

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 328

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO DOMESTIC VIOLENCE; EXPANDING THE CATEGORIES OF PERSONS WHO CANNOT RECEIVE, TRANSPORT OR POSSESS A FIREARM; PROVIDING THAT A PERSON SUBJECT TO AN ORDER OF PROTECTION SHALL NOT POSSESS, CARE FOR OR HAVE CUSTODY OR CONTROL OF A FIREARM; PROVIDING PENALTIES.

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

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981, Chapter 225, Section 1, as amended) is amended to read:

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"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
TRANSPORTATION OR POSSESSION BY [~~A FELON~~] CERTAIN PERSONS--
PENALTY.--

A. It is unlawful for [~~a felon~~] the following
persons to receive, transport or possess [~~any~~] a firearm or
destructive device in this state:

(1) a felon;

(2) a person subject to an order of protection
pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

(3) a person convicted of any of the following
crimes:

(a) battery against a household member
pursuant to Section 30-3-15 NMSA 1978;

(b) criminal damage to property of a
household member pursuant to Section 30-3-18 NMSA 1978;

(c) a first offense of stalking pursuant
to Section 30-3A-3 NMSA 1978; or

(d) a crime listed in 18 U.S.C. Sf6→**922**
921←Sf6.

B. [~~Any person violating the provisions of this~~
~~section~~] A felon found in possession of a firearm shall be
guilty of a fourth degree felony and shall be sentenced in
accordance with the provisions of the Criminal Sentencing Act;
provided that the violation of and the sentence imposed
pursuant to this subsection shall be increased to a violation

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of and the sentence for a third degree felony if the person has previously been convicted of a capital felony or a serious violent offense provided in [~~Subparagraphs (a) through (n) of~~] Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978.

C. Any person subject to an order of protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted of a crime listed in Paragraph (3) of Subsection A of this section who receives, transports or possesses a firearm or destructive device is guilty of a misdemeanor.

[G.] D. As used in this section:

(1) except as provided in Paragraph (2) of this subsection, "destructive device" means:

(a) any explosive, incendiary or poison gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge of more than four ounces; 4) missile having an explosive or incendiary charge of more than one-fourth ounce; 5) mine; or 6) similar device;

(b) any type of weapon by whatever name known that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell that is generally recognized as particularly suitable for sporting purposes; or

(c) any combination of parts either designed or intended for use in converting any device into a

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destructive device as defined in this paragraph and from which a destructive device may be readily assembled;

(2) the term "destructive device" does not include any device that is neither designed nor redesigned for use as a weapon or any device, although originally designed for use as a weapon, that is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

(3) "felon" means a person convicted of a felony offense by a court of the United States or of any state or political subdivision thereof and:

(a) less than ten years have passed since the person completed serving a sentence or period of probation for the felony conviction, whichever is later;

(b) the person has not been pardoned for the felony conviction by the proper authority; and

(c) the person has not received a deferred sentence; and

(4) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon [~~or any firearm muffler or firearm silencer.~~

~~"Firearm" includes any handgun, rifle or shotgun]."~~

SECTION 2. 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

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

D. "domestic abuse":

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

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

- (a) physical harm;
- (b) severe emotional distress;
- (c) bodily injury or assault;
- (d) a threat causing imminent fear of bodily injury by any household member;
- (e) criminal trespass;
- (f) criminal damage to property;
- (g) repeatedly driving by a residence or work place;
- (h) telephone harassment;
- (i) harassment;
- (j) strangulation;

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(k) suffocation; or

(l) harm or threatened harm to children as set forth in this paragraph; and

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

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

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

G. "law enforcement officer" means a public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes;

~~[F.]~~ H. "mutual order of protection" means an order of protection that includes provisions that protect both parties;

~~[G.]~~ I. "order of protection" means an injunction

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or a restraining or other court order granted for the protection of a victim of domestic abuse;

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

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

[J.] L. "strangulation" has the same meaning as set forth in Section 30-3-11 NMSA 1978; and

[K.] M. "suffocation" has the same meaning as set forth in Section 30-3-11 NMSA 1978."

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

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

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

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

(2) if the order is issued pursuant to this section and if the court also determines that the restrained party presents a credible threat to the physical safety of the household member after the restrained party has received notice and had an opportunity to be heard or by stipulation of the parties, to:

(a) deliver any firearm in the

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restrained party's possession, care, custody or control to a law enforcement agency, law enforcement officer or federal firearms licensee while the order of protection is in effect; and

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

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

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

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

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

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

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

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

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

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

C. The order of protection shall contain notice

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that violation of any provision of the order of protection
Sf6→~~may be a crime pursuant to federal and state law.~~←Sf6
Sf6→is a violation of state law and that federal law, 18 U.S.C.
922, et seq., prohibits possession of firearms by certain
persons.←Sf6

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

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

[E-] F. No order issued under the Family Violence Protection Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of

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the parties.

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

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

SECTION 4. A new section of the Family Violence Protection Act is enacted to read:

"[NEW MATERIAL] RELINQUISHMENT OF FIREARMS--PENALTY.--

A. After the court has issued notice that the restrained party is subject to the provisions of Paragraph (2) of Subsection A of Section 40-13-5 NMSA 1978, the restrained party shall relinquish all firearms in the restrained party's immediate possession or control or subject to the restrained party's possession or control in a safe manner to a law enforcement officer, a law enforcement agency or federal firearms licensee within forty-eight hours of service of the order.

B. A law enforcement officer or law enforcement agency shall take possession of all firearms subject to the order of protection that are relinquished by the restrained party or are in plain sight or are discovered pursuant to a lawful search.

