

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 259

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO DOMESTIC VIOLENCE; PROHIBITING A PERSON SUBJECT TO
CERTAIN ORDERS OF PROTECTION FROM POSSESSING OR PURCHASING
FIREARMS; PROVIDING PROCEDURES FOR DELIVERY OF FIREARMS.

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

SECTION 1. Section 40-13-2 NMSA 1978 (being Laws 1987,
Chapter 286, Section 2, as amended) is amended to read:

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

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

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

C. "court" means the district court of the judicial

1 district where an alleged victim of domestic abuse resides or
2 is found;

3 D. "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. "firearm" means any weapon that will or is
24 designed to or may readily be converted to expel a projectile
25 by action of an explosion, the frame or receiver of any such

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1 weapon or any firearm muffler or firearm silencer;

2 ~~[E.]~~ F. "household member" means a spouse, former
3 spouse, parent, present or former stepparent, present or former
4 parent in-law, grandparent, grandparent-in-law, child,
5 stepchild, grandchild, co-parent of a child or a person with
6 whom the petitioner has had a continuing personal relationship.
7 Cohabitation is not necessary to be deemed a household member
8 for purposes of this section;

9 ~~[F.]~~ G. "mutual order of protection" means an order
10 of protection that includes provisions that protect both
11 parties;

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

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

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

19 **SECTION 2.** Section 40-13-5 NMSA 1978 (being Laws 1987,
20 Chapter 286, Section 5, as amended) is amended to read:

21 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
22 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

23 A. Upon finding that domestic abuse has occurred or
24 upon stipulation of the parties, the court shall enter an order
25 of protection ordering the restrained party:

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1 (1) to refrain from abusing the protected
2 party or any other household member; and

3 (2) if the order is issued pursuant to this
4 section and if the court determines that the restrained party
5 presents a credible threat to the physical safety of the
6 household member after the restrained party has received notice
7 and had an opportunity to be heard:

8 (a) to deliver any firearm in the
9 restrained party's possession, care, custody or control while
10 the order of protection is in effect; and

11 (b) to refrain from purchasing,
12 receiving, possessing or attempting to purchase, receive or
13 possess any firearm while the order of protection is in effect.

14 B. In an order of protection entered pursuant to
15 Subsection A of this section, the court shall specifically
16 describe the acts the court has ordered the restrained party to
17 do or refrain from doing. As a part of any order of
18 protection, the court may:

19 (1) grant sole possession of the residence or
20 household to the protected party during the period the order of
21 protection is effective or order the restrained party to
22 provide temporary suitable alternative housing for the
23 protected party and any children to whom the restrained party
24 owes a legal obligation of support;

25 (2) award temporary custody of any children

1 involved when appropriate and provide for visitation rights,
2 child support and temporary support for the protected party on
3 a basis that gives primary consideration to the safety of the
4 protected party and the children;

5 (3) order that the restrained party shall not
6 initiate contact with the protected party;

7 (4) restrain a party from transferring,
8 concealing, encumbering or otherwise disposing of the other
9 party's property or the joint property of the parties except in
10 the usual course of business or for the necessities of life and
11 require the parties to account to the court for all such
12 transferences, encumbrances and expenditures made after the
13 order is served or communicated to the restrained party;

14 (5) order the restrained party to reimburse
15 the protected party or any other household member for expenses
16 reasonably related to the occurrence of domestic abuse,
17 including medical expenses, counseling expenses, the expense of
18 seeking temporary shelter, expenses for the replacement or
19 repair of damaged property or the expense of lost wages;

20 (6) order the restrained party to participate
21 in, at the restrained party's expense, professional counseling
22 programs deemed appropriate by the court, including counseling
23 programs for perpetrators of domestic abuse, alcohol abuse or
24 abuse of controlled substances; and

25 (7) order other injunctive relief as the court

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1 deems necessary for the protection of a party, including orders
2 to law enforcement agencies as provided by this section.

3 ~~[B.]~~ C. The order of protection shall contain a
4 notice that violation of any provision of the order constitutes
5 contempt of court and may result in a fine or imprisonment or
6 both.

7 ~~[C.]~~ D. If the order of protection supersedes or
8 alters prior orders of the court pertaining to domestic matters
9 between the parties, the order shall say so on its face. If an
10 action relating to child custody or child support is pending or
11 has concluded with entry of an order at the time the petition
12 for an order of protection was filed, the court may enter an
13 initial order of protection, but the portion of the order
14 dealing with child custody or child support will then be
15 transferred to the court that has or continues to have
16 jurisdiction over the pending or prior custody or support
17 action.

18 ~~[D.]~~ E. A mutual order of protection shall be
19 issued only in cases where both parties have petitioned the
20 court and the court makes detailed findings of fact indicating
21 that both parties acted primarily as aggressors and that
22 neither party acted primarily in self-defense.

23 ~~[E.—No]~~ F. An order issued under the Family
24 Violence Protection Act shall not affect title to any property
25 or allow a party to transfer, conceal, encumber or otherwise

1 dispose of another party's property or the joint or community
2 property of the parties.

3 ~~[F-]~~ G. Either party may request a review hearing
4 to amend an order of protection. An order of protection
5 involving child custody or support may be modified without
6 proof of a substantial or material change of circumstances.

7 ~~[G-]~~ H. An order of protection shall not be issued
8 unless a petition or a counter petition has been filed."

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

11 "[NEW MATERIAL] DELIVERY OF FIREARMS--PENALTY.--

12 A. A delivery of firearms ordered pursuant to
13 Section 40-13-5 NMSA 1978 shall occur by the restrained party
14 delivering any firearm in the restrained party's immediate
15 possession, care, custody or control to a third party who is
16 not prohibited from possessing a firearm by state or federal
17 law on or before the business day following the day on which
18 the restrained party is served with the order of protection.
19 To deliver the firearm, the restrained party may:

20 (1) sell or deliver the firearm to a federally
21 licensed firearms dealer;

22 (2) arrange for the storage of the firearm by
23 a law enforcement agency; or

24 (3) sell or otherwise deliver the firearm in
25 accordance with federal and state law to a party who may

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1 legally possess the firearm and who is not the restrained
2 party's spouse, parent, step-parent, parent-in-law, child,
3 stepchild or child-in-law.

4 B. An individual or entity who receives a firearm
5 pursuant to Subsection A of this section shall issue a receipt
6 that indicates the date and time of the delivery to the person
7 delivering the firearm at the time of delivery. A restrained
8 party shall file a copy of a receipt issued pursuant to this
9 subsection with the court that issued the order of protection
10 within three business days of the day the receipt was issued to
11 the restrained party. Failure to file a receipt shall
12 constitute a violation of the order of protection.

13 C. The provisions of Subsection A of this section
14 shall not be interpreted to require a:

15 (1) federally licensed firearms dealer to
16 purchase or accept possession of a firearm from a restrained
17 party; or

18 (2) law enforcement agency to store a firearm
19 or ammunition for a restrained party; provided that, if the
20 agency elects to store a firearm for a restrained party, the
21 agency may charge a fee for storing the firearm.

22 D. A person who is prohibited by state or federal
23 law from possessing a firearm and who, in good faith, delivers
24 a firearm in accordance with this section shall not be
25 arrested, charged, prosecuted or otherwise penalized for

1 possessing a firearm if the evidence for the alleged violation
2 of federal or state law for possessing the firearm was gained
3 as a result of the person's delivery of the firearm in
4 accordance with this section."

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