

LFC Requester:	Klundt, Kelly
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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 01/21/15
Original **Amendment** **Bill No:** HB 123
Correction **Substitute**

Sponsor: Rep. David Gallegos **Agency Code:** Attorney General's Office
Short Title: Family Violence Permanent No Contact Orders **Person Writing:** Sharon L. Pino
Title: Contact Orders **Phone:** (505) 827-6930 **Email:** spino@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

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.

BILL SUMMARY

Synopsis:

House Bill 123 creates a new section of the Family Violence Protection Act (FVPA) to include a new class of protection orders, “permanent no contact orders” issued under the Act. Section 40-13-5.1 provides that a judge may enhance an order of protection by issuing a permanent no contact order upon a finding that domestic abuse has occurred resulting in serious physical harm or severe emotional distress. A written memorandum of findings underlying the issuance of the permanent order is required and a conviction for a violent crime or a sex offense requiring registration pursuant to the Sex Offender Registration and Notification Act serves as prima facie evidence of the need to issue a permanent order. Further, under this new section, a protected party under a permanent no contact order shall be permitted to be represented at any hearing or court proceeding concerning an order of protection by counsel and is not required to appear in person.

HB 123 also amends several existing sections of the FVPA to include:

1. Section 40-13-2, wherein a definition of “permanent order of protection” is defined as an order of protection that “permits the protected party to be represented in court by counsel without having to appear in person.”
2. In 40-13-2(D), adding a provision wherein, “if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that it would be detrimental to the protected party to appear in court for a hearing on the question of continuing the order of protection, the judge may permit the protected party to be represented at the hearing by counsel without appearing in court in person.”
3. Section 4 of 40-13-5(A)(7), provided that upon a finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection and in addition to the other acts permitted by the current FVPA, the court may “issue a permanent no contact order.”
4. Section 40-13-5(G), provides that if a permanent no contact order is issued under Section 40-13-5.1, the protected party “is not required to appear in court in person, but may be represented in court by counsel.”

HB 123 also amends 30-21-10.1(A)(1) by requiring those sentenced to a term of incarceration in a facility designated by the corrections department for child solicitation by electronic communication device to be sentenced to serve an indeterminate period of supervised parole for a period of not less than five years and not in excess of twenty years. Further in 30-21-10.1(D)(4), the parole board may order a sex offender released on parole to not have contact with

certain persons or classes of persons, including through use of a permanent no contact order pursuant to the Family Violence Protection Act.

FISCAL IMPLICATIONS N/A

SIGNIFICANT ISSUES

There may constitutional issues related to this bill as drafted. Hearings on Petitions for Orders of Protection are evidentiary proceedings, wherein the standard of proof is greater than the probable cause standard utilized to issue the initial ex-parte protective order. Further, the rules of evidence apply at these evidentiary hearings. Permitting counsel to present evidence, which, given the nature of domestic violence and sexual assault, presumably may include hearsay statements of Petitioner, may violate hearsay rules, if the statement does not fall within a listed hearsay exception. Further, Respondent would be denied a right to cross-examine Petitioner on any allegations contained within the Petition alleging an act of abuse. Although the constitutional right of confrontation is specific to criminal proceedings, Respondents may claim they were denied due process or a full and fair hearing when important constitutional rights are implicated.

Issuance of an Order of Protection impacts constitutional rights of the Respondent, to include liberty of movement and the right to bear arms. Under federal law, when an order of protection is entered against an individual, that individual may not own or possess firearms or ammunition (18 USCA § 922(d)(8), applies to those “subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child”). Under 40-13-4(D) of HB 123, these constitutional rights can be impacted simply based on a finding of “probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that it would be detrimental to the protected party to appear” thereby allowing the Protected Party to forgo a personal appearance.

PERFORMANCE IMPLICATIONS N/A

ADMINISTRATIVE IMPLICATIONS N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP N/A

TECHNICAL ISSUES N/A

OTHER SUBSTANTIVE ISSUES N/A

ALTERNATIVES N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS N/A