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SENATE BILL 134

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Linda M. Lopez and David M. Gallegos

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING THE FAMILY VIOLENCE PROTECTION ACT; ALLOWING FOR THE ISSUANCE OF PERMANENT NO CONTACT ORDERS.

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

SECTION 1. A new Section 40-13-5.1 NMSA 1978 is enacted to read:

"40-13-5.1. [NEW MATERIAL] PERMANENT NO CONTACT ORDER.--

A. Upon finding that domestic abuse has occurred resulting in serious physical harm or severe emotional distress, the judge may enhance an order of protection by issuing a permanent no contact order.

B. The judge shall include in the record of the case a written memorandum of the findings underlying the issuance of a permanent no contact order.

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1 C. A conviction for a violent crime or a sex
2 offense for which a person is required to register pursuant to
3 the Sex Offender Registration and Notification Act shall serve
4 as prima facie evidence of the need to issue a permanent no
5 contact order.

6 D. The protected party under a permanent no contact
7 order shall be permitted to be represented at any hearing or
8 court proceeding concerning an order of protection by counsel,
9 without having to appear in court in person."

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

12 "40-13-2. DEFINITIONS.--As used in the Family Violence
13 Protection Act:

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

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

19 C. "court" means the district court of the judicial
20 district where an alleged victim of domestic abuse resides or
21 is found;

22 D. "domestic abuse":
23 (1) means an incident of stalking or sexual
24 assault whether committed by a household member or not;
25 (2) means an incident by a household member

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1 against another household member consisting of or resulting in:

- 2 (a) physical harm;
- 3 (b) severe emotional distress;
- 4 (c) bodily injury or assault;
- 5 (d) a threat causing imminent fear of
- 6 bodily injury by any household member;
- 7 (e) criminal trespass;
- 8 (f) criminal damage to property;
- 9 (g) repeatedly driving by a residence or
- 10 work place;
- 11 (h) telephone harassment;
- 12 (i) harassment; or
- 13 (j) 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 E. "household member" means a spouse, former
18 spouse, parent, present or former stepparent, present or former
19 parent in-law, grandparent, grandparent-in-law, child,
20 stepchild, grandchild, co-parent of a child or a person with
21 whom the petitioner has had a continuing personal relationship.
22 Cohabitation is not necessary to be deemed a household member
23 for purposes of this section;

24 F. "mutual order of protection" means an order of
25 protection that includes provisions that protect both parties;

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1 G. "order of protection" means an injunction or a
2 restraining or other court order granted for the protection of
3 a victim of domestic abuse;

4 H. "permanent no contact order" means an order of
5 protection that permits the protected party to be represented
6 in court by counsel without having to appear in person;

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

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

11 SECTION 3. Section 40-13-4 NMSA 1978 (being Laws 1987,
12 Chapter 286, Section 4, as amended) is amended to read:

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

15 A. Upon the filing of a petition for order of
16 protection, the court shall:

17 (1) immediately grant an ex parte temporary
18 order of protection without bond if there is probable cause
19 from the specific facts shown by the affidavit or by the
20 petition to give the judge reason to believe that an act of
21 domestic abuse has occurred;

22 (2) cause the temporary order of protection
23 together with notice of hearing to be served immediately on the
24 alleged perpetrator of the domestic abuse; and

25 (3) within ten days after the granting of the

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1 temporary order of protection, hold a hearing on the question
2 of continuing the order; or

3 (4) if an ex parte order is not granted, serve
4 notice to appear upon the parties and hold a hearing on the
5 petition for order of protection within seventy-two hours after
6 the filing of the petition; provided if notice of hearing
7 cannot be served within seventy-two hours, the temporary order
8 of protection shall be automatically extended for ten days.

9 B. If the court grants a temporary order of
10 protection, it may award temporary custody and visitation of
11 any children involved when appropriate.

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

15 D. If there is probable cause from the specific
16 facts shown by the affidavit or by the petition to give the
17 judge reason to believe that it would be detrimental to the
18 protected party to appear in court for a hearing on the
19 question of continuing the order of protection, the judge may
20 permit the protected party to be represented at the hearing by
21 counsel without appearing in court in person."

