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HOUSE BILL 353

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Sarah Maestas Barnes

AN ACT

RELATING TO SEXUAL OFFENSES; PROVIDING FOR THE ISSUANCE OF
PERMANENT NO CONTACT ORDERS TO RESTRAIN A CONVICTED SEX
OFFENDER FROM CONTACTING THE OFFENDER'S VICTIM; PROVIDING THAT
PROSECUTION FOR SEXUAL OFFENSES AGAINST CHILDREN MAY COMMENCE
AT ANY TIME AFTER THE OFFENSE OCCURS.

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

SECTION 1. [NEW MATERIAL] PERMANENT NO CONTACT ORDER--
SEX OFFENSES.--

A. When sentencing a defendant convicted of a sex
offense, the judge shall determine whether to issue a permanent
no contact order. As part of the defendant's sentencing
procedures, the judge shall hold a hearing at which:

(1) the victim shall have a right to be heard
regarding whether a permanent no contact order should be

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1 issued; and

2 (2) if the defendant opposes issuance of a
3 permanent no contact order, the defendant shall show cause why
4 the order should not be issued.

5 B. The judge sentencing the defendant for the sex
6 offense shall be the trier of fact for the hearing.

7 C. If the judge determines that reasonable grounds
8 exist for the victim to want to or need to prevent any future
9 contact with the defendant, the judge shall issue a permanent
10 no contact order. The judge shall enter written findings of
11 fact and the grounds on which the order is issued. The order
12 shall be incorporated into the judgment imposing the sentence
13 for the defendant's sex offense conviction.

14 D. In a permanent no contact order, in addition to
15 granting any other relief that the court deems necessary and
16 appropriate, the court may order the defendant not to:

17 (1) visit, follow, harass, assault, abuse or
18 otherwise interfere with the victim, including at the victim's
19 place of employment;

20 (2) contact the victim by telephone, in
21 writing or by electronic or any other means; and

22 (3) enter or remain present at the victim's
23 residence, school, place of employment or other specified
24 places at times when the victim is present.

25 E. A peace officer may arrest without a warrant and

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1 take into custody a restrained party whom the peace officer has
2 probable cause to believe has violated a permanent no contact
3 order issued pursuant to this section or entitled to full faith
4 and credit.

5 F. A restrained party convicted of violating a
6 permanent no contact order issued pursuant to this section is
7 guilty of a misdemeanor and shall be sentenced in accordance
8 with Section 31-19-1 NMSA 1978. Upon a second or subsequent
9 conviction, a restrained party shall be sentenced to a jail
10 term of not less than seventy-two consecutive hours, which
11 shall not be suspended, deferred or taken under advisement.

12 G. The state, at a victim's request, or a defendant
13 may make a motion to rescind a permanent no contact order at
14 any time after the order is issued. If the court determines
15 that the grounds on which the order was issued no longer exist,
16 the court may rescind the order and shall notify the law
17 enforcement agency that served the order that the order has
18 been rescinded.

19 H. If a court notifies a law enforcement agency
20 that a permanent no contact order has been entered or
21 rescinded, the law enforcement agency shall enter that
22 information in the national crime information center's order of
23 protection file within seventy-two hours of receipt of the
24 order.

25 I. The remedies provided in this section are in

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1 addition to any other civil or criminal remedy available to a
2 victim protected by a permanent no contact order or to the
3 state.

4 J. As used in this section:

5 (1) "permanent no contact order" means a
6 permanent injunction that prohibits any contact by a defendant
7 with the victim of a sex offense for which the defendant is
8 convicted. The duration of the injunction is the lifetime of
9 the defendant;

10 (2) "restrained party" means a defendant
11 against whom a permanent no contact order is issued;

12 (3) "sex offense" means any crime for which
13 registration is required under the Sex Offender Registration
14 and Notification Act; and

15 (4) "victim" means the person against whom the
16 sex offense was committed.

17 SECTION 2. Section 29-15-2 NMSA 1978 (being Laws 1995,
18 Chapter 146, Section 2, as amended) is amended to read:

19 "29-15-2. DEFINITIONS.--As used in the Missing Persons
20 Information and Reporting Act:

21 A. "Brittany alert" means a notification relating
22 to an endangered person:

23 (1) who is a missing person; and

24 (2) about whom there is a clear indication
25 that the person has a developmental disability as defined in

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1 Subsection A of Section 28-16A-6 NMSA 1978 and that the
2 person's health or safety is at risk;

3 B. "child" means a person under the age of eighteen
4 years who is not emancipated;

5 C. "clearinghouse" means the missing persons
6 information clearinghouse;

7 D. "custodian" means a parent, guardian or other
8 person who exercises legal physical control, care or custody of
9 a child or of an adult with a developmental disability; or a
10 person who performs one or more activities of daily living for
11 an adult;

12 E. "endangered person" means a missing person who:

13 (1) is in imminent danger of causing harm to
14 the person's self;

15 (2) is in imminent danger of causing harm to
16 another;

17 (3) is in imminent danger of being harmed by
18 another or who has been harmed by another;

19 (4) has been a victim of a crime as provided
20 in the Crimes Against Household Members Act or in Section
21 30-3A-3 or 30-3A-3.1 NMSA 1978, or their equivalents in any
22 other jurisdiction;

23 (5) is or was protected by an order of
24 protection pursuant to the Family Violence Protection Act;

25 (6) is or was protected by a permanent no

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1 contact order issued pursuant to Section 1 of this 2017 act;

2 [~~(6)~~] (7) has Alzheimer's disease, dementia or
3 another degenerative brain disorder or a brain injury; or

