

1 SENATE BILL 291

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO SEX OFFENDERS; ALLOWING FOR A PERMANENT NO CONTACT
12 ORDER TO BE ISSUED PERMANENTLY RESTRICTING OR PROHIBITING A
13 PERSON CONVICTED OF A SEX OFFENSE FROM HAVING CONTACT WITH THE
14 SEX OFFENDER'S VICTIM; PROVIDING PENALTIES.

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

17 SECTION 1. [NEW MATERIAL] NO CONTACT ORDER.--

18 A. When sentencing a defendant convicted of a sex
19 offense, the judge, upon the request of the district attorney,
20 shall determine whether to issue a permanent no contact order.

21 B. The judge shall order the defendant to show
22 cause why a permanent no contact order shall not be issued and
23 shall hold a show cause hearing as part of the sentencing
24 procedures for the defendant.

25 C. The victim shall have a right to be heard at the

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1 show cause hearing.

2 D. The judge sentencing the defendant is the trier
3 of fact regarding the show cause hearing.

4 E. If the judge determines that reasonable grounds
5 exist for the victim to fear any future contact with the
6 defendant, the judge shall issue the permanent no contact
7 order. The judge shall enter written findings of fact and the
8 grounds on which the permanent no contact order is issued. The
9 permanent no contact order shall be incorporated into the
10 judgment imposing the sentence on the defendant for the
11 conviction of the sex offense.

12 F. The court may grant one or more of the following
13 forms of relief in a permanent no contact order:

14 (1) order the defendant not to threaten,
15 visit, assault, molest or otherwise interfere with the victim;

16 (2) order the defendant not to follow the
17 victim, including at the victim's workplace;

18 (3) order the defendant not to harass the
19 victim;

20 (4) order the defendant not to abuse or injure
21 the victim;

22 (5) order the defendant not to contact the
23 victim by telephone, written communication or electronic means;

24 (6) order the defendant to refrain from
25 entering or remaining present at the victim's residence,

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1 school, place of employment or other specified places at times
2 when the victim is present; and

3 (7) order other relief deemed necessary and
4 appropriate by the court.

5 G. A peace officer may arrest without a warrant and
6 take into custody a restrained party whom the peace officer has
7 probable cause to believe has violated a permanent no contact
8 order that is issued pursuant to this section or entitled to
9 full faith and credit.

10 H. A restrained party convicted of violating a
11 permanent no contact order granted by a court pursuant to this
12 section is guilty of a misdemeanor and shall be sentenced in
13 accordance with Section 31-19-1 NMSA 1978. Upon a second or
14 subsequent conviction, an offender shall be sentenced to a jail
15 term of not less than seventy-two consecutive hours that shall
16 not be suspended, deferred or taken under advisement.

17 I. At any time after the issuance of the order, the
18 state, at the request of the victim, or the defendant may make
19 a motion to rescind the permanent no contact order. If the
20 court determines that reasonable grounds for the victim to fear
21 any future contact with the defendant no longer exist, the
22 court may rescind the permanent no contact order.

23 J. A state agency, court or political subdivision
24 of the state, including a magistrate or municipal court,
25 judicial district, law enforcement agency, county, municipality

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1 or home-rule municipality, shall not make available publicly on
2 the internet any information that would likely reveal the
3 identity or location of the party protected under a permanent
4 no contact order. A state agency, court or political
5 subdivision may share court-generated and law-enforcement-
6 generated information contained in secure, government
7 registries for permanent no contact order enforcement purposes.

8 K. A local law enforcement agency receiving a
9 permanent no contact order from the clerk of the court issued
10 pursuant to this section shall have the order entered in the
11 national crime information center's order of protection file
12 within seventy-two hours of receipt.

13 L. The remedies provided in this section are in
14 addition to any other civil or criminal remedy available to the
15 victim protected by the permanent no contact order or the
16 state.

17 M. As used in this section:

18 (1) "permanent no contact order" means a
19 permanent injunction that restricts or prohibits any contact by
20 a defendant with the victim of the sex offense for which the
21 defendant is convicted. The duration of the injunction is the
22 lifetime of the defendant;

23 (2) "sex offense" means any crime for which
24 registration is required under the Sex Offender Registration
25 and Notification Act; and

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1 (3) "victim" means the person against whom the
2 sex offense was committed.

3 SECTION 2. Section 29-15-2 NMSA 1978 (being Laws 1995,
4 Chapter 146, Section 2, as amended) is amended to read:

5 "29-15-2. DEFINITIONS.--As used in the Missing Persons
6 Information and Reporting Act:

7 A. "child" means an individual under the age of
8 eighteen years who is not emancipated;

9 B. "clearinghouse" means the missing persons
10 information clearinghouse;

11 C. "custodian" means a parent, guardian or other
12 person who exercises legal physical control, care or custody of
13 a child; or a person who performs one or more activities of
14 daily living for an adult;

15 D. "endangered person" means a missing person who:

16 (1) is in imminent danger of causing harm to
17 the person's self;

18 (2) is in imminent danger of causing harm to
19 another;

20 (3) is in imminent danger of being harmed by
21 another or who has been harmed by another;

22 (4) has been a victim of a crime as provided
23 in the Crimes Against Household Members Act or in Section
24 30-3A-3 or 30-3A-3.1 NMSA 1978, or their equivalents in any
25 other jurisdiction;

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1 (5) is or was protected by an order of
2 protection pursuant to the Family Violence Protection Act; ~~[or]~~

3 (6) is or was protected by a permanent no
4 contact order issued pursuant to Section 1 of this 2014 act; or

5 ~~[(6)]~~ (7) has Alzheimer's disease, dementia or
6 another degenerative brain disorder or a brain injury;

