

1 SENATE BILL 18

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Antoinette Sedillo Lopez and Pamela Herndon

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10 AN ACT

11 RELATING TO DOMESTIC AFFAIRS; RENAMING THE FAMILY VIOLENCE
12 PROTECTION ACT AS THE PROTECTION AGAINST ABUSE AND VIOLENCE
13 ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "40-13-1. SHORT TITLE.--Chapter 40, Article 13 NMSA 1978
19 may be cited as the "[~~Family Violence~~] Protection Against Abuse
20 and Violence Act"."

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

23 "40-13-2. DEFINITIONS.--As used in the [~~Family Violence~~]
24 Protection Against Abuse and Violence Act:

25 A. "abuse" means:

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1 (1) an incident or pattern of stalking or
2 sexual assault, whether committed by a household member or not;
3 and

4 (2) an incident or pattern of behavior by a
5 household member against another household member consisting of
6 or resulting in:

7 (a) physical harm or battery, whether
8 the injury is temporary or permanent;

9 (b) severe emotional distress that may
10 include fear, depression, anxiety or loss of sleep;

11 (c) bodily injury or assault;

12 (d) a threat causing imminent fear of
13 abuse;

14 (e) criminal trespass;

15 (f) criminal damage to or deprivation of
16 property, real or personal, or damage to jointly owned or
17 community property;

18 (g) repeatedly driving by a residence or
19 workplace for no lawful purpose or following in a public place;

20 (h) harassment, whether in person or by
21 telephone, internet or digital or electronic means;

22 (i) strangulation;

23 (j) suffocation;

24 (k) kidnapping or false imprisonment,
25 restricting or inhibiting movement or forced criminal activity;

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1 (l) interference with communication;

2 (m) threats to disclose immigration

3 status;

4 (n) harm or threatened harm to an animal
5 to intimidate, threaten or harass a person;

6 (o) unauthorized distribution of
7 sensitive images; or

8 (p) harm or threatened harm to children
9 as set forth in this paragraph;

10 B. "animal" means any living nonhuman creature,
11 domestic or wild;

12 ~~[A.]~~ C. "continuing personal relationship" means a
13 dating or intimate relationship;

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

17 ~~[G.]~~ E. "court" means the district court of the
18 judicial district where an alleged victim of [domestic] abuse
19 resides or is found or where the alleged abuse occurred;

20 ~~[D.] "domestic abuse":~~

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

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

25 ~~(a) physical harm;~~

- 1 ~~(b) severe emotional distress;~~
- 2 ~~(c) bodily injury or assault;~~
- 3 ~~(d) a threat causing imminent fear of~~
- 4 ~~bodily injury by any household member;~~
- 5 ~~(e) criminal trespass;~~
- 6 ~~(f) criminal damage to property;~~
- 7 ~~(g) repeatedly driving by a residence or~~
- 8 ~~work place;~~
- 9 ~~(h) telephone harassment;~~
- 10 ~~(i) harassment;~~
- 11 ~~(j) strangulation;~~
- 12 ~~(k) suffocation; or~~
- 13 ~~(l) harm or threatened harm to children~~
- 14 ~~as set forth in this paragraph; and~~

15 ~~(3) does not mean the use of force in self-~~

16 ~~defense or the defense of another;]~~

17 F. "credible threat" means a statement, act or

18 course of conduct that serves no legitimate purpose and is done

19 with the intent and apparent ability to carry out the threat

20 and that would cause a person who is the target of the threat

21 to fear for the person's safety or life or to fear bodily

22 injury. The threat need not be directly expressed if the

23 totality of the conduct would cause the person who is the

24 target of the threat to feel that fear. A "credible threat"

25 does not require the use or threatened use of a firearm;

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1 ~~[E.]~~ G. "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 or the frame or receiver of any
4 such weapon;

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

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

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

19 J. "minor" means a person under the age of
20 eighteen;

21 ~~[I.]~~ K. "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 ~~[J.]~~ L. "protected party" means a person protected
25 by an order of protection;

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

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

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

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

9 "40-13-3. PETITION FOR ORDER OF PROTECTION--CONTENTS--
10 STANDARD FORMS.--

11 A. A victim of ~~[domestic]~~ abuse may petition the
12 court under the ~~[Family Violence]~~ Protection Against Abuse and
13 Violence Act for an order of protection.