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

24 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
25 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

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1 A. Upon finding that domestic abuse has occurred or
2 upon stipulation of the parties, the court shall enter an order
3 of protection ordering the restrained party to refrain from
4 abusing the protected party or any other household member. The
5 court shall specifically describe the acts the court has
6 ordered the restrained party to do or refrain from doing. As a
7 part of any order of protection, the court may:

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

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

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

21 (4) restrain a party from transferring,
22 concealing, encumbering or otherwise disposing of the other
23 party's property or the joint property of the parties except in
24 the usual course of business or for the necessities of life and
25 require the parties to account to the court for all such

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1 transferences, encumbrances and expenditures made after the
2 order is served or communicated to the restrained party;

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

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

14 (7) issue a permanent no contact order; and

15 [~~(7)~~] (8) order other injunctive relief as the
16 court deems necessary for the protection of a party, including
17 orders to law enforcement agencies as provided by this section.

18 B. The order of protection shall contain a notice
19 that violation of any provision of the order constitutes
20 contempt of court and may result in a fine or imprisonment or
21 both.

22 C. If the order of protection supersedes or alters
23 prior orders of the court pertaining to domestic matters
24 between the parties, the order shall say so on its face. If an
25 action relating to child custody or child support is pending or

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1 has concluded with entry of an order at the time the petition
2 for an order of protection was filed, the court may enter an
3 initial order of protection, but the portion of the order
4 dealing with child custody or child support will then be
5 transferred to the court that has or continues to have
6 jurisdiction over the pending or prior custody or support
7 action.

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

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

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

22 G. If a permanent no contact order is issued under
23 Section 40-13-5.1 NMSA 1978, the protected party is not
24 required to appear in court in person, but may be represented
25 in court by counsel.

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

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

5 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
6 NOT EXCLUSIVE.--

7 A. An order of protection granted under the Family
8 Violence Protection Act shall be filed with the clerk of the
9 court, and a copy shall be sent by the clerk to the local law
10 enforcement agency. The order shall be personally served upon
11 the restrained party, unless the restrained party or the
12 restrained party's attorney was present at the time the order
13 was issued. The order shall be filed and served without cost
14 to the protected party.

15 B. A local law enforcement agency receiving an
16 order of protection from the clerk of the court that was issued
17 under the Family Violence Protection Act shall have the order
18 entered in the national crime information center's order of
19 protection file within seventy-two hours of receipt. This does
20 not include temporary orders of protection entered pursuant to
21 the provisions of Section 40-13-4 NMSA 1978.

22 C. An order of protection granted by the court
23 involving custody or support shall be effective for a fixed
24 period of time not to exceed six months. The order may be
25 extended for good cause upon motion of the protected party for

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1 an additional period of time not to exceed six months.
2 Injunctive orders shall continue until modified or rescinded
3 upon motion by either party or until the court approves a
4 subsequent consent agreement entered into by the parties.

5 D. If a permanent no contact order is issued under
6 Section 40-13-5.1 NMSA 1978, the protected party is not
7 required to appear in court in person, but may be represented
8 in court by counsel.

9 ~~[D-]~~ E. A peace officer may arrest without a
10 warrant and take into custody a restrained party whom the peace
11 officer has probable cause to believe has violated an order of
12 protection that is issued pursuant to the Family Violence
13 Protection Act or entitled to full faith and credit.

14 ~~[E-]~~ F. A restrained party convicted of violating
15 an order of protection granted by a court under the Family
16 Violence Protection Act is guilty of a misdemeanor and shall be
17 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a
18 second or subsequent conviction, an offender shall be sentenced
19 to a jail term of not less than seventy-two consecutive hours
20 that shall not be suspended, deferred or taken under
21 advisement.

22 ~~[F-]~~ G. In addition to any other punishment
23 provided in the Family Violence Protection Act, the court shall
24 order a person convicted to make full restitution to the party
25 injured by the violation of an order of protection and shall

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1 order the person convicted to participate in and complete a
2 program of professional counseling, at the person's own
3 expense, if possible.

4 ~~[G.]~~ H. In addition to charging the person with
5 violating an order of protection, a peace officer shall file
6 all other possible criminal charges arising from an incident of
7 domestic abuse when probable cause exists.

8 ~~[H.]~~ I. The remedies provided in the Family
9 Violence Protection Act are in addition to any other civil or
10 criminal remedy available to the protected party or the state."

11 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
12 provisions of this act is July 1, 2015.