7 E. "immediate family member" means the spouse,
8 nearest relative or close friend of a person;

9 F. "law enforcement agency" means a law enforcement
10 agency of the state, a state agency or a political subdivision
11 of the state;

12 G. "lead station" means an AM radio station that
13 has been designated as the "state primary station" by the
14 federal communications commission for the emergency alert
15 system;

16 H. "missing person" means a person whose
17 whereabouts are unknown to the person's custodian or immediate
18 family member and the circumstances of whose absence indicate
19 that:

20 (1) the person did not leave the care and
21 control of the custodian or immediate family member voluntarily
22 and the taking of the person was not authorized by law; or

23 (2) the person voluntarily left the care and
24 control of the custodian without the custodian's consent and
25 without intent to return;

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1 I. "missing person report" means information that
2 is:

3 (1) given to a law enforcement agency on a
4 form used for sending information to the national crime
5 information center; and

6 (2) about a person whose whereabouts are
7 unknown to the reporter and who is alleged in the form
8 submitted by the reporter to be missing;

9 J. "person" means an individual, regardless of age;

10 K. "possible match" means the similarities between
11 unidentified human remains and a missing person that would lead
12 one to believe they are the same person;

13 L. "reporter" means the person who reports a
14 missing person;

15 M. "silver alert" means a notification relating to
16 an endangered person:

17 (1) who is a missing person;

18 (2) who is fifty years or older; and

19 (3) about whom there is a clear indication
20 that the individual has an irreversible deterioration of
21 intellectual faculties;

22 N. "state agency" means an agency of the state, a
23 political subdivision of the state or a public post-secondary
24 educational institution; and

25 O. "state registrar" means the employee so

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1 designated by the public health division of the department of
2 health pursuant to the Vital Statistics Act."

3 SECTION 3. Section 30-1-15 NMSA 1978 (being Laws 2002,
4 Chapter 34, Section 1 and Laws 2002, Chapter 35, Section 1, as
5 amended) is amended to read:

6 "30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
7 SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

8 A. An alleged victim of an offense specified in
9 Subsection B of this section is not required to bear the cost
10 of:

11 (1) the prosecution of a misdemeanor or felony
12 domestic violence offense, including costs associated with
13 filing a criminal charge against an alleged perpetrator of the
14 offense;

15 (2) the filing, issuance or service of a
16 warrant;

17 (3) the filing, issuance or service of a
18 witness subpoena; or

19 (4) the filing, issuance, registration or
20 service of a protection order.

21 B. The provisions of Subsection A of this section
22 apply to:

23 (1) alleged victims of domestic abuse as
24 defined in Section 40-13-2 NMSA 1978;

25 (2) sexual offenses described in Sections

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1 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

2 (3) crimes against household members described
3 in Sections 30-3-12 through 30-3-16 NMSA 1978;

4 (4) harassment, stalking and aggravated
5 stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA
6 1978; ~~and~~

7 (5) the violation of an order of protection
8 that is issued pursuant to the Family Violence Protection Act
9 or entitled to full faith and credit; and

10 (6) the violation of a permanent no contact
11 order issued pursuant to Section 1 of this 2014 act."

12 SECTION 4. Section 30-3A-3.1 NMSA 1978 (being Laws 1997,
13 Chapter 10, Section 4) is amended to read:

14 "30-3A-3.1. AGGRAVATED STALKING--PENALTIES.--

15 A. Aggravated stalking consists of stalking
16 perpetrated by a person:

17 (1) who knowingly violates a permanent or
18 temporary order of protection issued by a court or a permanent
19 no contact order issued pursuant to Section 1 of this 2014 act,
20 except that mutual violations of such orders may constitute a
21 defense to aggravated stalking;

22 (2) in violation of a court order setting
23 conditions of release and bond;

24 (3) when the person is in possession of a
25 deadly weapon; or

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1 (4) when the victim is less than sixteen years
2 of age.

3 B. Whoever commits aggravated stalking is guilty of
4 a fourth degree felony. Upon a second or subsequent
5 conviction, the offender is guilty of a third degree felony.

6 C. In addition to any punishment provided pursuant
7 to the provisions of this section, the court shall order a
8 person convicted of aggravated stalking to participate in and
9 complete a program of professional counseling at ~~[his]~~ the
10 person's own expense."

11 SECTION 5. Section 40-13A-2 NMSA 1978 (being Laws 2013,
12 Chapter 47, Section 2) is amended to read:

13 "40-13A-2. DEFINITIONS.--As used in the Uniform
14 Interstate Enforcement of Domestic Violence Protection Orders
15 Act:

16 A. "foreign protection order" means a protection
17 order issued by a tribunal of another state;

18 B. "issuing state" means the state whose tribunal
19 issues a protection order;

20 C. "mutual foreign protection order" means a
21 foreign protection order that includes provisions in favor of
22 both the protected individual seeking enforcement of the order
23 and the respondent;

24 D. "protected individual" means a person protected
25 by a protection order;

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1 E. "protection order" means an injunction or other
2 order, issued by a tribunal under the domestic violence, family
3 violence, sex offender or antistalking laws of the issuing
4 state, to prevent a person from engaging in a violent or
5 threatening act against, harassment of, contact or
6 communication with or physical proximity to another person;

7 F. "respondent" means the person against whom
8 enforcement of a protection order is sought;

9 G. "state" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin
11 Islands or any territory or insular possession subject to the
12 jurisdiction of the United States. "State" includes an Indian
13 pueblo, tribe, nation or band that has jurisdiction to issue
14 protection orders; and

15 H. "tribunal" means a court, agency or other entity
16 authorized by law to issue or modify a protection order."