14 B. The petition shall be made under oath or shall
15 be accompanied by a sworn affidavit setting out specific facts
16 showing the alleged ~~[domestic]~~ abuse.

17 C. The petition shall state whether any ~~[other]~~
18 domestic action is pending between the petitioner and the
19 respondent.

20 D. ~~[If any other domestic action is pending between~~
21 ~~the petitioner and the respondent]~~ The parties shall not be
22 compelled to mediate any aspect of the case arising from the
23 ~~[Family Violence]~~ Protection Against Abuse and Violence Act
24 unless the court finds that appropriate safeguards exist to
25 protect each of the parties and that both parties can fairly

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1 mediate with such safeguards.

2 E. An action brought under the [~~Family Violence~~]
3 Protection Against Abuse and Violence Act is independent of any
4 proceeding for annulment, separation or divorce between the
5 parties, any other civil or criminal case that involves the
6 parties and any other judicial action in any other court.

7 F. Remedies granted pursuant to the [~~Family~~
8 ~~Violence~~] Protection Against Abuse and Violence Act are in
9 addition to and shall not limit other civil or criminal
10 remedies available to the parties.

11 G. Standard simplified petition forms with
12 instructions for completion shall be available to all parties.
13 Law enforcement agencies shall keep such forms and make them
14 available upon request to alleged victims of [~~domestic~~] abuse.

15 H. The petitioner shall advise the court if the
16 petitioner or respondent speaks a language other than English
17 and, upon that advisement, the clerk of the court shall access
18 language translation for documents from the administrative
19 office of the courts.

20 I. An order of protection may be issued to protect
21 or restrain a minor.

22 J. A minor who is thirteen years of age or older
23 and a victim of abuse may petition the court for an order of
24 protection on the minor's own behalf if the minor files a
25 petition:

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1 (1) for protection against the minor's co-
2 parent or a person with whom the minor has had a continuing
3 personal relationship; or

4 (2) that contains allegations of stalking or
5 sexual assault."

6 SECTION 4. Section 40-13-3.1 NMSA 1978 (being Laws 1995,
7 Chapter 176, Section 1, as amended) is amended to read:

8 "40-13-3.1. FORBEARANCE OF COSTS [~~ASSOCIATED WITH~~
9 ~~DOMESTIC ABUSE OFFENSES~~].--

10 A. An alleged victim of [~~domestic~~] abuse shall not
11 be required to bear the cost of:

12 (1) the prosecution of a misdemeanor or felony
13 offense arising out of an incident of [~~domestic~~] abuse,
14 including costs associated with filing a criminal charge
15 against the alleged perpetrator of the abuse;

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

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

20 (4) the filing, issuance or service of a
21 petition for an order of protection;

22 (5) the filing, issuance or service of an
23 order of protection; or

24 (6) obtaining law enforcement reports or
25 photographs or copies of photographs relating to the alleged

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1 abuse or pattern of abuse.

