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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/19/2017  
**SPONSOR** Kernan/Ivey-Soto **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Family Violence Concealed Carry Licenses **SB** 328

**ANALYST** Rogers

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
\$0.0	Indeterminate Decrease	Indeterminate Decrease	Recurring	Concealed Handgun Carry Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	Indeterminate Increase	Indeterminate Increase	Indeterminate Increase	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 259, SB 56, and SJR 5

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Office of the Attorney General (OAG)  
 Crime Victims Reparation Commission (CVRC)

### SUMMARY

#### Synopsis of Bill

Senate Bill 328 creates a new section of the Concealed Handgun Carry Act authorizing temporary concealed handgun licenses for victims of family violence. SB 328 states that when an order of protection is issued pursuant to 40-13-5 NMSA 1978 the victim can get a temporary concealed carry license if the order prohibits the respondent from possessing a gun. This license is valid for 45 days and is treated like a normal license issued pursuant to the Concealed Handgun Carry Act.

This temporary license is different from a normal license in some key ways. The applicant is not required to attend a firearms training course (but must still satisfy all other requirements for a normal license), and is not required to pay any fees. The temporary license is only valid in New Mexico. The licensee must carry a copy of the order of protection at all times the licensee is carrying a concealed weapon. Finally, DPS “shall give priority” to performing background checks for these temporary licenses.

## **FISCAL IMPLICATIONS**

The Department of Public Safety (DPS) reports it processes approximately 12,150 applications per year with a revenue averaging \$460 thousand. It is possible that the removal of fees required resulting from this bill would result in a decrease of revenue to the Concealed Handgun Carry Unit, which currently has seven FTE. One employee is paid from the general fund while the remaining FTE are paid with revenue generated from licensing fees. If the licensing activity decreases, DPS’s expenses for annual maintenance and upgrades of the criminal history screening computer system would exceed the revenue received from licensing and would have to be absorbed by other funding sources, including the general fund. The amount budgeted annually for maintaining and upgrading the computer system is between \$250 and \$350 thousand. It is unknown how many victims would file for a license under the provisions of the bill. Additionally, the priority given to these applications could strain the resources of DPS and impact the department’s operating budget.

The OAG explains SB 328 exempts the applicant from all costs and fees while simultaneously tasking DPS with the additional responsibilities of not only processing and dispensing these new licenses, but also granting the applicant priority status in conducting a background check. This fiscal impact, of course, must be weighed against the societal utility of allowing these vulnerable applicants priority status in legally protecting themselves.

CVRC states it assisted over 400 victims of domestic abuse in FY16. However, CVRC believes the bill may not enhance the safety of victims and that if the bill passed, an increase in submitted compensation applications may occur, requiring additional payouts to victims from the commission’s funds.

## **SIGNIFICANT ISSUES**

CVRC states “waving the firearm training course would mean frightened victims would be carrying concealed firearms without being properly trained.” The commission cites a study from the Johns Hopkins Center for Gun Policy Research which states women who purchased guns were 50 percent more likely to be killed by an intimate partner. CVRC believes more research on the potential causes and effects of the bill be conducted.

The OAG states there is risk in granting victims the right to carry guns without completing an authorized firearms training course.

The AOC points out “as drafted, SB 328 would only apply to a protected party of an order of protection if the order of protection ‘prohibits the respondent from possessing a firearm.’”

Currently, Forms 4-965, 4-970 and 4-971 New Mexico Rules Annotated (NMRA) do not include any language that prohibits the restrained party (the respondent) from possessing a

firearm under state law. Under federal law, if the protected party and the respondent of an order of protection fit the federal “intimate partner” relationship, as defined in 18 U.S.C. Section 921(a)(32), then the respondent is prohibited from possessing or purchasing a firearm under 18 U.S.C. Section 922(g)(8). The New Mexico Family Violence Protection Act’s definition of household member is broader than the federal “intimate partner” definition. One significant difference between the state and federal definitions involves individuals who are or have dated but never cohabitated. Under 18 U.S.C. Section 922(g)(8), the federal firearms prohibition would only apply to individuals who dated and cohabitated. Since the federal firearms prohibition only applies to “intimate partners”, as written, this legislation would not apply to “household members” defined under 40-13-2(E) NMSA 1978 who are a:

- present or former stepparent;
- present or former parent in-law;
- grandparent or grandparent in-law;
- grandchild;
- sexual assault victim (who is not an intimate partner of the offender); or
- stalking victim (who is not an intimate partner of the offender).

Subsection C of SB 328 outlines the procedure for receiving a temporary concealed handgun license. It does not appear that the protected party, seeking a temporary concealed license, is required to submit a copy of the order of protection to the department with their application. Another issue in subsection C is the waiver of the “cost of a fee for the application, processing or issuance of the temporary license” would obviously apply to the \$100 application fee under 29-19-5(B)(2) NMSA 1978 but it is unclear whether the intent of this legislation is also to waive a “reasonable fee” that law enforcement may charge for fingerprinting an applicant under 29-19-5(C) NMSA 1978.

Finally, subsection D in SB 328 requires the person who obtains a temporary concealed handgun license to “carry a copy of the injunction or the protective order at all times the person is carrying the concealed handgun.” The word “injunction” is not used anywhere in the Family Violence Protection Act and may cause unnecessary confusion. For the sake of consistency, the correct terminology for an order issued under the Family Violence Protection Act is “order of protection” rather than “protective order.” Finally, 29-19-9 NMSA 1978 already requires that the licensee “...have his concealed handgun license in his possession at all times while carrying a concealed handgun,” so requiring the protected party to also have to carry the order of protection with them may be overly burdensome, considering that the order of protection is at least seven pages long and is not as portable as the concealed handgun license.

## **ADMINISTRATIVE IMPLICATIONS**

Administrative implications fall entirely on DPS, which must absorb the additional burden of issuing a new class of concealed-carry license.

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

Relates to SB 259, SB 56, and SJR 5.