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FISCAL IMPACT REPORT

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	ORIGINAL DATE <u>1/27/2025</u>
SHORT TITLE <u>Attorneys for Indigent Domestic Abuse Victims</u>	BILL NUMBER <u>House Bill 57</u>
	ANALYST <u>Chavez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	At least \$4 million	At least \$4 million	At least \$8 million	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to House Bill 123 and Senate Bill 26.

Sources of Information

LFC Files

Agency Analysis Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- New Mexico Attorney General (NMAG)
- Public Defender Department (PDD)
- Crime Victims Reparation Commission (CVRC)

SUMMARY

House Bill 57 (HB57) would amend the Family Violence Protection Act (FPVA) to provide any indigent, alleged domestic abuse victim with a right to an attorney to assist them in all legal proceedings related to alleged domestic abuse or the alleged domestic abuser. HB57 charges judges with informing alleged domestic abuse victims of their right to obtain legal counsel and determining a victim’s indigency status at the victim’s first appearance in court. HB57 defines “indigent person” as an individual who “taking into account present income, liquid assets and requirements for basic necessities of life for the individual and the individual's dependents, is unable, without undue hardship, to pay for all or part of the expenses of legal representation.” Attorney services and court costs would be provided at public expense.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

AOC provides the following:

House Bill 57 does not contain an appropriation to cover the additional costs for the

judiciary to appoint counsel for alleged domestic abuse victims in all legal proceedings under Chapter 40 NMSA 1978. There will be a significant administrative cost for the statewide update and implementation of these statutory changes, including the development of new rules and court operation procedures.

The fiscal impact is most significant in 1) the cost of court appointed attorneys; and 2) court costs associated with an increase in hearings and case processing time as a result of the additional separate hearings contemplated by the bill to advise victims of their right to counsel. The bill expands access to court appointed attorneys for all case types in Chapter 40, the statutory section covering all family law matters. If court appointed attorneys are available, which is not a given considering New Mexico's chronic attorney shortage, the cost would likely exceed \$4M as there will likely be a significant increase in the number of parties alleging they are victims of domestic abuse and family law cases tend to reopen and remain open for many years. AOC would also require funding for two FTEs to administer this program.

The Administrative Office of the District Attorney (AODA) notes the following:

The judiciary would have to set up a system like the public defender's office to determine indigent status of victims. The Judiciary would also have to set up a system like the public defender's office to distribute case to attorneys throughout the State of New Mexico. Then there is the cost of attorneys to be paid and number of victims that would take advantage of the program. This would be a reoccurring expense to the judiciary.

The Crime Victims Reparation Commission provides the following:

CVRC currently provides funds for this type of representation (assistance with orders of protection, emergency custody and visitation procedures, and other civil legal assistance upon approval) with a \$2000 cap on payment for these services. Attorneys have declined to accept these cases due to the amount of the cap.

SIGNIFICANT ISSUES

AOC provides the following:

These proposed statutory changes in HB57 will have a significant impact on the judiciary.

1. Additional Procedure: HB57 states that when an alleged domestic abuse victim first appears in court the judge shall advise the alleged victim of the right to be represented by counsel of the victim's choosing or to have an adjournment to confer with counsel, and to have counsel assigned by the court in any case in which the victim is financially unable to obtain counsel. Domestic violence proceedings are prone to parties not appearing, and adding hearings increases the potential for no-show parties.
2. Court-appointed attorney case-type expansion: HB57 expands AOC's court-appointed attorney program to include representation for alleged domestic abuse victims for all cases under Chapter 40 NMSA 1978, potentially requiring the appointment of counsel in the following case types:
 1. Dissolution of marriage (divorce)
 2. Child support
 3. Adoption
 4. Name change
 5. Kinship guardianship