2 B. No witness fee shall be charged where prohibited
3 by federal law."

4 SECTION 5. Section 40-13-3.2 NMSA 1978 (being Laws 1999,
5 Chapter 142, Section 2, as amended) is amended to read:

6 "40-13-3.2. [~~EX PARTE~~] EMERGENCY ORDERS OF PROTECTION.--

7 A. [~~The district court may issue an ex parte~~
8 ~~written emergency order of protection when a law enforcement~~
9 ~~officer states to the court in person, by telephone or via~~
10 ~~facsimile and files a sworn written statement, setting forth~~
11 ~~the need for an emergency order of protection, and the court~~
12 ~~finds reasonable grounds to believe that the alleged victim or~~
13 ~~the alleged victim's child is in immediate danger of domestic~~
14 ~~abuse following an incident of domestic abuse. The written~~
15 ~~statement shall include the location and telephone number of~~
16 ~~the alleged perpetrator, if known.] A law enforcement officer
17 may request an emergency order of protection by written
18 petition to the court in person or by telephone, facsimile or
19 other electronic means. The law enforcement officer shall
20 inform the victim that an officer may petition the court for an
21 emergency order of protection on the victim's behalf. The
22 petition shall set forth the need for the emergency order of
23 protection and, if known, include the location and telephone
24 number of the alleged perpetrator. A criminal complaint does
25 not have to be filed in order for a law enforcement officer to~~

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1 request an emergency order of protection. The court may issue
2 an emergency order of protection when the court finds
3 reasonable grounds that the alleged victim and any other
4 household members are in immediate danger or that an act of
5 abuse has occurred or may occur.

6 B. A law enforcement officer who receives an
7 emergency order of protection, whether in writing, by
8 telephone, [Ø] by facsimile transmission or by other
9 electronic means from the court shall:

10 (1) if necessary, pursuant to the judge's oral
11 approval, write and sign the order on an approved form;

12 (2) if possible, immediately serve a signed
13 copy of the order on the restrained party and complete the
14 appropriate affidavit of service;

15 (3) immediately provide the protected party
16 with a physical and electronic signed copy of the order; and

17 (4) provide the original order to the court by
18 the close of business on the next [~~judicial~~] day the court is
19 open.

20 C. The court may grant the following relief in an
21 emergency order of protection upon a probable cause finding
22 that [~~domestic~~] abuse has occurred:

23 (1) enjoin the restrained party from
24 threatening to commit or committing acts of [~~domestic~~] abuse
25 against the protected party or any designated household

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1 members;

2 (2) enjoin the restrained party from any
3 contact with the protected party, including harassing,
4 telephoning, contacting or otherwise communicating with the
5 protected party; and

6 (3) grant temporary custody of any minor child
7 in common with the parties to the protected party, if
8 necessary.

9 D. A district judge shall be available [~~as~~
10 ~~determined by~~] at all times in each judicial district to hear
11 petitions for emergency orders of protection.

12 E. An emergency order of protection expires
13 seventy-two hours after issuance or at the end of the next
14 [~~judicial~~] day the court is open, whichever time is latest.
15 The expiration date shall be clearly stated on the emergency
16 order of protection.

17 F. A person may appeal the issuance of an emergency
18 order of protection to the court that issued the order. An
19 appeal may be heard as soon as the judicial day following the
20 issuance of the order.

21 G. Upon a proper petition, a [~~district~~] court may
22 issue a temporary order of protection that is based upon the
23 same incident of [~~domestic~~] abuse that was alleged in an
24 emergency order of protection.

25 H. Emergency orders of protection are enforceable

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1 in the same manner as other orders of protection issued
2 pursuant to the provisions of the [~~Family Violence~~] Protection
3 Against Abuse and Violence Act."

4 SECTION 6. Section 40-13-4 NMSA 1978 (being Laws 1987,
5 Chapter 286, Section 4, as amended) is amended to read:

6 "40-13-4. TEMPORARY ORDER OF PROTECTION--HEARING--
7 DISMISSAL.--

8 A. Upon the filing of a petition for order of
9 protection, the court shall:

10 (1) [~~immediately grant~~] on the same day, issue
11 an ex parte temporary order of protection without bond if there
12 is probable cause from the specific facts shown by the
13 affidavit or by the petition to give the judge reason to
14 believe that an act of [~~domestic~~] abuse has occurred or that
15 there is immediate danger of abuse;

16 (2) cause the temporary order of protection
17 together with notice of hearing to be served immediately on the
18 alleged perpetrator of the [~~domestic~~] abuse; and

19 (3) within ten days after the granting of the
20 temporary order of protection, hold a hearing on the question
21 of continuing the order. [~~or~~

