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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/28/17  
**LAST UPDATED** 03/16/17    **HB** \_\_\_\_\_  
**SPONSOR** SJC

**ANALYST** Sánchez

**SHORT TITLE** No Firearms for Orders of Protection Subjects    **SB** 259/ SJCS/SFI#1/aHJC

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		>886.0 See Fiscal Implication	>886.0 See Fiscal Implications	>1,772.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB48, SB328

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of HJC Amendment

House Judiciary Committee Amendment to Senate Floor amendment #1 to Senate Judiciary Committee substitute to Senate Bill 259

- Amends the definition of a firearm by removing firearm muffler or firearm silencer,
- Inserts a new section B allowing a restrained party to keep a weapon if the court finds it is necessary for the person’s employment yet allows the court to enter an order of protection with other restrictions to reasonable protect the protected party,
- Allows the restrained party to deliver the firearm to a party that does not reside in the same household as the restrained party, and
- Clarifies that if the restrained party willfully fails to file a receipt that the firearm was delivered to a third party that action constitutes a violation of the protection order.

#### Synopsis of Senate Floor Amendment

Senate Floor amendment number 1 to SJC substitute for Senate Bill 259 corrects a misspelled word.

Synopsis of SJC Substitute

Senate Bill 259 as substituted by the Senate Judiciary Committee requires the court to issue an order of protection upon a finding that domestic abuse has occurred or upon stipulation by both parties, to determine if the restrained party presents a credible threat after the restrained party has received notice and had an opportunity to be heard and require the restrained party to relinquish possession of any firearm and refrain from purchasing, receiving, possessing or attempting to purchase, receive or possess any firearm. The substitute addresses concerns expressed by AOC on the original bill.

The SJC substitute requires the restrained party to deliver a firearm or firearms to a third party that is not prohibited from possessing a firearm by state or federal law. The third party may be a licensed firearms dealer, a law enforcement agency or to a person legally allowed to possess a firearm that is not the restrained party's household member. The licensed firearms dealer is not required to buy or accept possession of the firearm, the law enforcement agency does not have to agree to store the firearm but if it does it may charge a storage fee. It also provides protection to a person who is prohibited from possessing a firearm who in good faith delivers a firearm if the evidence shows it was in accordance with provisions of this bill.

The SJC substitute also defines firearm.

**FISCAL IMPLICATIONS**

The Second Judicial District Court, which handles approximately 1/3 of all order of protection cases, anticipates that SB259 would result in the need for an additional judgeship, a trial court administrative assistant, a bailiff, three court monitors, a court clerk II, a probation officer, and two domestic violence special commissioners to comply with the mandates in SB259. The total cost for the additional 10 FTEs is \$886 thousand in recurring funds. Additional court staff will also likely be necessary for the other thirteen judicial district courts in the state with this proposed additional judicial finding.

New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly for the district courts is \$335.6 thousand.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

**SIGNIFICANT ISSUES**

According to the Public Defender Department (PDD), federal law already prohibits firearms possession by a person under a restraining order pertaining to an accusation of domestic violence. *See* 18 U.S.C. § 922(g)(8) & 924(a)(2). In order to enforce this prohibition, a copy of every police report that mentions a firearm is presently provided to the United States Attorney firearms prosecution division; DOJ requires each U.S. Attorney's office to have a lawyer

assigned to such prosecutions. The proposed law tracks the federal statute with respect to requirements of the hearing on such a protective order before the individual's firearms rights are suspended.

The Administrative Office of the Courts (AOC) report Section 2 of the substitute SB259 adds language to NMSA 1978, Section 40-13-5 that would require the court to make an additional finding that the restrained party “presents a credible threat to the physical safety of the household member.” This new standard is a considerable change from the current process for issuing an order of protection and will create several significant issues for the judiciary:

- Increases the burden of proof for the petitioner to not only prove that prior domestic abuse has occurred but also requires the petitioner to present additional testimony or evidence to support a finding that the restrained party also poses a “credible threat to the physical safety of the household member.”
- “Credible threat” is not defined in the Family Violence Protection Act.
- The additional finding will increase the time needed for hearings to determine what is a “credible threat” and the burden of proof to determine a credible threat.
- As drafted, “credible threat” may only apply to the petitioner (protected party) and does not take into consideration any credible threat the restrained party may pose to children or other family members of the petitioner.
- As drafted, the legislation would essentially eliminate stipulated orders where both parties agree to the issuance of an order of protection without requiring the court to hear testimony or make a determination that domestic abuse occurred.

In June 2016, the United States Supreme Court upheld the broad reach of a federal law that bars people with misdemeanor domestic violence convictions from owning guns. The ruling was a result of a case in which two Maine men who said their guilty pleas for hitting their partners should not disqualify them from gun ownership.