6. Parentage
 7. Domestic violence orders of protection
 8. Extreme risk firearm protection orders
3. AOC capacity: Section 4 specifically identifies AOC as the entity to develop and oversee contracts with court appointed attorneys. AOC will require additional FTEs and a substantial new budget to implement and administer this new AOC Court Appointed Attorney program.
 4. Court-appointed attorney availability: Court appointed attorney work in the area of child welfare and mental health is not only difficult because of the issues involved, but because it is not lucrative. Court appointed attorneys may typically be reimbursed between \$300 and \$1500 per case. AOC currently confronts the annual challenge of identifying attorneys interested in serving in this capacity. The scope of HB57 would substantially expand this effort. Even with funding, AOC is unable to confirm that enough court appointed attorneys are available to fulfill appointment in the case types required under HB57.
 5. Case process barriers remain: For domestic violence orders of protection cases, courts must set hearings within 10 days of the issuance of a temporary order of protection. As written, HB57 requires a judge to advise an alleged domestic abuse victim at their first appearance in court of their right to have legal counsel appointed. In domestic violence order of protection cases, the petitioner does not see a judge when asking that a temporary domestic violence order of protection be granted. The first opportunity for an alleged domestic abuse victim to see a judge is at the 10-day hearing. In calendar year 2024, there were 10,780 petitions for a domestic violence order of protection filed statewide. Most petitions for a domestic violence order of protection are filed by the alleged domestic abuse victim, not by an attorney. Under the proposed statute, an attorney would not be included in the process until the first hearing which could be 10 days after the filing of the filing of the victim's petition. If a counter-petition is filed, the second hearing would also include notice to the counter-petitioners that they have a right to counsel and a third hearing would be set to address the claims in both petitions.
 6. Additional hearings for Domestic Violence Orders of Protection: In calendar year 2024, there were 14,888 hearings in domestic violence order of protection cases. If the alleged domestic abuse victims ask the court to appoint legal counsel in 40 percent of the cases, this will result in an additional 4,312 hearing to be reset. There is likely to be an increase in domestic violence petitions filed, as well as counter-petitions, if parties alleging domestic violence are able to be assigned legal counsel after alleging domestic abuse. It is unlikely that most judicial districts will be able to absorb this type of increase in hearings. This may result in a delay in having the first 10-day hearing set in domestic violence order of protection cases and the need for additional judges and/or hearing officers to handle the caseload increase. In addition, the time to disposition for domestic violence order of protection cases will increase statewide.

AODA identifies several issues with the bill, including:

1. Courts appointing an attorney to a victim would make it appear the court system is taking

sides.

2. The district attorney's office has victim advocates whose job is to advocate for the victim to district attorney prosecuting the case and to guide the victim through the process of the criminal court system.
3. HB57 would take time from judges who have heavy caseloads to address a victims' indigence status.

NMAG provides the following:

It is not clear why there is a reference to "habeas corpus proceedings initiated in the supreme court" in Section 4, as set forth above, related to the obtaining of contracts with private attorneys for services to be performed to indigent domestic abuse victims.

PERFORMANCE IMPLICATIONS

The courts participate in performance-based budgeting and the bill may have an impact on the following performance measures: cases disposed of as a percentage of cases filed (clearance rate) and percent change in case filings by case type.

The Crime Victims Reparation Commission provides the following:

The Supreme Court would need to promulgate rules for the attorney assignment process by the court. AOC would need to successfully recruit sufficient numbers of attorneys to take on this representation. A training program for attorneys may be needed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The Crime Victims Reparation Commission provides the following:

SB26 changes the name of the Family Violence Act, this bill would need similar language changes should SB26 be enacted.

HB123 creates a new cause of action for equitable relief which could be the subject of representation under this bill.

ALTERNATIVES

AOC provides the following:

Without an appropriation, the judiciary court appointed attorney fund will not be sufficient to cover the costs of contract attorneys to represent alleged domestic abuse victims in all case types under Chapter 40 NMSA 1978. Alternatives to HB57 to ensure prompt assistance for victims of domestic abuse could include:

- Directing an appropriation to AOC for distribution to civil legal services organizations to provide trained advocates to assist victims of domestic abuse and facilitate access to community resources.
- Legislation supporting the creation and piloting of a program to train community justice workers to provide specialized assistance to victims of domestic abuse.
- Increase funding for guardians ad litem in domestic relations cases to represent children in contested custody cases.