4 [~~(7)~~] (8) has a developmental disability as
5 defined in Subsection A of Section 28-16A-6 NMSA 1978 and that
6 person's health or safety is at risk;

7 F. "immediate family member" means the spouse,
8 nearest relative or close friend of a person;

9 G. "law enforcement agency" means a law enforcement
10 agency of the state, a state agency or a political subdivision
11 of the state;

12 H. "lead station" means an AM radio station that
13 has been designated as the "state primary station" by the
14 federal communications commission for the emergency alert
15 system;

16 I. "missing person" means a person whose
17 whereabouts are unknown to the person's custodian or immediate
18 family member and the circumstances of whose absence indicate
19 that:

20 (1) the person did not leave the care and
21 control of the custodian or immediate family member voluntarily
22 and the taking of the person was not authorized by law; or

23 (2) the person voluntarily left the care and
24 control of the custodian without the custodian's consent and
25 without intent to return;

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1 J. "missing person report" means information that
2 is:

3 (1) given to a law enforcement agency on a
4 form used for sending information to the national crime
5 information center; and

6 (2) about a person whose whereabouts are
7 unknown to the reporter and who is alleged in the form
8 submitted by the reporter to be missing;

9 K. "person" means an individual, regardless of age;

10 L. "possible match" means the similarities between
11 unidentified human remains and a missing person that would lead
12 one to believe they are the same person;

13 M. "reporter" means the person who reports a
14 missing person;

15 N. "silver alert" means a notification relating to
16 an endangered person:

17 (1) who is a missing person;

18 (2) who is fifty years or older; and

19 (3) about whom there is a clear indication
20 that the individual has an irreversible deterioration of
21 intellectual faculties;

22 O. "state agency" means an agency of the state, a
23 political subdivision of the state or a public post-secondary
24 educational institution; and

25 P. "state registrar" means the employee so

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1 designated by the public health division of the department of
2 health pursuant to the Vital Statistics Act."

3 SECTION 3. Section 30-1-9.1 NMSA 1978 (being Laws 1987,
4 Chapter 117, Section 1) is amended to read:

5 "30-1-9.1. OFFENSES AGAINST CHILDREN--TOLLING OF STATUTE
6 OF LIMITATIONS.--

7 A. The applicable time period for commencing
8 prosecution pursuant to Section 30-1-8 NMSA 1978 shall not
9 commence to run for an alleged violation of Section 30-6-1
10 [~~30-9-11 or 30-9-13~~] NMSA 1978 until the victim attains the age
11 of eighteen or the violation is reported to a law enforcement
12 agency, whichever occurs first.

13 B. No limitation period shall exist, and
14 prosecution for an alleged violation of Section 30-9-11 NMSA
15 1978, when the victim is a child, or Section 30-9-13 NMSA 1978
16 may commence at any time after the occurrence of the alleged
17 violation."

18 SECTION 4. Section 30-1-15 NMSA 1978 (being Laws 2002,
19 Chapter 34, Section 1 and Laws 2002, Chapter 35, Section 1, as
20 amended) is amended to read:

21 "30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
22 SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

23 A. An alleged victim of an offense specified in
24 Subsection B of this section is not required to bear the cost
25 of:

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1 (1) the prosecution of a misdemeanor or felony
2 domestic violence offense, including costs associated with
3 filing a criminal charge against an alleged perpetrator of the
4 offense;

5 (2) the filing, issuance or service of a
6 warrant;

7 (3) the filing, issuance or service of a
8 witness subpoena; or

9 (4) the filing, issuance, registration or
10 service of a protection order.

11 B. The provisions of Subsection A of this section
12 apply to:

13 (1) alleged victims of domestic abuse as
14 defined in Section 40-13-2 NMSA 1978;

15 (2) sexual offenses described in Sections
16 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

17 (3) crimes against household members described
18 in Sections 30-3-12 through 30-3-16 NMSA 1978;

19 (4) harassment, stalking and aggravated
20 stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA
21 1978; ~~and~~

22 (5) the violation of an order of protection
23 that is issued pursuant to the Family Violence Protection Act
24 or entitled to full faith and credit; and

25 (6) the violation of a permanent no contact

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1 order issued pursuant to Section 1 of this 2017 act."

2 SECTION 5. Section 40-13A-2 NMSA 1978 (being Laws 2013,
3 Chapter 47, Section 2) is amended to read:

4 "40-13A-2. DEFINITIONS.--As used in the Uniform
5 Interstate Enforcement of Domestic Violence Protection Orders
6 Act:

7 A. "foreign protection order" means a protection
8 order issued by a tribunal of another state;

9 B. "issuing state" means the state whose tribunal
10 issues a protection order;

11 C. "mutual foreign protection order" means a
12 foreign protection order that includes provisions in favor of
13 both the protected individual seeking enforcement of the order
14 and the respondent;

15 D. "protected individual" means a person protected
16 by a protection order;

17 E. "protection order" means an injunction or other
18 order, issued by a tribunal under the domestic violence, family
19 violence, sex offender or antistalking laws of the issuing
20 state, to prevent a person from engaging in a violent or
21 threatening act against, harassment of, contact or
22 communication with or physical proximity to another person;

23 F. "respondent" means the person against whom
24 enforcement of a protection order is sought;

25 G. "state" means a state of the United States, the

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1 District of Columbia, Puerto Rico, the United States Virgin
2 Islands or any territory or insular possession subject to the
3 jurisdiction of the United States. "State" includes an Indian
4 pueblo, tribe, nation or band that has jurisdiction to issue
5 protection orders; and

6 H. "tribunal" means a court, agency or other entity
7 authorized by law to issue or modify a protection order."

8 SECTION 6. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2017.