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HOUSE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO FAMILY LAW; RECOGNIZING THE RIGHT OF ALLEGED DOMESTIC ABUSE VICTIMS TO BE REPRESENTED BY AN ATTORNEY IN LEGAL MATTERS RELATED TO THE DOMESTIC ABUSE OR THE DOMESTIC ABUSER.

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;

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underscoring material = new
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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 or the frame or receiver of any
4 such weapon;

5 F. "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. "indigent person" means an individual who,
13 taking into account present income, liquid assets and
14 requirements for basic necessities of life for the individual
15 and the individual's dependents, is unable, without undue
16 hardship, to pay for all or part of the expenses of legal
17 representation;

18 ~~[G.]~~ H. "law enforcement officer" means a public
19 official or public officer vested by law with a duty to
20 maintain public order or to make arrests for crime, whether
21 that duty extends to all crimes or is limited to specific
22 crimes;

23 ~~[H.]~~ I. "mutual order of protection" means an order
24 of protection that includes provisions that protect both
25 parties;

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1 ~~[F.]~~ J. "order of protection" means an injunction
2 or a restraining or other court order granted for the
3 protection of a victim of domestic abuse;

4 ~~[G.]~~ K. "protected party" means a person protected
5 by an order of protection;

6 ~~[K.]~~ L. "restrained party" means a person who is
7 restrained by an order of protection;

8 ~~[H.]~~ M. "strangulation" has the same meaning as set
9 forth in Section 30-3-11 NMSA 1978; and

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

12 **SECTION 2.** A new section of the Family Violence
13 Protection Act is enacted to read:

14 "[NEW MATERIAL] RIGHT TO REPRESENTATION.--

15 A. An alleged domestic abuse victim who is an
16 indigent person is entitled to representation by an attorney in
17 all legal proceedings under Chapter 40 NMSA 1978 that are
18 related to the alleged domestic abuse or the alleged domestic
19 abuser. The attorney's services, expenses and court costs
20 shall be provided at public expense for indigent persons.

21 B. When an alleged domestic abuse victim first
22 appears in court, the judge shall advise the alleged victim
23 that the alleged victim has the right to be represented by
24 counsel of the alleged victim's choosing, the right to have an
25 adjournment to confer with counsel and the right to have

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1 counsel assigned by the court in any case in which the alleged
2 victim is financially unable to obtain counsel."

3 SECTION 3. A new section of the Family Violence
4 Prevention Act is enacted to read:

5 "[NEW MATERIAL] DETERMINATION OF INDIGENCY.--

6 A. The court shall determine whether an alleged
7 domestic abuse victim is an indigent person at the alleged
8 victim's first appearance in each legal proceeding related to
9 the alleged domestic abuse or the alleged domestic abuser.

10 B. In determining whether an alleged domestic abuse
11 victim is an indigent person, the court concerned may consider
12 such factors as income, property owned, outstanding obligations
13 and the number and ages of the alleged victim's dependents. In
14 each case, the alleged victim shall, subject to the penalties
15 for perjury, certify in writing or by other record material
16 factors relating to the victim's ability to pay as the court
17 prescribes."

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

20 "[NEW MATERIAL] CONTRACTUAL SERVICES OF COUNSEL.--To
21 facilitate representation of alleged domestic abuse victims who
22 are indigent persons, the director of the administrative office
23 of the courts may, upon direction of the supreme court with
24 respect to habeas corpus proceedings initiated in the supreme
25 court, or upon request of a district court, enter into

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1 contracts with attorneys designated by those courts whereby the
2 attorney shall undertake to perform the services of assigned
3 counsel in all or any specified portion of the cases
4 originating within the judicial district. All contracts shall
5 be approved by the chief justice of the supreme court, and all
6 payments provided therein shall be made by the supreme court or
7 in the appropriate district court requesting the contract."

8 SECTION 5. A new section of the Family Violence
9 Prevention Act is enacted to read:

10 "[NEW MATERIAL] COUNSEL NOT SUBJECT TO LIABILITY.--
11 Attorneys who are assigned to or contracted with to perform
12 services for alleged domestic abuse victims who are indigent
13 persons shall not be held liable in any civil action respecting
14 the attorney's performance or nonperformance of the services."