22 (~~4) if an ex parte order is not granted, serve~~
23 ~~notice to appear upon the parties and hold a hearing on the~~
24 ~~petition for order of protection within seventy-two hours after~~
25 ~~the filing of the petition; provided if notice of hearing~~

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1 ~~cannot be served within seventy-two hours, the temporary order~~
2 ~~of protection shall be automatically extended for ten days.]~~

3 B. ~~[If the court grants a]~~ In the temporary order
4 of protection, ~~[it may award temporary custody and visitation~~
5 ~~of any children involved when appropriate]~~ the court shall:

6 (1) enjoin the restrained party from
7 committing or threatening to commit acts of abuse against the
8 protected party or member of the protected party's household;

9 (2) enjoin the restrained party from any
10 contact or communication with the protected party; and

11 (3) when appropriate, award temporary custody
12 and visitation or supervised visitation with any child or
13 children and give primary consideration to the safety of the
14 protected party and child or children.

15 C. Except for petitions alleging stalking or sexual
16 assault, if the court finds that the alleged perpetrator is not
17 a household member, the court shall dismiss the petition.

18 D. If, upon review of a petition for an order of
19 protection, the court does not have sufficient information to
20 find or does not find probable cause to believe that an act of
21 abuse has occurred, the court shall hold a hearing within
22 seventy-two hours to allow the petitioner to provide additional
23 information to the court. Personal service is not required to
24 conduct a seventy-two-hour hearing. At the conclusion of the
25 hearing, the court shall issue either a temporary order of

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1 protection or an order dismissing the petition."

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

4 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
5 TO PROPERTY NOT AFFECTED [~~MUTUAL ORDER OF PROTECTION~~].--

6 A. Upon finding that [~~domestic~~] abuse has occurred
7 or that there is immediate danger of abuse or upon stipulation
8 of the parties, the court shall enter an order of protection on
9 the same day ordering the restrained party to:

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

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

18 (a) deliver any firearm in the
19 restrained party's possession, care, custody or control to a
20 law enforcement agency, law enforcement officer or federal
21 firearms licensee while the order of protection is in effect;
22 and

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

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

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

12 (2) may award temporary custody of any
13 children involved when appropriate and provide for visitation
14 rights, child support and temporary support for the protected
15 party on a basis that gives primary consideration to the safety
16 of the protected party and the children; provided that any
17 child custody and visitation order issued with the order of
18 protection may only be effective for a period of six months.
19 Any custody or visitation order may be extended for good cause
20 shown for no longer than an additional six months;

21 (3) may issue the order of protection between
22 the parties for a period of time independent of any custody or
23 property attachment;

24 [~~(3)~~] (4) may order that the restrained party
25 shall not initiate contact with the protected party;

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1 [~~(4)~~] (5) may restrain a party from
2 transferring, concealing, encumbering or otherwise disposing of
3 the other party's property or the joint property of the parties
4 except in the usual course of business or for the necessities
5 of life and require the parties to account to the court for all
6 such transferences, encumbrances and expenditures made after
7 the order is served or communicated to the restrained party;

8 (6) may grant to a party the exclusive or
9 shared possession and control of any animal kept, owned or
10 leased by either party or by the minor child or minor children
11 residing in the household of either party. The court may order
12 a party to stay away from the animal and may forbid a party
13 from taking, transferring, concealing, mistreating, harming or
14 disposing of the animal;

15 [~~(5)~~] (7) may order the restrained party to
16 reimburse the protected party or any other household member for
17 expenses reasonably related to the occurrence of [~~domestic~~]
18 abuse, including medical expenses, counseling expenses, the
19 expense of seeking temporary shelter, expenses for the
20 replacement or repair of damaged property or the expense of
21 lost wages;

22 [~~(6)~~] (8) may order the restrained party to
23 participate in, at the restrained party's expense, professional
24 counseling programs deemed appropriate by the court, including
25 counseling programs for perpetrators of [~~domestic~~] abuse,

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1 alcohol abuse or abuse of controlled substances; ~~and~~

2 ~~(7)~~ (9) may order other injunctive relief as
3 the court deems necessary for the protection of a party,
4 including orders to law enforcement agencies as provided by
5 this section; and

6 (10) shall not order that the protected party
7 participate in treatment or counseling related to abuse because
8 the court does not have that authority pursuant to the
9 Protection from Abuse and Violence Act.

