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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/09

SPONSOR Cervantes LAST UPDATED \_\_\_\_\_ HB 187

SHORT TITLE Enforcement Of Domestic Violence Protection SB \_\_\_\_\_

ANALYST Wilson

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

|              | FY09  | FY10          | FY11          | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected              |
|--------------|-------|---------------|---------------|-------------------|----------------------|----------------------------|
| <b>Total</b> | \$0.1 | Indeterminate | Indeterminate | Indeterminate     | Recurring            | General Fund<br>Local Fund |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Bernalillo County Metropolitan Court (BCMC)

### SUMMARY

#### Synopsis of Bill

House Bill 187: HB 187 enacts the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Act) to establish uniform procedures that enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions.

The National Conference of Commissioners on Uniform State Laws National Conference of Commissioners on Uniform State Laws has provided the following summary of the model act:

Because domestic violence and stalking protection orders are not necessarily uniform in character as is the usual case with other judgments and orders of courts from state to state, an enforceable order must be defined broadly enough to ensure that any kind of order that prohibits personal contact or proximity when there is a threat of domestic violence is enforced. The need for a uniform mechanism is founded on the widespread understanding the States have not consistently or effectively enforced domestic violence protection orders issued by other States or Tribes.

The Act defines “protection order” to be “an injunction or other order, issued by a tribunal under the domestic-violence, family-violence, or anti-stalking laws of the issuing State, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.” The fact that the order has terms and conditions that are different from orders issued in the enforcing state, or comes from tribunals that are not organized in the same fashion as the tribunals of the enforcing state, does not mean that the enforcing state may refuse enforcement. Any kind of a foreign order that is intended to prevent violence must be enforced.

There are essentially three enforcement tracks that a foreign protection order may take in any enforcing state under the Act, including:

- (1) direct enforcement by a tribunal,
- (2) direct enforcement by law enforcement officers, and
- (3) registration of foreign protection orders as a prelude to enforcement.

A tribunal with jurisdiction to enforce may enforce a foreign protection order without any other prior validating procedure. A valid foreign protection order from any State or Tribe must be enforced, pursuant to provisions of the federal Violence Against Women Act requiring that States accord full faith and credit to Tribal protection orders. A valid protection order is one that identifies the protected individual and the respondent who is the potential victimizer, is currently in effect, and was issued by a tribunal with full jurisdiction. An order must meet due process standards. An ex parte order is enforceable if the respondent was provided notice and has had or will have opportunity to be heard within a reasonable time after the order was issued. Terms of an order respecting custody and visitation must be enforced, if the issuing state has jurisdiction. An order valid on its face establishes a prima facie case for its validity.

It is not necessary for the protected individual to petition a tribunal to enforce a valid foreign protection order. A law enforcement officer with “probable cause to believe that a valid foreign protection order exists and that the order has been violated” must enforce the order “as if it were the order of a tribunal of this State.” The presence of an order that identifies the protected individual and the respondent that is current constitutes probable cause to believe that a valid foreign protection order exists. Law enforcement officers who are not presented with an actual order, may still act to enforce upon other information that **provides** probable cause to believe that a valid order exists. Even if an order appears not to have been served on the respondent, a law enforcement officer must inform the respondent of the order and make a reasonable effort to serve it. The respondent must then have a reasonable time to comply, before further enforcement is initiated. Registration is not a pre-condition for enforcement by a law enforcement officer.

Registration of orders and judgments for enforcement purposes has long been a part of American law. Registration is provided for in the Uniform Enforcement of Foreign Judgments Act and the Uniform Interstate Family Support Act. Registration is an assist to enforcement. A registered order that is certified in the issuing state sets aside possible challenges to the order. A registered order provides substantial assurance to a tribunal or law enforcement officer in an enforcing state that the order is valid. Registration allows a protected individual to prepare for enforcement of an order before there is any actual threat from the named respondent.

The Act provides for registration -- a fairly simple procedure that requires a certified order and an affidavit from the protected individual that the order is current. The protected individual may receive a certified copy of the order, which then may be presented for enforcement either in a tribunal or by a law enforcement officer.

The last important provision of the Act is an immunity provision that provides a liability shield for any agency, law enforcement officer, prosecuting attorney, clerk of court, or other official who enforces an order under the Act in good faith.

HB 187 differs from the model act by inserting language setting forth limits on internet publication. A state agency, court or political subdivision of the state shall not make available publicly on the internet any information regarding the registration of, filing or a petition for, or issuance of a protection order, restraining order or injunction, whether the filing or issuance occurred in New Mexico or any other state, if such publication would be likely to publicly reveal the identity or location of the protected party under such an order. However, a state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

Also, HB 187 differs from the model act by amending Section 40-13-6, NMSA 1978, governing orders of protection under the Family Violence Protection Act to remove conflicting language regarding enforcement of foreign orders of protection issued by tribal courts and courts of other states.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions

### **SIGNIFICANT ISSUES**

While both the federal Violence Against Women Act and the New Mexico Family Violence Protection Act already require state courts to give full faith and credit to orders of protection issued by other states and tribal courts, they do not sufficiently explain the core requirements of interstate enforcement of such orders. For example, despite requiring that courts and law enforcement officers enforce the orders of other States as if they were protection orders of the enforcing state, the current laws typically do not answer the question of whether state courts and officers are required to enforce provisions of foreign protection orders that would not be authorized by the laws of the enforcing state. This bill provides procedures to be used by the enforcing entity, and resolves issues left unanswered in existing laws and provide for a more uniform scheme for enforcement of protection orders.

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is one of many model acts promoted by the Uniform Conference of Commissioners on Uniform State Laws, which seeks to secure uniformity of state laws where diversity obstructs the interests of all the citizens of the U.S. In regards to domestic violence protection orders, the lack of uniformity in

State laws has served to obscure interstate enforcement rather than promote it, causing confusion rather than enforcement. As last count, sixteen other states, the District of Columbia and U.S. Virgin Islands have adopted the model act.

#### **ADMINISTRATIVE IMPLICATIONS**

New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

#### **OTHER SUBSTANTIVE ISSUES**

The New Mexico Supreme Court last fall promulgated amendments to its forms for protection orders providing a uniform first page that clearly identifies both the protected party and the respondent, or restrained, party and indicates that due process for the restrained party has been met or will be met in the near future. District courts have been mandated to use these new forms for their orders, which will allow courts in other jurisdictions and law enforcement to more easily enforce the order.

DW/mc