would require additional LOPD resources.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS