

LFC Requester:	
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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:
Original **Amendment**
Correction **Substitute**

Date 1-14-16
Bill No: SB44

Sponsor: Michael Padilla
Short Title: Protection Order Exclusion
Zone Project

Agency Code: 264
Person Writing Gail MacQuesten
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	150	nonrecurring	general

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	nonrecurring	General fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB27

Duplicates/Relates to Appropriation in the General Appropriation Act n/a

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB44 enacts a new section of the Family Violence Protection Act (NMSA 1978, Section 40-13-1 *et seq.*) to create a pilot project in the second judicial district to assess the effectiveness of using a global positioning tracking system to monitor exclusion zones established when a restrained party has violated an order of protection. SB44 appropriates \$150,000 to the second judicial district to spend in fiscal years 2017 through 2019 to carry out the project. Unexpended or unencumbered funds revert to the general fund. The legislative finance committee is to evaluate the program after it has been in place for two years.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SB44 appropriates \$150,000 to the second judicial district for the project. The district is required to set up and operate, or contract with a third party to operate, a global positioning satellite tracking system to monitor tracking devices worn by the restrained party. It is unknown whether the appropriation is sufficient to cover these costs, and SB44 explicitly provides that the second judicial district may seek federal funding or other funding.

The district attorneys in the second judicial district will have additional duties under SB44, although it is unknown how much additional costs they will incur. When a restrained party violates an order of protection, additional findings must be made to establish geographic exclusion zones, and an additional hearing will be necessary if a restrained party enters an exclusion zone.

SIGNIFICANT ISSUES

SB44 would create a pilot project to determine the feasibility of using GPS technology to monitor and enforce orders of protection issued under the Family Violence Protection Act. The Act applies to situations involving domestic abuse, which includes not only abuse by one household member against another, but also stalking and sexual assault whether or not those acts are committed by a household member. As currently written, the Act provides procedures for

obtaining ex parte emergency orders of protection, and temporary orders of protection. A protection order will prohibit the restrained party from abusing the protected party, and may impose additional conditions, such as limiting contact with the protected party. Issuance of a protection order requires a finding that “domestic abuse” has occurred, but the procedure for obtaining a protection order is separate from a criminal case. There need not be a criminal case or conviction before a protection order is issued.

SB44’s pilot program would only apply to restrained persons who have violated an existing order of protection. (A violation may be charged as a misdemeanor, but SB44 requires only that the court make a finding of a violation; there is no need for a criminal conviction before SB44’s pilot program can apply.) If the court finds a violation, SB44 allows the court to establish geographic exclusion zones into which the restrained party may not enter. For example, the court may order the restrained party not to enter the protected party’s residence, place of employment or school. The restrained party may be required to wear a global positioning satellite tracking device that will record and transmit location data. If the restrained party enters an exclusion zone, location data will be immediately transmitted to the protected party, law enforcement and the corrections department. The device will notify the protected party of the breach in real time, and sound an alarm. Monitors will be able to speak to the restrained party through a cell phone or similar technology implanted in the device. Entry into an exclusion zone is a violation of the protection order, unless the court finds that the entry was inadvertent or otherwise permissible.

If successful, the program could offer greater security to the protected party, and better enforcement of protection orders.

Requiring a person to wear a GPS monitor and tracking their location 24/7 raises privacy concerns, and under SB44 this requirement is being imposed on someone who has not necessarily been convicted of a crime. However, for SB44 to apply, the court must have made a finding of domestic abuse, and a finding that the restrained party violated an order of protection. To help SB44 survive a possible due process challenge, it would be helpful to require additional findings that demonstrate the need for monitoring, such as a finding that monitoring is necessary for the safety of the protected party.

PERFORMANCE IMPLICATIONS

Establishing a short-term pilot program limited to the second judicial district will allow the state to evaluate the feasibility of using a GPS monitoring system in connection with protection orders without investing in a permanent state-wide program.

ADMINISTRATIVE IMPLICATIONS

The administrative duties will fall on the second judicial district, which will have the responsibility of setting up and administering the program.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB27 creates a new section of the Family Violence Protection Act providing for the issuance of extended orders of protection in criminal sexual penetration cases.

TECHNICAL ISSUES

See Significant Issues, above.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will be no pilot program to test the feasibility of using global positioning systems to monitor the locations of restrained persons under The Family Violence Protection Act.

AMENDMENTS

None proposed.