

LFC Requester:	Kelly Klundt
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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 01/15/2015

Prepared: _____

Bill No: SB 134

Original **Amendment** _____

Correction _____ **Substitute** _____

Sponsor: Sen L. Lopez and D. Gallegos

Agency Code: Attorney General's Office

Short Title: Family Violence Protection Act

Person Writing Michael Sanchez, AAG

Title: Permanent No Contact Orders

fsdfs _____ **Analysis:** _____

Phone: 827-6064 **Email** mpsanchez@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: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

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:

SB 134 would amend the law to permit the issuance of a “permanent order of protection” to a victim of domestic abuse without the victim’s appearance in court, if the judge finds that domestic abuse has occurred which has resulted in serious physical harm or severe emotional distress. When issuing a permanent no-contact order, the court would be required to include a written memorandum of findings establishing a basis for such order.

Upon issuance of a permanent order of protection, the victim would no longer be required to personally appear at further hearings, but would be able to be represented by counsel.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This legislation presents the issue of whether the victim's right to be free from the danger or trauma of appearing in open court to obtain an order of protection outweighs the alleged abuser’s right to confront his or her accuser in court in order to rebut the allegations of abuse. Permitting the victim to be absent from the hearing may diminish the accused's ability to present evidence to the Court by denying the accused the ability to question the victim.

Domestic violence victims may be reluctant to confront their accusers in court for fear of future abuse. Requiring the victim to appear at the hearing for issuance of an order of protection may discourage victims from seeking the legal protections to which they may be entitled. However, while the issuance of an order of protection is a civil proceeding, the permanent order entails several possible consequences to the accused, including but not limited to, loss of child visitation rights, loss of rights to possession of residence, and loss of rights to possess firearms. Violation of the order may result in incarceration of the restrained party.

This act would allow for a victim to be represented by counsel in lieu of personally appearing, but does not provide a mechanism for a victim who is unable to pay for counsel to avail himself or herself of this option.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None known.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

The definition of base-level Domestic Abuse requires a finding of simple “physical harm” or “severe emotional distress”.

The proposed legislation, however, requires a finding of “serious physical harm” or “severe emotional distress” in order for the judge to issue an order of permanent protection.

Thus, while the Court would have to find more than simple physical harm in order to enter an order of permanent protection, it would have to find only base-level “severe emotional distress” to enter such an order.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A