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FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez LAST UPDATED _____
ORIGINAL DATE 01/22/24
BILL _____
SHORT TITLE Rename Family Violence Protection Act NUMBER Senate Bill 12
ANALYST Torres, J.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|------------------|------------------|------------------|-------------------|---------------------------|---------------|
| | No fiscal impact | No fiscal impact | No fiscal impact | | Recurring | General Fund |
| Total | No fiscal impact | No fiscal impact | No fiscal impact | | Recurring | General Fund |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 12

Senate Bill 12 (SB12) extensively rewrites existing law (the Family Violence Protection Act), which governs the issuance of orders of protection. SB12 renames the act as Protection Against Abuse and Violence Act and expands the definitions of abuse to include kidnapping; false imprisonment; interference with communication; threats to disclose immigrant status; harm or threatened harm to an animal to intimidate, threaten, or harass a person; and unauthorized distribution of sensitive images. SB12 deletes the “domestic abuse” and “mutual order of protection” definitions and adds a “credible threat” definition.

There is a provision for parties who do not understand English. A protection order may now be issued to protect or restrain a minor under 12. The bill allows a minor who is 13 or older to seek a protection order from a co-parent or another with whom the minor has had a continuing personal relation, or when stalking or sexual abuse is alleged.

SB12 clarifies that a criminal complaint need not be filed before a law enforcement officer can request an emergency protection order. An officer must inform a victim the officer may petition a court for an emergency on the victim’s behalf, which petition shall describe the need for that order and information about the alleged perpetrator’s location and telephone number if known. A

district judge in each judicial district must be always available to hear a petition for an emergency order. SB12 allows for temporary orders restraining the perpetrator from committing or threatening to commit acts of abuse against the protected party or a household member and prevents any contact or communication with the protected party.

Temporary custody and visitation of any children involved may also be addressed, although limited to a period of six months, subject to a six-month extension. If a temporary protection order is not immediately issued, a hearing must be held within 72 hours, with no requirement for personal service. Provisions regarding any animal owned by either party or a minor in the household may also be included.

SB12 specifically directs that an order cannot require a protected party to participate in treatment or counseling related to abuse. Orders of protection may be for a fixed period of any length, as appropriate to protect the safety of the protected party and may be extended. The existing six-month cap is removed.

The bill prohibits a restrained party from owning or possessing a firearm while an order of protection is in effect. Emergency assistance provided by a local law enforcement officer is expanded to include other household members as well as the protected party, and when making arrests, the officer must identify whether a party acted in self-defense, as well as identifying and documenting in the criminal complaint and incident report the names and relationships between people present during the incident, including additional victims and witnesses. Detention centers and jails must make reasonable efforts to notify the victim when a restrained party or an alleged perpetrator of abuse, stalking, or sexual assault is released from custody, escapes or is transferred to another facility.

SB12 clarifies that petitions, orders, injunctions, and other pleadings and documents can remain on the judiciary's case management and e-filing system as long as the address of a protected person is redacted.

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

2023 agency analyses indicated that any additional impact would likely be absorbed by existing resources.

SIGNIFICANT ISSUES

The Children, Youth and Families Department's (CYFD's) 2023 analysis of the similar Senate Bill 18 indicated that SB18 was the two-year product of the SM50 task force. That task force was composed of members from the judiciary, CYFD, law enforcement, and representatives of agencies and advocacy groups involved in healthcare, domestic violence issues, animal protection, and social services. The National Center for State Courts provided a technical assistance team with knowledge of national best practices. It noted that the change in the short title recognizes that orders of protection are not limited to family members but encompass a broader range of relationships and vulnerable victims, including non-family household members, sexual assault victims, and children.

Additionally, CYFD advised that an essential change to the act, recognized in many definitional and procedural changes, is the recognition of abuse as a pattern of behavior over time. Definitions and criteria for orders allow for a broader range of coercive and controlling tactics. Prior loopholes, such as a perpetrator’s failure to appear at a hearing, are removed as barriers to being granted protection by a court. Changes clarifying that orders may be issued to protect or restrain minors and authorizing those between 12 and 13 to directly petition a court for a protection order are of particular importance to CYFD. As to specific provisions of SB18, the Administrative Office of the District Attorneys (AODA) pointed out an apparent conflict arising from new language in Subsection C of Section 40-13-5 NMSA 1978, which prohibits restrained parties from owning or possessing a firearm.

AODA notes subsection (A) (2), of that same section, requires a prior court determination that the restrained party presents a credible threat to the safety of the household member, after notice and hearing. Only then could the court order relinquishment and prohibit possession of firearms. Further, Subsection (B) requires the court to specifically describe the acts a restrained party may or may do not do in the order of protection. In addition, existing Section 40-13-13 NMSA 1978 addresses relinquishment of firearms. AODA concludes that there is no need for the new language in Subsection C. The Law Offices of the Public Defender (LOPD) points to another section it believes to be problematic. Section 10 of the bill requires an officer making a warrantless arrest for abuse to “identify whether one of the parties acted in self-defense,” and retains existing language that the officer must indicate in writing that the party arrested was “the predominant aggressor.” This determination, LOPD pointed out, is made with very limited information, typically based on the allegations of only one party and although well intended, LOPD believes it could actually have a negative effect on a truth-seeking process by adopting assumptions made with limited information.

OTHER SUBSTANTIVE ISSUES

In 2023, the New Mexico Sentencing Commission (NMSC) stated that there were over 20 thousand domestic violence incidents reported by law enforcement to the New Mexico Interpersonal Violence Data Central Repository in 2021. The NMSC also reported that this number is likely far lower than the actual occurrence of interpersonal violence in the state, as the U.S. Department of Justice’s Bureau of Justice Statistics estimates that less than half of all violent victimizations were reported to the police in 2021.

JT/rl/hg