

LFC Requester:	Chenier Eric
-----------------------	---------------------

**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 02/03/2015
Original **Amendment** **Bill No:** SB 408
Correction **Substitute**

Sponsor: Sen. Lisa A. Torraco **Agency Code:** Attorney General's Office
Person Writing Sharon L. Pino, SDAG

Short Title: Domestic Violence
Predominant Aggressor **Phone:** 827-6030 **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)

Conflicts with:

SB 408’s change to the definition of “household member” in 31-1-7(E), makes that definition inconsistent with the definition of “household member” currently in 40-13-2(E) of the Family Violence Protection Act and the definition of “household member” in 30-3-11(A) of the Crimes Against Household Members Act

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:

SB 408 amends NMSA 1978, Section 29-7-4.1 by requiring that the domestic abuse incident training component required in the curriculum of each basic law enforcement training class include training on identifying the predominant aggressor when reporting to the scene of a domestic abuse incident.

SB 408 also amends NMSA 1978, Section 31-1-7 by replacing domestic “disturbance” with domestic “abuse incident” and by moving the definition of household member from within section A of this statute to a new section E (definition section of the statute) and adds to that definition of household member “of the victim” when referring to a co-parent of a child.

SB 408 adds a new section B which details that law enforcement must make a determination of predominant aggressor when responding to a complaint of domestic violence from two or more opposing persons. They would make this determination by considering the following factors:

1. Prior complaints of domestic violence
2. Relative severity of injuries
3. Seriousness of any threats creating fear of serious injury to another household member or another person
4. The likelihood of future injury to each of the parties; and
5. Whether one of the parties acted in self-defense

It is further clarified that if an officer determines that one person was the predominant aggressor, the officer need not arrest the other person alleged to have committed an assault or battery upon a household member.

SB 408, in a new section E, creates a definition section for 31-1-7 which changes the definition of household member, and provides a definition for predominant aggressor by referencing the

definition in the Family Violence Protection Act.

SB 408 amends the Family Violence Protection Act as follows:

1. 40-13-1.1 adds language into the legislative findings section encouraging law enforcement to analyze each domestic abuse incident to determine whether a particular party is the predominant aggressor.
2. 40-13-2, definition section is amended to include a definition of predominant aggressor, which means the “most significant, rather than the first, aggressor at the scene of competing claims of domestic violence”
3. 40-13-7, the section addressing law enforcement duties, is amended to include a duty to follow the procedures to determine the predominant aggressor pursuant to 31-1-7, the warrantless arrest statute.

FISCAL IMPLICATIONS

n/a

SIGNIFICANT ISSUES

Self-defense is proper under certain circumstances, as detailed in NMRA, Crim. UJI 14-5191. However, failure to fully investigate factors that indicate whether a person may have acted in self-defense has led to dual arrests in domestic abuse cases. Dual arrests not only create difficulty in prosecution, by the act of arrest creating reasonable doubt, but dual arrests can also have lasting effects for victims of domestic abuse, by creating a criminal record, even without a subsequent conviction, and may prevent a victim of domestic abuse from receiving services, and housing, may create employment issues, and prejudice the victim in custody, order of protection, or other proceedings.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The term “domestic violence” is used throughout the bill, along with “domestic abuse.” Domestic abuse, rather than “domestic violence” is defined in the Family Violence Protection Act, and is the terms used throughout our statutes to refer to domestic violence. For consistency, domestic abuse is a preferable term.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS