

HOUSE BILL 268

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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AN ACT

RELATING TO ORDERS OF PROTECTION; ALLOWING FOR THE USE OF
EXCLUSION ZONES MONITORED BY A GLOBAL POSITIONING SATELLITE
TRACKING SYSTEM UPON VIOLATION OF AN ORDER OF PROTECTION;
CREATING THE DOMESTIC VIOLENCE SURVEILLANCE FUND; MAKING AN
APPROPRIATION.

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

SECTION 1. A new section of the Family Violence
Protection Act is enacted to read:

"[NEW MATERIAL] USE OF GLOBAL POSITIONING SATELLITE
TRACKING SYSTEM UPON VIOLATION OF AN ORDER OF PROTECTION.--

A. When a restrained party has been found to
violate an order of protection, the court may, in addition to
other remedies, establish geographic exclusion zones into which
the restrained party cannot enter. The area encompassed by the

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1 exclusion zone shall be determined by the court and may
2 include:

- 3 (1) the protected party's residence;
- 4 (2) the protected party's place of employment;
- 5 (3) the protected party's school, college or
6 other place for education or training;
- 7 (4) the protected party's child's or
8 children's school, college, or other place for education or
9 training; and
- 10 (5) other areas that the court determines are
11 necessary for the safety of the protected party.

12 B. If a restrained party enters an exclusion zone,
13 the restrained party shall be considered to have violated the
14 order of protection, unless the court finds that the entry into
15 the exclusion zone was inadvertent.

16 C. To enforce the exclusion zones, the court may
17 order that the restrained party wear a global positioning
18 satellite tracking device designed to transmit and record the
19 restrained party's location data. If the restrained party
20 enters a court-defined exclusion zone, the restrained party's
21 location data shall be immediately transmitted to the protected
22 party, law enforcement and the corrections department.

23 D. The global positioning satellite tracking system
24 used pursuant to this section shall be managed and administered
25 by the corrections department. The department shall develop

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1 standards to implement the provisions of this section,
2 including procurement of equipment and other services necessary
3 to implement the monitoring program. The department shall use
4 the best available global positioning satellite technology with
5 the capability to:

6 (1) immediately notify law enforcement or
7 other monitors of any breach of the court-ordered exclusion
8 zone boundaries;

9 (2) notify the protected party in near-real
10 time of any breach;

11 (3) allow monitors to speak to the restrained
12 party through a cell phone or similar technology implanted in
13 the global positioning system device; and

14 (4) activate a loud alarm to warn the
15 protected party of the restrained party's presence in an
16 exclusion zone."

17 SECTION 2. A new section of the Family Violence
18 Protection Act is enacted to read:

19 "[NEW MATERIAL] DOMESTIC VIOLENCE SURVEILLANCE FUND--
20 FINE--ADMINISTRATION--USE OF MONEY IN FUND.--

21 A. The "domestic violence surveillance fund" is
22 created in the state treasury to be administered by the
23 corrections department.

24 B. If the court orders the establishment of an
25 exclusion zone monitored by a global positioning satellite

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1 tracking system, the court shall impose a fine of not more than
2 seven hundred fifty dollars (\$750) on the restrained party,
3 which shall be determined based on the restrained party's
4 financial ability to pay. The fine shall be in addition to any
5 other penalties that may be imposed for the violation of an
6 order of protection. Money collected pursuant to the fine
7 shall be deposited in the domestic violence surveillance fund.

8 C. All balances in the domestic violence
9 surveillance fund are appropriated to the corrections
10 department for the primary purpose of employing personnel and
11 purchasing equipment and services to establish and maintain the
12 global positioning satellite tracking system established in
13 Section 1 of this 2015 act.

14 D. Payments from the domestic violence surveillance
15 fund shall be made upon warrants drawn by the secretary of
16 finance and administration pursuant to vouchers issued and
17 signed by the secretary of corrections.

18 E. Any balance remaining in the domestic violence
19 surveillance fund at the end of a fiscal year shall not revert
20 to the general fund."

21 SECTION 3. Section 40-13-5 NMSA 1978 (being Laws 1987,
22 Chapter 286, Section 5, as amended) is amended to read:

23 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
24 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

25 A. Upon finding that domestic abuse has occurred or
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1 upon stipulation of the parties, the court shall enter an order
2 of protection ordering the restrained party to refrain from
3 abusing the protected party or any other household member. The
4 court shall specifically describe the acts the court has
5 ordered the restrained party to do or refrain from doing. As a
6 part of any order of protection, the court may:

7 (1) grant sole possession of the residence or
8 household to the protected party during the period the order of
9 protection is effective or order the restrained party to
10 provide temporary suitable alternative housing for the
11 protected party and any children to whom the restrained party
12 owes a legal obligation of support;

13 (2) award temporary custody of any children
14 involved when appropriate and provide for visitation rights,
15 child support and temporary support for the protected party on
16 a basis that gives primary consideration to the safety of the
17 protected party and the children;

18 (3) order that the restrained party shall not
19 initiate contact with the protected party;

20 (4) restrain a party from transferring,
21 concealing, encumbering or otherwise disposing of the other
22 party's property or the joint property of the parties except in
23 the usual course of business or for the necessities of life and
24 require the parties to account to the court for all such
25 transferences, encumbrances and expenditures made after the

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1 order is served or communicated to the restrained party;

2 (5) order the restrained party to reimburse
3 the protected party or any other household member for expenses
4 reasonably related to the occurrence of domestic abuse,
5 including medical expenses, counseling expenses, the expense of
6 seeking temporary shelter, expenses for the replacement or
7 repair of damaged property or the expense of lost wages;

8 (6) order the restrained party to participate
9 in, at the restrained party's expense, professional counseling
10 programs deemed appropriate by the court, including counseling
11 programs for perpetrators of domestic abuse, alcohol abuse or
12 abuse of controlled substances; and

13 (7) order other injunctive relief as the court
14 deems necessary for the protection of a party, including orders
15 to law enforcement agencies as provided by this section.

16 B. The order of protection shall contain a notice
17 that violation of any provision of the order constitutes
18 contempt of court and may result in a fine, ~~[or]~~ imprisonment
19 or ~~[both]~~ monitoring by a global positioning satellite tracking
20 system, or any combination of these.

21 C. If the order of protection supersedes or alters
22 prior orders of the court pertaining to domestic matters
23 between the parties, the order shall say so on its face. If an
24 action relating to child custody or child support is pending or
25 has concluded with entry of an order at the time the petition

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1 for an order of protection was filed, the court may enter an
2 initial order of protection, but the portion of the order
3 dealing with child custody or child support will then be
4 transferred to the court that has or continues to have
5 jurisdiction over the pending or prior custody or support
6 action.

7 D. A mutual order of protection shall be issued
8 only in cases where both parties have petitioned the court and
9 the court makes detailed findings of fact indicating that both
10 parties acted primarily as aggressors and that neither party
11 acted primarily in self-defense.

12 E. No order issued under the Family Violence
13 Protection Act shall affect title to any property or allow a
14 party to transfer, conceal, encumber or otherwise dispose of
15 another party's property or the joint or community property of
16 the parties.

17 F. Either party may request a review hearing to
18 amend an order of protection. An order of protection involving
19 child custody or support may be modified without proof of a
20 substantial or material change of circumstances.

21 G. An order of protection shall not be issued
22 unless a petition or a counter petition has been filed."

23 SECTION 4. APPROPRIATION.--Seventy-five thousand dollars
24 (\$75,000) is appropriated from the general fund to the domestic
25 violence surveillance fund for expenditure in fiscal year 2016

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1 and subsequent fiscal years to carry out the purposes of the
2 fund. Any unexpended or unencumbered balance remaining at the
3 end of a fiscal year shall not revert to the general fund.

4 SECTION 5. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2015.

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