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FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/2020

SPONSOR Sedillo Lopez LAST UPDATED 2/19/2020 HB _____

SHORT TITLE Family Violence Protection Act Task Force SM 50/aSPAC

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 Attorney General’s Office (NMAG)
 Crime Victims Reparation Commission (CVRC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Memorial 50 corrects a reference to the “intimate partner violence review team” to the “intimate partner death review team” on page 2, line 9, and removes an extraneous “a” from page 2, line 16.

Synopsis of Original Bill

Senate Memorial 50 directs the Crime Victims Reparation Commission (CVRC) to create a task force to review the Family Violence Protection Act (Act) and propose updates to the Act. The task force will deliver a report to the interim legislative committee that deals with courts, corrections, and justice by December 1, 2020. The task force will include the Children, Youth and Families Department’s (CYFD) domestic violence programs coordinator, family court judges, representatives from the family law section of the state bar, representatives from the New Mexico Coalition Against Domestic Violence, representatives from the Administrative Office of the Courts (AOC), representatives of law enforcement, and other representatives from state and nonprofit agencies that work on domestic violence issues.

FISCAL IMPLICATIONS

While CVRC states it can accomplish the goals of SM50 within existing resources, it notes that this will create additional duties for existing staff and will create conflicting priorities. CVRC states that an appropriation to have a staff member dedicated coordinating the efforts of the task force would increase its efficiency.

SIGNIFICANT ISSUES

AOC noted the following significant issues:

While the crux of the Family Violence Protection Act has not changed significantly since 1999, two significant revisions were made in 2018 and 2019. During the 2018 legislative session the FVPA was amended to include strangulation and suffocation to the definition of domestic abuse and during the 2019 legislative session a new firearm relinquishment component added to the order of protection process. These two recent changes highlight the importance of updating the entire act to ensure the act is keeping up with legal and technological changes that affect this area of the law. The definition of a household member has not been updated since 2010 and does not adequately address teen dating violence or adult children abusing their parent.

The following data represents the number of domestic violence order of protection petitions issued statewide:

Calendar Year	Temporary (Ex Parte) Order of Protection	Permanent Order of Protection issued after a hearing
2015	10,739	3,344
2016	10,860	3,279
2017	10,506	3,174
2018	10,316	3,288
2019	11,068	3,334

Over 80 percent of the parties in domestic violence order of protection cases are self-represented litigants who navigate the legal system without the assistance of an attorney. For these reasons, it is important that the FVPA be updated to ensure that the law is clearly written and up-to-date with societal and technological advances.

CYFD provided the following analysis:

The Family Violence Protection Act accomplishes the following:

- Discourages dual arrests, encourages special law enforcement training, and directs law enforcement to identify and consider whether one party acted in self-defense;
- Defines “domestic abuse,” including types of actions, definitions of relationships that fall under the act (i.e. “household member”)
- Prohibits court costs for victims of domestic abuse;
- Creates several Orders of Protection for victims of domestic abuse and the remedies available for each, including:

- Ex parte emergency orders of protection
- Temporary orders of protection
- Orders of protection
- Procedures for extending an Order of Protection;
- Instructions for Service of Orders of Protection;
- Mandates for law enforcement response to victims of domestic violence, including for law enforcement to “take whatever steps are reasonably necessary to protect the victim from further domestic abuse”;
- A mandate for medical personnel to document the nature of the abuse and the name of the alleged perpetrator in their patient’s file;
- Allows for the appointment of Domestic Violence Special Commissioners;
- Prohibits the publication of any information likely to reveal the identity or location of a person protected by and Order of Protection; and
- A requirement for restrained parties who are found to present “a credible threat to the physical safety of a household member of the restrained party” to relinquish firearms to law enforcement.

There are several obvious contradictions and confusing sections and definitions that have been unclear or problematic for the courts and law enforcement, and therefore weaken the law and its implementation. These include:

- The requirements and limitations of warrantless arrest for alleged perpetrators of domestic violence (see *State v. Almanzar*);
- The general term and definitions for a “household member,” which, for example, include any victim of sexual assault, even if the perpetrator is a stranger;
- The contradictory mandates to determine a predominant aggressor and avoid dual arrests, yet the presence in the Act of a “mutual order of protection,” which requires finding that “both parties acted primarily as aggressors.”

There are also several practical implementation issues. For example, law enforcement receives very little training in domestic violence situations or their obligations under the Act. The Academy requires 30 minutes domestic violence training per year for law enforcement. This small amount of time tends to focus on officer safety but allows very little instruction in the complexities of domestic violence investigation or obligations under the Act. For another example, the Act mandates that medical personnel document domestic violence but there are very few doctors or nurses who understand their obligations under the Act, or even know of its existence.

Consequently, CYFD believes that a review and update, in light of twenty years of changes in State case law, federal Supreme Court rulings, emerging national promising practices, and practical experience with the Act will benefit the law as a whole.

PERFORMANCE IMPLICATIONS

CYFD notes it has performance measures related to this memorial.

OTHER SUBSTANTIVE ISSUES

CYFD notes that, as one section of the Family Violence Protection Act deals specifically with medical personnel, a useful addition to the official list of participants in the task force would be a representative from medical training and certification for doctors, nurses, or medical assistants.

ER/rl/sb