

1 SENATE BILL 407

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; AMENDING AND ENACTING SECTIONS OF
12 THE FAMILY VIOLENCE PROTECTION ACT TO MANDATE REPORTING OF
13 ALLEGED DOMESTIC ABUSE AND REFERRAL TO SERVICES FOR AFFECTED
14 HOUSEHOLDS; REQUIRING THE CHILDREN, YOUTH AND FAMILIES
15 DEPARTMENT TO INVESTIGATE ALLEGED DOMESTIC ABUSE AND TO REFER
16 AFFECTED HOUSEHOLDS TO APPROPRIATE SERVICES.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 40-13-1.1 NMSA 1978 (being Laws 2002,
20 Chapter 34, Section 2 and Laws 2002, Chapter 35, Section 2) is
21 amended to read:

22 "40-13-1.1. LEGISLATIVE FINDINGS--STATE POLICY--DUAL
23 ARRESTS.--The legislature finds that:

24 A. domestic abuse presents a grave threat to the
25 well-being of members of the households in which it occurs, and

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1 allegations of domestic abuse must be referred to law
2 enforcement for prompt investigation;

3 B. domestic abuse incidents are complex and require
4 special training on the part of law enforcement officers to
5 respond appropriately [~~to domestic abuse incidents~~]. The state
6 [~~of New Mexico~~] discourages dual arrests of persons involved in
7 incidents of domestic abuse. A law enforcement officer, in
8 making arrests for domestic abuse, shall seek to identify and
9 shall consider whether one of the parties acted in self-
10 defense; and

11 C. households in which domestic abuse has occurred
12 may be in need of services to assist the household in avoiding
13 future incidents or allegations of domestic abuse."

14 SECTION 2. Section 40-13-2 NMSA 1978 (being Laws 1987,
15 Chapter 286, Section 2, as amended) is amended to read:

16 "40-13-2. DEFINITIONS.--As used in the Family Violence
17 Protection Act:

18 A. "continuing personal relationship" means a
19 dating or intimate relationship;

20 B. "co-parents" means persons who have a child in
21 common, regardless of whether they have been married or have
22 lived together at any time;

23 C. "court" means the district court of the judicial
24 district where an alleged victim of domestic abuse resides or
25 is found;

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1 D. "department" means the children, youth and
2 families department;

3 ~~D.~~ E. "domestic abuse":

4 (1) means an incident of stalking or sexual
5 assault whether committed by a household member or not;

6 (2) means an incident by a household member
7 against another household member consisting of or resulting in:

- 8 (a) physical harm;
- 9 (b) severe emotional distress;
- 10 (c) bodily injury or assault;
- 11 (d) a threat causing imminent fear of
- 12 bodily injury by any household member;
- 13 (e) criminal trespass;
- 14 (f) criminal damage to property;
- 15 (g) repeatedly driving by a residence or
- 16 work place;

- 17 (h) telephone harassment;
- 18 (i) harassment; or
- 19 (j) harm or threatened harm to children
- 20 as set forth in this paragraph; and

21 (3) does not mean the use of force in self-
22 defense or the defense of another;

23 ~~E.~~ F. "household member" means a spouse, former
24 spouse, parent, present or former stepparent, present or former
25 parent-in-law, grandparent, grandparent-in-law, child,

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1 stepchild, grandchild, co-parent of a child or a person with
2 whom the petitioner has had a continuing personal relationship.
3 Cohabitation is not necessary to be deemed a household member
4 for purposes of this section;

5 ~~[F.]~~ G. "mutual order of protection" means an order
6 of protection that includes provisions that protect both
7 parties;

8 ~~[G.]~~ H. "order of protection" means an injunction
9 or a restraining or other court order granted for the
10 protection of a victim of domestic abuse;

11 I. "petitioner" means a person that files a
12 petition pursuant to the provisions of Section 40-13-3 NMSA
13 1978;

14 ~~[H.]~~ J. "protected party" means a person protected
15 by an order of protection; and

16 ~~[I.]~~ K. "restrained party" means a person who is
17 restrained by an order of protection."

18 **SECTION 3.** A new section of the Family Violence
19 Protection Act is enacted to read:

20 "[NEW MATERIAL] MANDATORY REPORTING--INVESTIGATION--
21 REFERRAL.--

22 A. A person that is not privileged as a matter of
23 law and that has knowledge of or a reasonable suspicion that
24 domestic abuse is occurring shall immediately refer the
25 allegation of domestic abuse to local or tribal law

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enforcement.

B. In addition to following the protocols set forth in Section 40-13-7 NMSA 1978, a law enforcement agency receiving a report of domestic abuse shall transmit in writing the facts of the report and the name, address and contact information of the reporter to the department. The department shall coordinate its actions with law enforcement to take immediate steps to ensure prompt investigation of the report and that immediate steps are taken to protect the health and welfare of the members of the household. The department shall ensure that the members of the household receive behavioral health or social services as appropriate to address the needs of household members after the incident or allegation of domestic abuse and to avoid any further incidents or allegations of domestic abuse."