C. A law enforcement officer or law enforcement agency that takes temporary possession of a firearm pursuant to

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this section shall:

- (1) prepare a receipt identifying all firearms that have been relinquished or taken;
- (2) provide a copy of the receipt to the restrained party;
- (3) provide a copy of the receipt to the petitioner within seventy-two hours of taking possession of the firearm;
- (4) file the original receipt with the court that issued the order of protection within seventy-two hours of taking possession of the firearm; and
- (5) ensure that the law enforcement agency retains a copy of the receipt.

Sf1 → ~~D. A court that has probable cause to believe that a restrained party has failed to relinquish a firearm in violation of an order of protection or received or purchased a firearm while subject to the order of protection shall issue a search warrant pursuant to Rule 5-211 NMRA:~~

- ~~(1) describing the firearm;~~
- ~~(2) authorizing a search of the location where the firearm is reasonably believed to be; and~~
- ~~(3) authorizing the seizure of any firearm discovered pursuant to the search.~~ ← Sf1

Sf → ~~E.~~ ~~D.~~ ← Sf An order of protection issued pursuant to Section 40-13-5 NMSA 1978 shall include:

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(1) a statement that the restrained party shall not purchase, receive, transport, possess or have custody or control of a firearm while the order of protection is in effect;

(2) a description of the requirements for the relinquishment of firearms as provided in this section;

(3) a statement that within seventy-two hours of the issuance of the order of protection the restrained party must file with the court issuing the order:

(a) a receipt identifying all firearms that have been relinquished or taken by a law enforcement officer or law enforcement agency; or

(b) a declaration of non-relinquishment;

(4) the expiration date of relinquishment;

(5) the address of the court that issued the order of protection; and

(6) a statement that violation of any provision of the order of protection is ~~Sf6~~ ~~a~~ ~~Sf1~~ ~~crime~~ ~~pursuant to federal and~~ ~~Sf1~~ ~~Sf1~~ ~~violation of~~ ~~Sf1~~ ~~state law~~ ~~Sf1~~ ~~and may be a violation of federal law~~ ~~Sf1~~ ~~Sf6~~ ~~Sf6~~ ~~a~~ violation of state law and that federal law, 18 U.S.C. 922, et seq., prohibits possession of firearms by certain persons. ~~Sf6~~

~~Sf~~ ~~F.~~ ~~E.~~ ~~Sf~~ If the respondent is present at the hearing on the order of protection, the court shall provide the respondent with a receipt form to identify all firearms to be surrendered or, if the respondent has no firearms to

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relinquish, a declaration of non-relinquishment. The court shall accept the completed form from the respondent for immediate filing.

Sf4→~~G. A law enforcement officer and law enforcement agency shall be immune from civil or criminal liability for any damage or deterioration of firearms stored or transported pursuant to this section. This subsection shall not apply if the damage or deterioration was the result of recklessness, gross negligence or intentional misconduct by the law enforcement officer or law enforcement agency.~~←Sf4

Sf→~~H.~~ **F.**←Sf Evidence establishing ownership or possession of a firearm pursuant to this section shall not be admissible as evidence in any Sf7→~~unrelated~~←Sf7 criminal proceeding.

Sf5→~~I. The local law enforcement agency shall make a firearm available within thirty days of receipt of a request from a formerly restrained party who is then currently eligible to own and possess a firearm.~~←Sf5

Sf5→~~I.~~ **G.** The law enforcement agency or federal firearms licensee with custody of a surrendered or seized firearm shall make the firearm available to a formerly restrained party within three business days of receipt of a request from a formerly restrained party who is then currently eligible to own and possess a firearm.←Sf5

Sf→~~J.~~ **H.**←Sf A formerly restrained party who has

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surrendered or had firearms taken by a law enforcement officer or law enforcement agency pursuant to this section who does not wish the firearm returned or who is no longer eligible to possess a firearm may sell or transfer the firearm to a Sf3→~~licensed firearms dealer~~←Sf3 Sf3→**federal firearms licensee**←Sf3. The law enforcement agency shall not release the firearm to a Sf3→~~licensed firearms dealer~~←Sf3 Sf3→**federal firearms licensee**←Sf3 until:

(1) the Sf3→~~licensed firearms dealer~~←Sf3 Sf3→**federal firearms licensee**←Sf3 has displayed proof that the formerly restrained party has transferred the firearm to the Sf3→~~dealer~~←Sf3 Sf3→**licensee**←Sf3; and

(2) the law enforcement agency has verified the transfer with the formerly restrained party.

Sf→~~K.~~ **I.**←Sf A law enforcement agency holding a firearm relinquished pursuant to this section may dispose of the firearm Sf8→~~six~~←Sf8 Sf8→**twelve**←Sf8 months from the date of proper notice to the formerly restrained party of the intent to dispose of the firearm, unless another person claiming to be the lawful owner presents written proof of ownership. If the firearm remains unclaimed after Sf8→~~six~~←Sf8 Sf8→**twelve**←Sf8 months from the date of notice, no party shall assert ownership and the law enforcement agency may dispose of the firearm. For the purposes of this subsection, "dispose" means to destroy a firearm or sell or transfer the firearm to a Sf3→~~licensed firearms dealer~~←Sf3 Sf3→**federal firearms licensee**←Sf3.

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Sf2→~~L.~~ J. The provisions of this section shall not be interpreted to require a federal firearms licensee to purchase or accept possession of a firearm from a restrained party.←Sf2

Sf9→~~L.~~ ~~This section shall not affect the ability of a law enforcement officer to remove a firearm from a person pursuant to other lawful authority.~~←Sf9

Sf→~~M.~~ K.←Sf The administrative office of the courts shall develop a standard receipt form and declaration of non-relinquishment form for use under this section."

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

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