## **PERFORMANCE IMPLICATIONS**

This bill may have an impact on the following performance measures:

- District Courts:
  - Cases disposed of as a percent of cases filed;
  - Percent change in case filings by case type;

## **ADMINISTRATIVE IMPLICATIONS**

The Second Judicial District Court indicates that allocation of more time for order of protection hearings would result in fewer hearings being scheduled each day and would create a backlog of cases to be heard within the statutorily required 10 days of issuance of a temporary order of protection. Orders of protection that are issued upon the stipulation of the parties may be impacted as well. An evidentiary hearing will be required for all stipulations to determine if there is a credible threat. The requirement of a hearing regardless of a stipulation may impact the number of stipulations and lead to delays in hearings as the stipulation may no longer be agreed upon once a hearing is held regarding a credible threat. Petitioners who may agree to a stipulation as to avoid attending a hearing on the graphic details of the domestic abuse or sexual assault may no longer have the option as they may automatically have to attend a hearing due to

the requirement to determine “credible threat.”

Furthermore, the new section does not address who is responsible for confirming that the receipt is filed. If the court is responsible for monitoring this activity, there will need to be additional staff to monitor all orders of protection that have a finding that a credible threat exists. The court will have to hold hearings regarding the failure to deliver the firearms or on the legitimacy of the delivery of the firearms.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB259 relates to SB48 Background Checks on Gun Transfers, SB328 Family Violence Concealed Carry Licenses

### **TECHNICAL ISSUES**

The HJC amendment has a small grammatical error on page 8, line 12. The amendment now reads: “If the restrained party willfully fails to file the receipt, that failure” constitute instead of constitutes.

AOC states in Section 2 the proposed change to Section 40-13-5(A)(2), “...after the restrained party has received notice and had an opportunity to be heard.” Currently, a district court may only issue an order of protection if the respondent has been personally served with the petition. This requirement affords the respondent with notice of the hearing and the opportunity to be heard. Therefore, the additional language proposed by this substitute bill is redundant and unnecessary since the respondent/restricted party is already afforded these protections in the current order of protection process.

AOC further opines that the consequences of violating the order of protection if the restrained party fails to file the receipt showing the firearm was delivered to an authorized individual are unclear. Law enforcement is not authorized to confiscate the weapons under the current Family Violence Protection Act nor under SB259. In addition, this section does not specify how a restrained party can retrieve a firearm. It may be useful to specify that once an order of protection is dismissed or expires, that the restrained party must prove that he/she is authorized to retrieve the firearm.

### **OTHER SUBSTANTIVE ISSUES**

The following are jurisdictions with laws that prohibit firearm purchase or possession by persons convicted of misdemeanor domestic violence offences.

Colorado	Indiana	New Jersey	Tennessee
Delaware	Louisiana	Oregon	Texas
District of Columbia	Minnesota	Pennsylvania	Washington
Illinois	Nebraska	South Dakota	West Virginia

The following are jurisdictions where the courts are either authorized or required to prohibit subjects of domestic violence protective orders from purchasing or possessing firearms.

Alaska	Indiana	Nebraska	South Dakota
Arizona	Iowa	Nevada	Tennessee
California	Louisiana	New Hampshire	Texas
Connecticut	Maine	New Jersey	Utah
Delaware	Maryland	New York	Virginia
District of Columbia	Massachusetts	North Carolina	Washington
Florida	Michigan	Oregon	West Virginia
Hawaii	Minnesota	Pennsylvania	Wisconsin
Illinois	Montana	Rhode Island	

## ALTERNATIVES

The Law Center to Prevent Gun Violence suggests considering the following key features for proposed gun legislation dealing with domestic violence:

- In addition to persons prohibited by federal law, persons convicted of a violent misdemeanor against a former or current dating partner, cohabitant, or family member are prohibited from purchasing or possessing firearms and ammunition (*California, Connecticut, Illinois, New York*)
- When a person is convicted of a domestic violence misdemeanor, the court must order the person to surrender all firearms and ammunition in his or her possession (*Colorado, Iowa, Tennessee*)
- A court that is convicting a defendant of a violent misdemeanor must determine whether the crime falls within the federal definition of “misdemeanor crime of domestic violence,” and, if so, must report the defendant to the databases used for firearm purchaser background checks (*Illinois, New York*)
- In addition to persons prohibited by federal law, former or current dating partners, cohabitants, or family members who are subject to a domestic violence protective order are prohibited from purchasing or possessing firearms and ammunition (*California, Hawaii, Massachusetts, Utah*)
- Persons subject to a domestic violence protective order issued before notice or a hearing are prohibited from purchasing or possessing firearms and ammunition (*California, Illinois, Massachusetts, Texas, Virginia, West Virginia, Wisconsin*)
- All domestic violence protective orders require law enforcement to seize all firearms and ammunition in the abuser’s possession, or under his or her ownership or control (*Illinois, Massachusetts*)
- Law enforcement responding to a domestic violence incident are required to remove all firearms and ammunition in the abuser’s possession, or under his or her ownership or control (*New Hampshire*)
- Firearms seized at the scene of a domestic violence incident must be permanently given to law enforcement, sold at public auction, or destroyed (*Ohio*).