10 C. The order of protection shall contain notice
11 that violation of any provision of the order of protection is a
12 violation of state law and that federal law, 18 U.S.C. 922, et
13 seq., prohibits possession of firearms by certain persons. The
14 order of protection shall contain notice that all restrained
15 parties are prohibited from owning or possession a firearm
16 pursuant to state law while the order of protection is in
17 effect. Firearms prohibitions pursuant to state law also apply
18 to stipulated orders and to orders when the respondent has been
19 served with notice of the hearing and has had the opportunity
20 to participate.

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

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

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

23 H. An order of protection may be issued against a
24 party who has been served with a copy of a petition for an
25 order of protection and a notice to appear and has had an

1 opportunity to participate; provided that the proof of service
2 is in the court file. If a party fails to appear at the ten-
3 day hearing in which an order of protection is issued, the
4 court shall mail a copy of the order to the party's address of
5 record."

6 SECTION 8. Section 40-13-5.1 NMSA 1978 (being Laws 2016,
7 Chapter 32, Section 1 and Laws 2016, Chapter 33, Section 1) is
8 amended to read:

9 "40-13-5.1. EXTENDED ORDER OF PROTECTION.--

10 A. In the sentencing proceeding for a person
11 convicted of criminal sexual penetration pursuant to Section
12 30-9-11 NMSA 1978, a prosecutor may request that the criminal
13 court grant the victim an order of protection to remain in
14 effect for the duration of the criminal court's jurisdiction
15 over the person.

16 B. At any time after the expiration of a criminal
17 court's jurisdiction over a person against whom an order of
18 protection was granted pursuant to a request pursuant to
19 Subsection A of this section, the victim may:

20 (1) file a petition for an order of protection
21 against the person; and

22 (2) submit evidence of the person's conviction
23 for criminal sexual penetration, including out-of-state, as
24 cause for the court to grant the order of protection.

25 C. Based on evidence submitted pursuant to

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1 Subsection B of this section, a court may take judicial notice
2 of the facts that led to a person's conviction for criminal
3 sexual penetration and a victim shall not be required to appear
4 before the court on the victim's petition for an order of
5 protection; provided, however, that another person may appear
6 on the victim's behalf.

7 D. A court may grant an order of protection
8 pursuant to this section for any length of time, including for
9 a victim's lifetime.

10 E. Notwithstanding the provisions of Subsection C
11 of Section 40-13-6 NMSA 1978, an order of protection granted
12 pursuant to this section shall continue until the expiration
13 provided in the order, if any, or until modified or rescinded
14 upon a motion by the ~~[victim]~~ protected party."

15 SECTION 9. Section 40-13-6 NMSA 1978 (being Laws 1987,
16 Chapter 286, Section 6, as amended) is amended to read:

17 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
18 NOT EXCLUSIVE.--

19 A. An order of protection granted under the ~~[Family~~
20 ~~Violence]~~ Protection Against Abuse and Violence Act shall be
21 filed with the clerk of the court, and a copy shall be sent by
22 the clerk to the local law enforcement agency. The order shall
23 be ~~[personally served upon the restrained party, unless the~~
24 ~~restrained party or the restrained party's attorney was present~~
25 ~~at the time the order was issued]~~ provided to the parties or

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1 the parties' attorneys. The order shall be filed and ~~[served]~~
2 provided to the parties and a local law enforcement agency
3 without cost to the protected party.

4 B. A local law enforcement agency receiving an
5 order of protection from the clerk of the court that was issued
6 under the ~~[Family Violence]~~ Protection Against Abuse and
7 Violence Act shall have the order entered in the national crime
8 information center's order of protection file within seventy-
9 two hours of receipt. This does not include temporary orders
10 of protection entered pursuant to the provisions of Section
11 40-13-4 NMSA 1978.

12 C. An order of protection ~~[granted by the court~~
13 ~~involving custody or support shall be effective for a fixed~~
14 ~~period of time not to exceed six months. The order may be~~
15 ~~extended for good cause upon motion of the protected party for~~
16 ~~an additional period of time not to exceed six months.~~
17 ~~Injunctive orders shall continue until modified or rescinded~~
18 ~~upon motion by either party or until the court approves a~~
19 ~~subsequent consent agreement entered into by the parties]~~
20 issued by the court may be in effect for a fixed period of time
21 of any length; provided that the court deems the period of time
22 appropriate to protect the safety of the protected party. Upon
23 motion and after a hearing, an existing order of protection
24 that may expire may be extended for good cause shown.

25 D. A ~~[peace]~~ law enforcement officer may arrest

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1 without a warrant and take into custody a restrained party
2 [~~whom~~] who the [~~peace~~] officer has probable cause to believe
3 has violated an order of protection that is issued pursuant to
4 the [~~Family Violence~~] Protection Against Abuse and Violence Act
5 or entitled to full faith and credit.

6 E. A restrained party convicted of violating an
7 order of protection granted by a court under the [~~Family~~
8 ~~Violence~~] Protection Against Abuse and Violence Act is guilty
9 of a misdemeanor and shall be sentenced in accordance with
10 Section 31-19-1 NMSA 1978. Upon a second or subsequent
11 conviction, an offender shall be sentenced to a jail term of
12 not less than seventy-two consecutive hours that shall not be
13 suspended, deferred or taken under advisement.

14 F. In addition to any other punishment provided in
15 the [~~Family Violence~~] Protection Against Abuse and Violence
16 Act, the court shall order a person convicted to make full
17 restitution to the party injured by the violation of an order
18 of protection and shall order the person convicted to
19 participate in and complete a [~~program of professional~~
20 ~~counseling~~] domestic violence offender treatment or
21 intervention program or other relevant treatment or
22 intervention program, at the person's own expense, if possible.

23 G. In addition to charging the person with
24 violating an order of protection, a [~~peace~~] law enforcement
25 officer shall file all other possible criminal charges arising

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1 from an incident of [~~domestic~~] abuse when probable cause
2 exists.

3 H. The remedies provided in the [~~Family Violence~~]
4 Protection Against Abuse and Violence Act are in addition to
5 any other civil or criminal remedy available to the protected
6 party or the state."

7 SECTION 10. Section 40-13-7 NMSA 1978 (being Laws 1987,
8 Chapter 286, Section 7, as amended) is amended to read:

9 "40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY
10 ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO
11 VICTIMS WHEN AN ALLEGED PERPETRATOR IS RELEASED FROM
12 DETENTION--STATEMENT IN JUDGMENT AND SENTENCE DOCUMENT.--

13 A. A person who allegedly has been a victim of
14 [~~domestic~~] abuse may request the assistance of a local law
15 enforcement agency.

16 B. A local law enforcement officer responding to
17 the request for assistance shall be required to take whatever
18 steps are reasonably necessary to protect the victim and other
19 household members from further [~~domestic~~] abuse, including:

20 (1) [~~advising~~] informing the victim of the
21 remedies available under the [~~Family Violence~~] Protection
22 Against Abuse and Violence Act; the right to file a written
23 statement, a criminal complaint and a request for an arrest
24 warrant; and the availability of [~~domestic~~] violence shelters,
25 medical care, counseling and other services;

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1 (2) upon the request of the victim, providing
2 or arranging for transportation of the victim to a medical
3 facility or place of shelter;

4 (3) upon the request of the victim,
5 accompanying the victim to the victim's residence to obtain the
6 victim's clothing and personal effects required for immediate
7 needs and the clothing and personal effects of any children
8 then in the care of the victim;

9 (4) upon the request of the victim, [~~assist~~]
10 assisting in placing the victim in possession of the dwelling
11 or premises or otherwise assist in execution, enforcement or
12 service of an order of protection;

13 (5) arresting the alleged perpetrator [~~when~~
14 ~~appropriate~~] and including a written statement in the
15 [~~attendant~~] police report to indicate that the arrest of the
16 alleged perpetrator was [~~in whole or in part, premised~~] based
17 upon probable cause to believe that the alleged perpetrator
18 committed [~~domestic~~] abuse against the victim. [~~and, when~~
19 ~~appropriate~~] A law enforcement officer, in making arrests for
20 abuse, shall identify whether one of the parties acted in self-
21 defense and indicate that the party arrested was the
22 predominant aggressor; [~~and~~]

23 (6) [~~advising~~] informing the victim [~~when~~
24 ~~appropriate~~] of the procedure for initiating proceedings under
25 the [~~Family Violence~~] Protection Against Abuse and Violence Act

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1 or criminal proceedings and of the importance of preserving
2 evidence, including digital evidence; and

3 (7) identifying and documenting in the
4 criminal complaint and incident report names and relationships
5 between people present at the incident, including any
6 additional victims or witnesses.

7 C. The jail or detention center shall make [a]
8 reasonable [~~attempt~~] efforts to notify the arresting law
9 enforcement agency or officer and victim when the alleged
10 perpetrator of abuse, stalking or sexual assault or a
11 restrained party in violation of an order of protection escapes
12 from custody, is released from custody or is transferred to
13 another facility. The arresting law enforcement agency shall
14 make [a] reasonable [~~attempt~~] efforts to notify the victim that
15 the alleged perpetrator is released from custody.

16 D. Any law enforcement officer responding to a
17 request for assistance under the [~~Family Violence~~] Protection
18 Against Abuse and Violence Act is immune from civil liability
19 to the extent allowed by law. Any jail, detention center or
20 law enforcement agency that makes a reasonable attempt to
21 provide notification that an alleged perpetrator is released
22 from custody is immune from civil liability to the extent
23 allowed by law.

24 E. A statement shall be included in a judgment and
25 sentence document to indicate when a conviction results from

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1 the commission of [~~domestic~~] abuse."

2 SECTION 11. Section 40-13-7.1 NMSA 1978 (being Laws 2005,
3 Chapter 281, Section 1) is amended to read:

4 "40-13-7.1. [~~MEDICAL~~] HEALTH CARE PERSONNEL--
5 DOCUMENTATION OF [~~DOMESTIC~~] ABUSE.--

6 A. When [~~medical~~] health care personnel who are
7 interviewing, examining, attending or treating a person:

8 (1) receive a report from the person of an act
9 of [~~domestic~~] abuse, the [~~medical~~] health care personnel shall
10 document the nature of the abuse and the name of the alleged
11 perpetrator, if disclosed, of the abuse in the person's medical
12 file and shall provide the person with information and referral
13 to services for victims of [~~domestic~~] abuse; or

14 (2) may have reason to believe or suspect that
15 the person is a victim of [~~domestic~~] abuse, the [~~medical~~]
16 health care personnel shall provide the person with information
17 and referral to services for victims of [~~domestic~~] abuse.

18 B. Medical and other health-care-related
19 information or communications concerning [~~domestic~~] abuse of a
20 person obtained by or from [~~medical~~] health care personnel
21 during the course of an interview, examination, diagnosis or
22 treatment are confidential communications unless released:

23 (1) with the prior written consent of the
24 person;

25 (2) pursuant to a court order; or

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1 (3) when necessary to provide treatment,
2 payment and operations in accordance with the federal Health
3 Insurance Portability and Accountability Act of 1996.

4 C. As used in this section, "~~[medical]~~ health care
5 personnel" means:

6 (1) licensed health care practitioners who
7 interview, examine, attend or treat a person and who are under
8 the guidance or supervision of licensed health care
9 practitioners;

10 ~~[(2) licensed emergency medical technicians;~~
11 ~~(3) health care practitioners who interview,~~
12 ~~examine, attend or treat a person and who are under the~~
13 ~~guidance or supervision of licensed health care practitioners;~~
14 and

15 ~~(4) residents and interns]~~
16 (2) health care practitioners in training,
17 including students, residents and interns; and
18 (3) licensed emergency medical technicians."

19 SECTION 12. Section 40-13-9 NMSA 1978 (being Laws 2005,
20 Chapter 30, Section 1) is amended to read:

21 "40-13-9. DOMESTIC VIOLENCE SPECIAL COMMISSIONERS--
22 APPOINTMENT--QUALIFICATIONS.--

23 A. A domestic violence special commissioner shall
24 be appointed by and serve at the pleasure of the chief judge of
25 the judicial district to which the officer is assigned.

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- 1 B. A domestic violence special commissioner shall:
2 (1) be an attorney licensed to practice law in
3 New Mexico;
4 (2) have a minimum of three years experience
5 in the practice of law and be knowledgeable in the area of
6 domestic relations and domestic violence matters; and
7 (3) conform to Canons 21-100 through [~~21-500~~
8 ~~and 21-700~~] 21-400 of the Code of Judicial Conduct as adopted
9 by the supreme court. Violation of any such canon shall be
10 grounds for dismissal of any domestic violence special
11 commissioner."

12 SECTION 13. Section 40-13-10 NMSA 1978 (being Laws 2005,
13 Chapter 30, Section 2) is amended to read:

14 "40-13-10. SPECIAL COMMISSIONERS--POWERS--DUTIES.--
15 A. A domestic violence special commissioner shall
16 perform the following duties in carrying out the provisions of
17 the [~~Family Violence~~] Protection Against Abuse and Violence
18 Act:

- 19 (1) review [~~petitions~~] every petition for
20 [~~orders~~] an order of protection and all motions to enforce,
21 modify or terminate orders of protection or motions to show
22 cause;
23 (2) if deemed necessary, interview
24 petitioners. Any interview shall be on the record;
25 (3) conduct hearings on the merits of

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1 petitions for orders of protection and motions to enforce,
2 modify or terminate orders of protection or motions to show
3 cause; and

4 (4) prepare recommendations to the [~~district~~]
5 court regarding petitions for orders of protection and motions
6 to enforce, modify or terminate orders of protection or motions
7 to show cause.

8 B. All orders must be signed by a district court
9 judge before the recommendations of a domestic violence special
10 commissioner become effective. The recommendation of the
11 hearing officer shall be reviewed and signed on the same day of
12 the hearing."

13 SECTION 14. Section 40-13-12 NMSA 1978 (being Laws 2008,
14 Chapter 40, Section 10) is amended to read:

15 "40-13-12. LIMITS ON INTERNET PUBLICATION.--A state
16 agency, court or political subdivision of the state, including
17 a magistrate or municipal court, judicial district, law
18 enforcement agency, county, municipality or home-rule
19 municipality, shall not make available publicly on the internet
20 any information [~~that would likely reveal the identity or~~
21 ~~location of the party protected under an order of protection]~~
22 regarding the registration of, filing of a petition for or
23 issuance of a protection order, restraining order or injunction
24 pursuant to the Uniform Interstate Enforcement of Domestic
25 Violence Protection Orders Act, whether the filing or issuance

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1 occurred in New Mexico or any other state. This provision
2 shall not apply to a filing or issuance on the New Mexico state
3 judiciary's statewide case management and e-filing system, but
4 the address of a protected person shall be redacted from that
5 filing or issuance. A state agency, court or political
6 subdivision may share court-generated and law enforcement-
7 generated information contained in secure, government
8 registries for protection order enforcement purposes."

9 SECTION 15. REPEAL.--Section 40-13-1.1 NMSA 1978 (being
10 Laws 2002, Chapter 34, Section 2 and Laws 2002, Chapter 35,
11 Section 2) is repealed.