

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 328

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

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:

"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:

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underscored material = new
[bracketed material] = delete

- 1 (1) a felon;
- 2 (2) a person subject to an order of protection
- 3 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or
- 4 (3) a person convicted of any of the following
- 5 crimes:
 - 6 (a) battery against a household member
 - 7 pursuant to Section 30-3-15 NMSA 1978;
 - 8 (b) criminal damage to property of a
 - 9 household member pursuant to Section 30-3-18 NMSA 1978;
 - 10 (c) a first offense of stalking pursuant
 - 11 to Section 30-3A-3 NMSA 1978; or
 - 12 (d) a crime listed in 18 U.S.C. 922.

13 B. ~~[Any person violating the provisions of this~~
14 ~~section]~~ A felon found in possession of a firearm shall be
15 guilty of a fourth degree felony and shall be sentenced in
16 accordance with the provisions of the Criminal Sentencing Act;
17 provided that the violation of and the sentence imposed
18 pursuant to this subsection shall be increased to a violation
19 of and the sentence for a third degree felony if the person has
20 previously been convicted of a capital felony or a serious
21 violent offense provided in ~~[Subparagraphs (a) through (n) of]~~
22 Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978.

23 C. Any person subject to an order of protection
24 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted
25 of a crime listed in Paragraph (3) of Subsection A of this

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1 section who receives, transports or possesses a firearm or
2 destructive device shall be guilty of a misdemeanor.

3 [~~G-~~] D. As used in this section:

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

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

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

18 (c) any combination of parts either
19 designed or intended for use in converting any device into a
20 destructive device as defined in this paragraph and from which
21 a destructive device may be readily assembled;

22 (2) the term "destructive device" does not
23 include any device that is neither designed nor redesigned for
24 use as a weapon or any device, although originally designed for
25 use as a weapon, that is redesigned for use as a signaling,

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1 pyrotechnic, line throwing, safety or similar device;

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

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

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

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

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

16 "Firearm" includes any handgun, rifle or shotgun."

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

19 "40-13-2. DEFINITIONS.--As used in the Family Violence
20 Protection Act:

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

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

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1 C. "court" means the district court of the judicial
2 district where an alleged victim of domestic abuse resides or
3 is found;

4 D. "domestic abuse":

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

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

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

- 18 (h) telephone harassment;
19 (i) harassment;
20 (j) strangulation;
21 (k) suffocation; or
22 (l) harm or threatened harm to children
23 as set forth in this paragraph; and

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

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

5 "Firearm" includes any handgun, rifle or shotgun;

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

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

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

21 ~~[G.]~~ I. "order of protection" means an injunction
22 or a restraining or other court order granted for the
23 protection of a victim of domestic abuse;

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

1 ~~[F.]~~ K. "restrained party" means a person who is
2 restrained by an order of protection;

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

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

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

9 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
10 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

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

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

16 (2) relinquish any firearm owned by the
17 restrained party or in the restrained party's possession, care,
18 custody or control to a law enforcement officer or law
19 enforcement agency while the order of protection is in effect;
20 and

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

24 B. In an order of protection entered pursuant to
25 Subsection A of this section, the court shall specifically

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1 describe the acts the court has ordered the restrained party to
2 do or refrain from doing. As a part of any order of
3 protection, the court may:

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

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

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

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

24 (5) order the restrained party to reimburse
25 the protected party or any other household member for expenses

1 reasonably related to the occurrence of domestic abuse,
2 including medical expenses, counseling expenses, the expense of
3 seeking temporary shelter, expenses for the replacement or
4 repair of damaged property or the expense of lost wages;

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

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

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

17 C. The order of protection shall contain notice
18 that violation of any provision of the order of protection is a
19 crime pursuant to federal and state law.

20 ~~[G.]~~ D. If the order of protection supersedes or
21 alters prior orders of the court pertaining to domestic matters
22 between the parties, the order shall say so on its face. If an
23 action relating to child custody or child support is pending or
24 has concluded with entry of an order at the time the petition
25 for an order of protection was filed, the court may enter an

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

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

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

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

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

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

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

25 A. After the court has issued notice that the

1 restrained party is subject to the provisions of Paragraphs (2)
2 and (3) of Subsection A of Section 40-13-5 NMSA 1978, the
3 restrained party shall relinquish all firearms in the
4 restrained party's immediate possession or control or subject
5 to the restrained party's possession or control in a safe
6 manner to a law enforcement officer or a law enforcement agency
7 within forty-eight hours of issuance of the order.

