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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/12/14  
**SPONSOR** Lopez **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Sex Offense Permanent No Contact Orders **SB** 291

**ANALYST** Chenier

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications				Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Sentencing Commission (NMSC)  
 Administrative Office of the Courts (AOC)  
 Attorney General’s Office (AGO)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 291 authorizes the district attorney to request the sentencing judge to enter a permanent no contact order for any convicted sex offender. The no contact order would permanently prohibit the sex offender from having contact with the victim of the sex offense. The sentencing judge must hold a hearing after entering a show cause order, and must then determine if there are reasonable grounds for the victim to fear any future contact with the offender. At the hearing, the judge must allow the offender to be heard if they choose. After the hearing, if the judge is going to enter a no contact order, he must enter written findings of fact and the grounds under which the permanent no contact order is issued. The no contact order must be incorporated into the offender’s judgment and sentence. The judge may grant one or more forms of relief in the order, such as ordering the offender not threaten or visit the victim, not to follow the victim, not to harass the victim, not to contact the victim by telephone, etc., and any other relief deem necessary and appropriate by the judge.

An offender who violates the no contact order is guilty of a misdemeanor for his first and

subsequent convictions, but for second and subsequent convictions a mandatory jail term of not less than 72 hours must be imposed. The victim and offender have the right to motion the court to rescind the no contact order, and the court may do so if it determines that the reasonable grounds for the victim to fear the offender no longer exist.

The bill also requires state agencies and other public entities not to publicly disclose any victim's identity or location when there is a no contact order in place regarding that victim.

The bill also amends the Missing Persons Information and Reporting Act to specifically include victims protected by a no contact order. The bill further amends the forbearance of costs statute to include victims protected by a no contact order which has been violated by the offender, meaning that such victims do not have to bear any court costs if they seek to enforce the no contact order. The bill amends the aggravated stalking criminal statute to expand that crime to include offenders who knowingly violate a no contact order. This crime remains a fourth degree felony for a first conviction and a third degree felony for any second or subsequent conviction. Finally, the bill amends the Uniform Interstate Enforcement of Domestic Violence Protections Orders Act to include sex offenders within the category of offenders subject to a protection order.

## **FISCAL IMPLICATIONS**

As with any Bill that creates new criminal liability or broadens the reach of an existing criminal statute, there is potential for an increased number of individuals to be prosecuted, supervised or incarcerated in the criminal justice system and county or state correctional systems. Increases in the number of criminal cases charged and prosecuted increase costs to law enforcement and prosecutorial agencies and the courts. Increased numbers of individuals convicted of crimes can be anticipated to result in increased costs to the probation and parole agencies and corrections agencies.

## **SIGNIFICANT ISSUES**

The AGO stated that section 1 (J) of the bill places restrictions on government agencies prohibiting essentially all government agencies from making "available publicly" any information that would "likely reveal the identity or location of the party protected under a permanent no contact order" has the potential to be very difficult for public agencies to guarantee. For example, local units of government have publicly accessible records concerning items such as business licenses, professional licenses, property title records, etc. Many such records include the person's name and either a home or business address for the person. Under the current language of subsection (J) it would be unlawful for those records to be made public if the individual named has also been named as the protected party in a permanent no contact order. Under current law, many of the public agencies that would be required not to publicly release such information would have no way of being alerted to the fact that a particular individual has received protection under a permanent no contact order.

AOC stated that the bill does not address circumstances where the victim of the sex offender is also the offender's biological minor child. A permanent no contact order issued against a sex offender (parent) would essentially bar them from having any contact with the victim (child) and any other children that may reside in the same household as the victim. Furthermore, a no contact order could potentially bar the offender (parent) from being able to visit or have contact

with his or her other children because they all reside in the same household. Another issue with the act is that only the district attorney can request the judge to consider issuing a permanent no contact order. There could potentially be a difference of opinion if the district attorney feels the need to protect a minor victim from any type of contact by the sex offender and asks the court for a permanent no contact order and the victim's mother does not want the father to be restricted from seeing or talking to his child. This act seems completely appropriate for adults and non-familial minor children, but does not have any provisions for minor children who are also the sex offender's biological children or step-children.

The AOC also stated that Section 40-13-2(D)(1) NMSA 1978 of the Family Violence Protection Act allows victims of "an incident of stalking or sexual assault whether committed by a household member or not" to petition a court for an order of protection. The Family Violence Protection Act would allow the victim of a sexual assault to obtain an order of protection, regardless of whether the sex offender is a household member or stranger. Judges and/or domestic violence special commissioners who regularly hear order of protection cases have more experience, training and knowledge in family dynamics and often must craft orders of protection in such a way as to preserve the restrained party's ability to foster healthy relationship with his/her children. This act specifically requires that the "judge sentencing the defendant is the trier of fact regarding the show cause hearing" and a criminal judge may not have enough experience or knowledge to make a decision in a case involving a biological parent and his/her child(ren), especially when the no contact order is by default permanent.

EC/ds