

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 281

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

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; PROVIDING THAT
PROSECUTION FOR SECOND DEGREE CRIMINAL SEXUAL PENETRATION IF
THE VICTIM IS NOT A CHILD SHALL COMMENCE WITHIN TEN YEARS.

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:

.209298.2

underscoring material = new
~~[bracketed material] = delete~~

1 (1) the victim shall have a right to be heard
2 regarding whether a permanent no contact order should be
3 issued; and

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

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

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

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

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

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

24 (3) enter or remain present at the victim's
25 residence, school, place of employment or other specified

underscoring material = new
~~[bracketed material]~~ = delete

1 places at times when the victim is present.

2 E. A peace officer may arrest without a warrant and
3 take into custody a restrained party whom the peace officer has
4 probable cause to believe has violated a permanent no contact
5 order issued pursuant to this section or entitled to full faith
6 and credit.

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

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

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

.209298.2

1 order.

2 I. The remedies provided in this section are in
3 addition to any other civil or criminal remedy available to a
4 victim protected by a permanent no contact order or to the
5 state.

6 J. As used in this section:

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

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

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

17 (4) "victim" means the person against whom the
18 sex offense was committed.

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

21 "29-15-2. DEFINITIONS.--As used in the Missing Persons
22 Information and Reporting Act:

23 A. "Brittany alert" means a notification relating
24 to an endangered person:

25 (1) who is a missing person; and

1 (2) about whom there is a clear indication
2 that the person has a developmental disability as defined in
3 Subsection A of Section 28-16A-6 NMSA 1978 and that the
4 person's health or safety is at risk;

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

7 C. "clearinghouse" means the missing persons
8 information clearinghouse;

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

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

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

17 (2) is in imminent danger of causing harm to
18 another;

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

21 (4) has been a victim of a crime as provided
22 in the Crimes Against Household Members Act or in Section
23 30-3A-3 or 30-3A-3.1 NMSA 1978, or their equivalents in any
24 other jurisdiction;

25 (5) is or was protected by an order of

underscored material = new
[bracketed material] = delete

1 protection pursuant to the Family Violence Protection Act;

2 (6) is or was protected by a permanent no
3 contact order issued pursuant to Section 1 of this 2018 act;

4 [~~6~~] (7) has Alzheimer's disease, dementia or
5 another degenerative brain disorder or a brain injury; or

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

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

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

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

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

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

25 (2) the person voluntarily left the care and

.209298.2

1 control of the custodian without the custodian's consent and
2 without intent to return;

3 J. "missing person report" means information that
4 is:

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

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

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

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

15 M. "reporter" means the person who reports a
16 missing person;

17 N. "silver alert" means a notification relating to
18 an endangered person:

19 (1) who is a missing person;

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

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

24 O. "state agency" means an agency of the state, a
25 political subdivision of the state or a public post-secondary

underscored material = new
[bracketed material] = delete

1 educational institution; and

2 P. "state registrar" means the employee so
3 designated by the public health division of the department of
4 health pursuant to the Vital Statistics Act."

5 SECTION 3. Section 30-1-8 NMSA 1978 (being Laws 1963,
6 Chapter 303, Section 1-8, as amended) is amended to read:

7 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A
8 person shall not be prosecuted, tried or punished in any court
9 of this state unless the indictment is found or information or
10 complaint is filed within the time as provided:

11 A. for a second degree felony other than a
12 violation of Section 30-9-11 NMSA 1978 for which the victim is
13 not a child, within six years from the time the crime was
14 committed;

15 B. for a second degree felony provided in Section
16 30-9-11 NMSA 1978 for which the victim is not a child, within
17 ten years from the time the crime was committed;

18 [~~B-~~] C. for a third or fourth degree felony, within
19 five years from the time the crime was committed;

20 [~~G-~~] D. for a misdemeanor, within two years from
21 the time the crime was committed;

22 [~~D-~~] E. for a petty misdemeanor, within one year
23 from the time the crime was committed;

24 [~~E-~~] F. for any crime against or violation of
25 Section 51-1-38 NMSA 1978, within three years from the time the

