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FISCAL IMPACT REPORT

SPONSOR Torraco ORIGINAL DATE 2/5/15
LAST UPDATED _____ HB _____

SHORT TITLE Order of Protection Hearing SB 407

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB134

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Administrative Office of the District Attorneys (AODA)

New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 407 amends Section 40-13-4 NMSA 1978 (Family Violence Protection Act) removing the requirement to hold a hearing within 10 days after granting the temporary order of protection and requiring a hearing on continuing the order to be held if the court grants a temporary order and no later than 60 days after service of the temporary of protection the court shall enter either a permanent order or dismiss the temporary order.

FISCAL IMPLICATIONS

None identified

SIGNIFICANT ISSUES

The NMSC reports a temporary order of protection lasts less than 60 days in most jurisdictions. Some states indicate that the order is good until the hearing, with a suggestion of the number of days from the order to the hearing. Information on the Womenslaw.org website lists the number of days by state when that information is available. (See the table below)

AOC states that NMSA 1978, section 40-13-4-A(3) currently provides that a hearing must be held “within ten days after the granting of the temporary order of protection”. The ten day hearing provides the alleged party a prompt opportunity to contest the issuance of the temporary order of protection which was issued ex parte. SB 407 would delete subsection A(3) and insert a new subsection that would expand the time the court would have to hold a hearing from 10 days to 60 days before the temporary order of protection can be made permanent. SB 407 provides that after a temporary order of protection is granted by the court “it shall hold a hearing on the question of continuing the order;” and “no later than sixty days after the service of the temporary order of protection the court shall either enter a permanent order of protection or dismiss the temporary order of protection.” Failure to hold a hearing within 60 days would require the court to dismiss the temporary order of protection. Expanding the time a temporary order of protection could remain in place (up to 60 days) before a hearing is held could prevent a parent from not having custody and/or visitation with their child for a significantly longer period of time.

AODA opines that the consequences of a temporary order of protection can be serious, affecting custody and visitation rights, and access to the family residence. So the period of time those limitations can be in effect before the allegations in the petition are tested in a hearing needs to be limited.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 407 and SB 134 both amend section 40-13-4 of the Family Violence Protection Act, although each bill adds different language to the same section. Language in SB 407 and SB 134 does not duplicate or conflict with each other.

TECHNICAL ISSUES

According to AOC, the change in SB 407 that a hearing must be held “no later than sixty days after service of the temporary order of protection” could be an issue if there is a delay in serving the restrained party with the temporary order of protection.

ABS/bb

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State	Number of Days	Additional Clarification
Alabama	10	
Alaska	20	
Arizona		The EOP is valid only until the close of business on the day after it is issued . You should file for a "permanent" order of protection from the court before the emergency order expires. To get an EOP, contact a law enforcement officer, who can help you get one.
Arkansas	30	In order to get a permanent Order of Protection, you need to have a full court hearing with your abuser present. A Temporary "Ex-parte" Order of Protection will protect you from the time you file until your full court hearing takes place, usually within 30 days.*
California	21	When you go to court to apply for a restraining order, the clerk will give you a date, usually within three weeks, when you will have to come back to court for a full hearing. If you are in immediate danger and need protection right away, you can ask for a temporary (ex parte) restraining order, which can order the abuser to leave the home, have no contact with you, and offer many other forms of protection that are listed in
State	Number of Days	Additional Clarification
Colorado	14	A temporary (ex parte) protection order is designed to protect you during the time that it takes for your full court hearing for a permanent order to take place, which is usually within the next 14 days.
Connecticut	14	
Delaware	10	If the commissioner decides to sign an Emergency (ex parte) Order granting you relief, you will be given a date for a full hearing. Your abuser WILL be asked to attend this hearing. The Emergency (ex parte) Order is good until the full hearing takes place. This usually happens within 10 days.
D.C.	14	The first temporary protection order that you get can last up to 14 days. Once you return to court, the judge can extend the temporary protection order for additional 14 day periods (or for longer period if both parties consent) until the final court hearing or trial is completed.
Florida	15	
Georgia	30	
Hawaii		It is valid for up to 180 days or until an order for protection becomes effective, whichever happens first.** Generally, a hearing on the TRO will take place within 15 days.
Idaho	14	
Illinois	14 to 21	The emergency order will last until you can have a full hearing for a plenary order, usually within 14-21 days.
Indiana	30	
Iowa	15	
Kansas	21	
Kentucky	14	
Louisiana	21	
Maine	21	
Maryland	7	The temporary order is in effect for 7 days after service of the order , at which point a full court hearing will be held for a final protective order. If the court is closed on the day on which the temporary protective order is due to expire, the temporary protective order will be effective until the second day on which the court is open, by which time the judge has to hold a final protective order hearing. The judge may extend the temporary order as needed, but not to more than 6 months.
Massachusetts	10	
Michigan		An ex parte domestic relationship PPO is valid for at least 182 days (approximately 6 months). The abuser can request a hearing to modify (change) or rescind (cancel) the PPO.*** If the judge issues you a PPO after this hearing, it would be called a final domestic relationship PPO.

		An ex parte order will be effective for a fixed period set by the court and can generally last for up to two years or until modified or vacated by the judge after a hearing.*1 Once you've been granted an ex parte order, you do not need to return to court for a full hearing unless: 1. You request a hearing to ask the judge for additional protection than what can be granted with an ex parte order; 2. The judge decides not to grant you all of the protection that you asked for in the ex parte order; or3. The abuser requests a hearing once s/he is served with your ex parte order. Note: If a hearing is ordered based on reasons #1 or #2, above, the hearing will be held within 7 days. If the hearing is ordered based on reason #3, above, it will be held within 10 days of when the court receives his/her request (although either side may request a continuance in any of the circumstances). The court will notify you of the hearing by mail*2 and you would need to go to the hearing in order to present evidence as to why the order should continue. If the judge does not grant you an ex parte order, the hearing for a full order for protection will be scheduled within 14 days A temporary order generally lasts until the court hearing that you must have in order to receive a permanent order. This usually takes place within 10 days after the abuser has been presented, or served, with the temporary order. If you and the abuser have minor children together, a temporary order can only last up to 30 days, maximum. However, you both do not have minor children in common, a temporary protective order can be longer than 30 days, up to a maximum of 1 year
Minnesota		
Mississippi	10	
Missouri	15	
Montana	20	
Nebraska	14	
Nevada	30	
New Hampshire		
New Jersey	10	
State	Number of Days	Additional Clarification
New York		The temporary order usually lasts until you can have a full court hearing, which may not happen for many court dates. If the hearing does not happen on the first date you return to court (the first "adjourn date"), usually the judge will extend the order of protection from court date to court date.
North Carolina	10	An ex parte temporary protective order will protect you until your full court hearing takes place, usually within 10 days from when the order is granted or within 7 days from the date the respondent is served, whichever occurs later.* Note: The ex parte order will not be able to be enforced until the defendant is served with a copy of the order.
Ohio	7 to 10	
Oklahoma		
Oregon		
Pennsylvania	10	
Rhode Island	21	
South Carolina		
South Dakota		
Tennessee	15	
Texas		
Utah		
Vermont	10	
Virginia	15	
Washington	14	
West Virginia	10	
Wisconsin		
Wyoming	3	