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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 3/5/15  
**LAST UPDATED** 3/10/15     **HB** 268/HAFCS/aHF1#1  
**SPONSOR** HAFC  
**SHORT TITLE** Protection Order Exclusion Zones     **SB** \_\_\_\_\_  
**ANALYST** A. Sánchez

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See narrative	TBD	TBD	TBD	Recurring	Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 407, HB 123, SB 134  
 Relates to Appropriation in the General Appropriation Act

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- New Mexico Corrections Department (NMCD)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)

### **SUMMARY**

#### Synopsis of Original Bill

House Floor Amendment 1 to House Appropriation and Finance Committee Substitute to House Bill 268 removes the specific uses of the domestic violence fund and instead adds broader language allowing the fund to be used to cover all or part of the cost of using a GPS system for indigent people required to use the system based on the requirements of the bill.

#### Synopsis of Original Bill

House Appropriation and Finance Committee Substitute to House Bill 268 proposes to create a new section to the Family Violence Protection Act that would allow judges to order a restrained party that violates an order of protection to be monitored by a global positions satellite (GPS) tracking system. HB 268/HAFCS would also create a nonreverting Domestic Violence Surveillance Fund to be administered by the AOC. The AOC may collect costs to use the GPS based on the restrained party's ability to pay. Money in the fund is appropriated to the AOC to pay for personnel, equipment and services.

## FISCAL IMPLICATIONS

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

HB 268/HAFCS removes the concern that NMCD expressed in the original bill. The data available from NMCD; however, does provide a benchmark of costs to operate a GSP system. Since the bill has no appropriation, the AOC may have to initially use internal funds to start the program. Based on the NMCD data, it cost approximately \$5.05 per person per day to actively monitor an offender. An estimate cannot be provided without knowing the number of individuals for which the courts have issued a restraining order and the length of time the order is in place.

According to AOC, it does not have the infrastructure or necessary resources to execute the mandate of the bill. Although it cannot estimate the potential cost, it believes it will be substantial and the judicial branch cannot carry out the provisions of the bill without appropriate funding.

AODA reported in its analysis that violation of an order of protection is a misdemeanor, and the district attorneys will be involved in violation cases when a criminal penalty is sought. Therefore, district attorneys are likely to be involved in cases interpreting and applying the provisions of the bill. To the extent the bill raises additional issues or results in additional litigation, the district attorneys will have additional costs.

## SIGNIFICANT ISSUES

According to AODA, as is the case with all restraining orders, there will be issues involved in providing safety for the protected party, while not unduly restricting the actions of the restrained party. If the program operates as described in the bill it would provide a strong enforcement tool for orders of protection, and provide warnings to protected parties when a restrained party enters an exclusion zone.

The AOC states that the bill would provide judges another option, other than incarceration, for restrained parties that violate an existing order of protection. Approximately 14 other states have similar legislation which uses GPS technology to monitor domestic violence offenders. This legislation would only apply to restrained parties under a domestic violence order of protection (DVOP) that are found to have violated the DVOP. This new section of the Family Violence Protection Act would give judges the discretion to order a restrained party found guilty of violating a DVOP to be monitored by GPS.

PDD stated that the bill allows inadvertence as a defense to violation of the exclusion zone. This complies with *State v. Ramos*, 2013-NMSC-031, the State must prove “two elements of knowledge—the protective order and the presence of the protected party within the protected zone” for conviction. While not mentioned in the bill, duress is always a defense. *See State v. Baca*, 1992-NMSC-055, 114 N.M. 668 (right to present a duress defense is available for any crime except homicide or a crime requiring the specific intent to kill). For the most clarity, duress should be added to the statute.

NMCD may question why it needs to be notified about a GPS violation for a person that has not

been convicted and is not under its supervision. NMCD already monitors individuals under its jurisdiction using GPS. If an individual violated his or her restraining order and was wearing a NMCD issued GPS device, Probation and Parole Officer would be notified immediately. NMCD would then take appropriate action based on the offender's probation or parole order

## **RELATIONSHIP**

HB 268/HAFCS relates to SB 407 (Order of Protection Hearings), HB 123 (Family Violence Permanent No Contact Orders), SB 134 (Family Violence Permanent No Contact Orders).

## **OTHER SUBSTANTIVE ISSUES**

According to AOC, other states with similar legislation have expanded the GPS monitoring to individuals charged with domestic violence crimes as part of their conditions of release. GPS monitoring reduces the costs of incarceration, while allowing the defendant to continue to work and fulfill child support obligations. This bill, however, does not address a false reporting of the GPS system as a defense to this presumed violation.

PDD states that a wholesale exclusion of certain geographical zones, instead of prohibiting the restrained person from being within a defined distance of the protected party, may have the unintended consequence of preventing the restrained party from working or obtaining an education. For example, if both parties attend the University of New Mexico and the judge orders a zone of exclusion to be the University, the restrained party can no longer attend the university at all rather than rearrange class schedules to avoid the protected parties. The same could happen at work – if both parties work at one place, shifts could be arranged so they parties avoid one another but a geographical exclusion would require the restrained party to find different employment.

## **TECHNICAL ISSUES**

PDD suggests adding duress to the statute for more clarity.

Based on AOC's response, a false reporting should be added to the law as a defense to a presumed violation.

ABS/bb