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

13 C. A law enforcement officer or law enforcement
14 agency that takes temporary possession of a firearm pursuant to
15 this section shall:

16 (1) prepare a receipt identifying all firearms
17 that have been relinquished or taken;

18 (2) provide a copy of the receipt to the
19 restrained party;

20 (3) provide a copy of the receipt to the
21 petitioner within seventy-two hours of taking possession of the
22 firearm;

23 (4) file the original receipt with the court
24 that issued the order of protection within seventy-two hours of
25 taking possession of the firearm; and

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1 (5) ensure that the law enforcement agency
2 retains a copy of the receipt.

3 D. A restrained party who does not own or have
4 possession, control or custody of a firearm shall file a
5 declaration of non-relinquishment with the court that issued
6 the order of protection within seventy-two hours of the
7 issuance of the order.

8 E. A court that has probable cause to believe that
9 a restrained party has failed to relinquish a firearm in
10 violation of an order of protection or received or purchased a
11 firearm while subject to the order of protection shall issue a
12 search warrant pursuant to Rule 5-211 NMRA:

13 (1) describing the firearm;

14 (2) authorizing a search of the location where
15 the firearm is reasonably believed to be; and

16 (3) authorizing the seizure of any firearm
17 discovered pursuant to the search.

18 F. An order of protection issued pursuant to
19 Section 40-13-5 NMSA 1978 shall include:

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

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

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

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

7 (b) a declaration of non-relinquishment;

8 (4) the expiration date of relinquishment;

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

11 (6) a statement that violation of any
12 provision of the order of protection is a crime pursuant to
13 federal and state law.

14 G. If the respondent is present at the hearing on
15 the order of protection, the court shall provide the respondent
16 with a receipt form to identify all firearms to be surrendered
17 or, if the respondent has no firearms to relinquish, a
18 declaration of non-relinquishment. The court shall accept the
19 completed form from the respondent for immediate filing.

20 H. A law enforcement officer and law enforcement
21 agency shall be immune from civil or criminal liability for any
22 damage or deterioration of firearms stored or transported
23 pursuant to this section. This subsection shall not apply if
24 the damage or deterioration was the result of recklessness,
25 gross negligence or intentional misconduct by the law

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1 enforcement officer or law enforcement agency.

2 I. Evidence establishing ownership or possession of
3 a firearm pursuant to this section shall not be admissible as
4 evidence in any unrelated criminal proceeding.

5 J. The local law enforcement agency shall make a
6 firearm available within thirty days of receipt of a request
7 from a formerly restrained party who is then currently eligible
8 to own and possess a firearm.

9 K. A formerly restrained party who has surrendered
10 or had firearms taken by a law enforcement officer or law
11 enforcement agency pursuant to this section who does not wish
12 the firearm returned or who is no longer eligible to possess a
13 firearm may sell or transfer the firearm to a licensed firearms
14 dealer. The law enforcement agency shall not release the
15 firearm to a licensed firearms dealer until:

16 (1) the licensed firearms dealer has displayed
17 proof that the formerly restrained party has transferred the
18 firearm to the dealer; and

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

21 L. A law enforcement agency holding a firearm
22 relinquished pursuant to this section may dispose of the
23 firearm six months from the date of proper notice to the
24 formerly restrained party of the intent to dispose of the
25 firearm, unless another person claiming to be the lawful owner

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1 presents written proof of ownership. If the firearm remains
2 unclaimed after six months from the date of notice, no party
3 shall assert ownership and the law enforcement agency may
4 dispose of the firearm. For the purposes of this subsection,
5 "dispose" means to destroy a firearm or sell or transfer the
6 firearm to a licensed firearms dealer.

7 M. This section shall not affect the ability of a
8 law enforcement officer to remove a firearm from a person
9 pursuant to other lawful authority.

10 N. The administrative office of the courts shall
11 develop a standard receipt form and declaration of non-
12 relinquishment form for use under this section."

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

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