

LFC Requester:	Kelly Klundt
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 01/22/2025 *Check all that apply:*
Bill Number: SB 26 Original Correction
 Amendment Substitute

Sponsor: Antoinette Sedillo Lopez **Agency Name and Code** 790 – Department of Public Safety
Short Title: Protection Against Abuse and Violence **Number:** _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	NFI	NFI

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	NFI	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act: Almost identical to 2024 SB12; similar to 2023 SB18

SECTION III: NARRATIVE

BILL SUMMARY

This bill renames the Family Violence Protection Act as the Protection Against Abuse and Violence Act and broadens the scope of state law to provide for protective orders against violence and abuse. 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. It deletes the current “domestic abuse” and “mutual order of protection” definitions and adds a “credible threat” and a “sensitive images” definition. Makes conforming nomenclature and technical changes throughout.

FISCAL IMPLICATIONS

No fiscal impact for DPS.

SIGNIFICANT ISSUES

SB 0026 at Section 9 proposes to amend Section 40-13-2 D. “domestic abuse” by deleting that subsection and replacing it with A. (1) “abuse”. Section 9 would further amend the current definition of “[domestic] abuse” which is (1) “an incident of stalking or sexual assault, whether committed by a household member or not” to “an incident *or pattern* of stalking or sexual assault . . .”. Stalking is defined in the Criminal Code at NMSA Section 30-3A-3 A. as “knowingly pursuing *a pattern of conduct*, without lawful authority, directed at a specific individual when the person intends that the *pattern of conduct* would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.” (Emphasis added) A “pattern of conduct” is defined for purposes of the crime of stalking at Subsection B. (2) of Section 30-3A-3 as “*two or more acts, on more than one occasion*, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, *follows, monitors, surveils, threatens or communicates to or about a person.*”) DPS believes that given that the crime of stalking is by definition a “pattern of conduct,” and that by requiring a restraining order to be issued on a “pattern of stalking” is raising a new, unknown offense to law enforcement, which may trigger a concern that the statute is unconstitutionally vague.

SB 0026 would add three new examples to the definition of what would now be called “abuse” rather than “domestic abuse.” The first is: “(m) unauthorized distribution of *sensitive* images.” DPS believes “sensitive images” raises similar concerns of being unconstitutionally vague. If aimed at explicit sexual images, DPS believes a more specific definition should be used, similar to the definitions included in the Sexually Oriented Material Harmful to Minors at NMSA 1978, Section 30-37-1 B. (“‘nudity’ means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state”), C. (“‘sexual conduct’ means acts of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast”); D. (“‘sexual excitement’ means the condition of human male or female genitals when in a state of sexual stimulation or arousal”); E.

(“‘sado-masochistic abuse’ means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained”).

Section 9 of SB 0026 would also eliminate the “mutual order of protection.” Section 10 allows a law enforcement officer to file a petition for an order of protection on behalf of either an adult or minor victim of abuse. It is unclear whether this option is meant to present an alternative for the teenage minor to obtain a protective order from a co-parent or someone else from whom the legal custodian should be charged with protecting the minor in order to bypass the Abuse and Neglect Act and the foster parent system. The officer remains a mandatory reporter for purposes of the Abuse and Neglect Act. DPS believes clarification on the officer's responsibilities in petitioning for this order and contacting CYFD and reporting under the Abuse and Neglect Act should be added.

DPS does not understand why Section 12 proposes to delete the term “ex parte” from the “emergency orders” of protection section in Section 40-13-3.2 of the Act. The procedure remains ex parte.

Section 13 of SB 0026 would allow a temporary order of protection to be issued without a finding that abuse has occurred but that there is “immediate danger of abuse.” To the extent Section 14 would then allow firearms to be prohibited based solely on the threat of “immediate danger of abuse,” DPS believes there are provision overlaps and may conflict with the Extreme Risk Firearm Protection Order Act. Section 40-17-5 D. of the ERFPO Act requires a law enforcement officer to “file a petition for an extreme risk firearm protection order upon receipt of credible information from a reporting party that gives the agency or officer probable cause to believe that a respondent poses *a significant danger of causing imminent personal injury to self or others by having in the respondent's custody or control or by purchasing, possessing or receiving a firearm.*” (Emphasis added) Since the Legislature has already provided a mechanism by which a “reporting party” may obtain an ERFPO under the ERFPO Act, DPS is concerned that creating a different standard – “immediate danger of abuse” – in the “Protection Against Abuse and Violence Act” will cause unnecessary confusion. DPS believes that it may be better to leave the removal of firearms where no “abuse” as defined in the “Protection Against Abuse and Violence Act” has occurred to the ERFPO Act and only address removal of firearms under the “Protection Against Abuse and Violence Act” where abuse has occurred.

Section 13 of SB 0026 would automatically require a court that did not have “sufficient information to find or does not find probable cause to believe that an act of abuse has occurred” to hold another hearing within seventy-two hours “to allow the petitioner to provide additional information to the court.” The mandatory nature of the hearing imposes a mandatory duty on a law enforcement officer to further investigate the allegations first brought to the officer or to continue to seek an order regardless of any change in the circumstances of the alleged victim or other household members, if applicable.

Section 14 of SB 0026 adds a Subsection B (6) which allows the court to grant a party “exclusive or shared possession and control” of or an order to stay away from “any animal kept, owned or leased by either party or by the minor child or minor children residing in the household of either party.” DPS believes requiring that there be probable cause to believe the restrained party has harmed or threatened to harm the animal may make it easier for the officer to justify this request

in any petition filed by an officer.

Section 17 of SB 0026 would amend the Act to require a law enforcement making an arrest for “abuse” to “identify whether one of the parties acted in self-defense.” DPS believes in many cases, law enforcement officers will not have sufficient information to make this determination. It also calls for a law enforcement officer to reach an (in this Act) undefined legal conclusion. DPS believes, instead, the officer should simply include in the officer’s report the facts that are gathered in relation to the incident that leads to the arrest. This same section would also amend the Act to require the arresting officer to “identify and document in the criminal complaint and incident report names and relationships between people present at the incident, including any additional victims or witnesses.” Law enforcement officers already document witnesses to incidents they are investigating in their reports and also document those with visible injuries who may reasonably be considered “victims.”

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

Implementing SB0026 will require significant administrative efforts, including updating legal forms, training judicial and law enforcement staff, and establishing streamlined protocols for emergency orders. Courts will need to adapt to the increased volume and complexity of cases, while law enforcement agencies are responsible for ensuring the timely entry of orders into the National Crime Information Center (NCIC) National Protection Order File (FPOF). Coordination between agencies, including law enforcement and courts, and standardizing reporting from all jurisdictions, particularly in rural or underserved areas, is essential to ensure consistent enforcement and victim support. Courts must establish procedures to notify law enforcement and NCIC about changes, renewals, or terminations of orders. Safeguards must be in place to protect sensitive victim information while ensuring compliance with NCIC reporting requirements. Measures to prevent errors or incomplete submissions are necessary to ensure all required information is accurately collected at the inception.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

To ensure clarity and effectiveness, SB0026 will require clear instructions for entering and managing data in protection order registries to avoid enforcement delays.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo will remain.

AMENDMENTS

None.