.209298.2

underscored material = new
[bracketed material] = delete

1 crime was committed;

2 [F-] G. for a felony pursuant to Section 7-1-71.3,
3 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
4 crime was committed; provided that for a series of crimes
5 involving multiple filing periods within one calendar year, the
6 limitation shall begin to run on December 31 of the year in
7 which the crimes occurred;

8 [G-] H. for an identity theft crime pursuant to
9 Section 30-16-24.1 NMSA 1978, within five years from the time
10 the crime was discovered;

11 [H-] I. for any crime not contained in the Criminal
12 Code or where a limitation is not otherwise provided for,
13 within three years from the time the crime was committed; and

14 [I-] J. for a capital felony or a first degree
15 violent felony, no limitation period shall exist and
16 prosecution for these crimes may commence at any time after the
17 occurrence of the crime."

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

20 "30-1-9.1. OFFENSES AGAINST CHILDREN--TOLLING OF STATUTE
21 OF LIMITATIONS.--

22 A. The applicable time period for commencing
23 prosecution pursuant to Section 30-1-8 NMSA 1978 shall not
24 commence to run for an alleged violation of Section 30-6-1
25 [~~30-9-11 or 30-9-13~~] NMSA 1978 until the victim attains the age

.209298.2

underscored material = new
[bracketed material] = delete

1 of eighteen or the violation is reported to a law enforcement
2 agency, whichever occurs first.

3 B. No limitation period shall exist, and
4 prosecution for an alleged violation of Section 30-9-11 NMSA
5 1978, when the victim is a child, or Section 30-9-13 NMSA 1978
6 may commence at any time after the occurrence of the alleged
7 violation."

8 SECTION 5. Section 30-1-15 NMSA 1978 (being Laws 2002,
9 Chapter 34, Section 1 and Laws 2002, Chapter 35, Section 1, as
10 amended) is amended to read:

11 "30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
12 SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

13 A. An alleged victim of an offense specified in
14 Subsection B of this section is not required to bear the cost
15 of:

16 (1) the prosecution of a misdemeanor or felony
17 domestic violence offense, including costs associated with
18 filing a criminal charge against an alleged perpetrator of the
19 offense;

20 (2) the filing, issuance or service of a
21 warrant;

22 (3) the filing, issuance or service of a
23 witness subpoena; or

24 (4) the filing, issuance, registration or
25 service of a protection order.

.209298.2

underscored material = new
[bracketed material] = delete

1 B. The provisions of Subsection A of this section
2 apply to:

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

5 (2) sexual offenses described in Sections
6 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

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

9 (4) harassment, stalking and aggravated
10 stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA
11 1978; ~~and~~

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

15 (6) the violation of a permanent no contact
16 order issued pursuant to Section 1 of this 2018 act."

17 **SECTION 6.** Section 40-13A-2 NMSA 1978 (being Laws 2013,
18 Chapter 47, Section 2) is amended to read:

19 "40-13A-2. DEFINITIONS.--As used in the Uniform
20 Interstate Enforcement of Domestic Violence Protection Orders
21 Act:

22 A. "foreign protection order" means a protection
23 order issued by a tribunal of another state;

24 B. "issuing state" means the state whose tribunal
25 issues a protection order;

.209298.2

1 C. "mutual foreign protection order" means a
2 foreign protection order that includes provisions in favor of
3 both the protected individual seeking enforcement of the order
4 and the respondent;

5 D. "protected individual" means a person protected
6 by a protection order;

7 E. "protection order" means an injunction or other
8 order, issued by a tribunal under the domestic violence, family
9 violence, sex offender or antistalking laws of the issuing
10 state, to prevent a person from engaging in a violent or
11 threatening act against, harassment of, contact or
12 communication with or physical proximity to another person;

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

15 G. "state" means a state of the United States, the
16 District of Columbia, Puerto Rico, the United States Virgin
17 Islands or any territory or insular possession subject to the
18 jurisdiction of the United States. "State" includes an Indian
19 pueblo, tribe, nation or band that has jurisdiction to issue
20 protection orders; and

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

23 SECTION 7. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2018.