

<b>LFC Requester:</b>	<b>Marty Daly</b>
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**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: **Date** 1/14/16  
**Original**     **Amendment**        **Bill No:**    HB 27  
**Correction**     **Substitute**   

**Sponsor:** David Gallegos    **Agency Code:**    305  
**Short Title:**    Family Violence Act Extended Protection Order    **Person Writing:**    Yvonne M. Chicoine  
**Title:**    Protection Order    **Phone:**    827-6928    **Email:**    ychicoine@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**Synopsis:**

This bill proposes to add a new section to the Family Violence Protection Act (FVPA), NMSA 1978, Sections 40-13-1 to -12, creating special provisions for issuance of an order of protection under the Family Violence Protection Act to a victim of domestic abuse where the person to be restrained has been convicted of committing the crime of criminal sexual penetration under NMSA 1978, Section 30-9-11 against the victim.

Section A of the proposed new section provides that at the time a defendant is sentenced for criminal sexual penetration the prosecutor may ask the criminal court to grant the victim an order of protection to remain in effect for the duration of the court’s jurisdiction.

Section B provides that after the court’s jurisdiction expires, a victim to whom an order of protection was granted under Section A may petition for an order of protection and submit evidence of the defendant’s conviction as cause for the order.

Section C provides that a court can rely on the petition and evidence submitted with it and not require the victim to appear personally, but that another person may appear on the victim’s behalf.

Section D provides that courts may provide orders of protection under the section for any length of time, including for the victim’s lifetime.

Section E provides that an order of protection under the proposed new section of the FVPA will remain in force until its expiration, if any, or until the order is modified or rescinded at the victim’s request.

**FISCAL IMPLICATIONS**

**SIGNIFICANT ISSUES**

Section A of the proposed new language provides that “a prosecutor may request” the court to grant an order of protection to the victim of a rape. It makes no provision for a sentencing court to issue the requested order. Nor does it require the issuing court to consider aspects of the order of protection enumerated in Section 40-13-5. Amendments to the bill could reconcile possible

attacks of this kind post-adjudication of the criminal case.

Section B of the proposed new language allows a victim of domestic abuse to petition for an order of protection after the court's jurisdiction has expired. Currently, NMSA 1978, Section 40-13-5, provides that "upon finding that domestic abuse has occurred . . . , the court shall enter an order of protection ordering the restrained person to refrain from abusing the protected party or any other household member." Evidence of a person's conviction of criminal sexual penetration would unequivocally support a finding "that domestic abuse has occurred."

Section D of the proposed new section provides that the court may grant an order of protection for any length of time, including for the life of the victim. This language is commensurate with existing law because lifetime (permanent) orders of protection already can be issued, except where "custody or support" are involved. *See* § 40-13-6(C).

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

Identifying the distinction between the proposed new orders of protection and existing orders of protection – if distinctions are intended – within this bill would be assistive in preventing post adjudication collateral attack.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

## **AMENDMENTS**

An amendment to Section A, changing the language, "a prosecutor may request" to "the court may grant at the prosecutor's request" (see above as addressed in Significant Issues).