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HOUSE BILL 300

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

INTRODUCED BY

Nate Gentry

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, and the
12 order shall be incorporated into the judgment imposing the
13 sentence 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;

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

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

24 E. A peace officer may arrest without a warrant and
25 take into custody a restrained party whom the peace officer has

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1 probable cause to believe has violated a permanent no contact
2 order that was issued in accordance with this section or that
3 is entitled to full faith and credit.

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

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17 been rescinded.

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20 rescinded, the law enforcement agency shall enter that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

24 I. The remedies provided in this section are in
25 addition to any other civil or criminal remedy available to the

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1 state or to a victim protected by a permanent no contact order.

2 J. As used in this section:

3 (1) "permanent no contact order" means a
4 permanent injunction that prohibits any contact by a defendant
5 with the victim of a sex offense for which the defendant is
6 convicted. The duration of the injunction is the lifetime of
7 the defendant unless rescinded as provided in this section;

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

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

13 (4) "victim" means the person against whom a
14 sex offense was committed.

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

17 "29-15-2. DEFINITIONS.--As used in the Missing Persons
18 Information and Reporting Act:

19 A. "Brittany alert" means a notification relating
20 to an endangered person:

21 (1) who is a missing person; and

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

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

3 C. "clearinghouse" means the missing persons
4 information clearinghouse;

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

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

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

13 (2) is in imminent danger of causing harm to
14 another;

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

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

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

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

25 [~~(6)~~] (7) has Alzheimer's disease, dementia or

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1 another degenerative brain disorder or a brain injury; or

2 [~~(7)~~] (8) has a developmental disability as
3 defined in Subsection A of Section 28-16A-6 NMSA 1978 and that
4 person's health or safety is at risk;

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

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

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

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

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

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

24 J. "missing person report" means information that
25 is:

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

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

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

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

11 M. "reporter" means the person who reports a
12 missing person;

13 N. "silver alert" means a notification relating to
14 an endangered person:

15 (1) who is a missing person;

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

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

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

23 P. "state registrar" means the employee so
24 designated by the public health division of the department of
25 health pursuant to the Vital Statistics Act."

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

3 "30-1-9.1. OFFENSES AGAINST CHILDREN--TOLLING OF STATUTE
4 OF LIMITATIONS.--

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

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

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

19 "30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
20 SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

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

24 (1) the prosecution of a misdemeanor or felony
25 domestic violence offense, including costs associated with

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1 filing a criminal charge against an alleged perpetrator of the
2 offense;

3 (2) the filing, issuance or service of a
4 warrant;

5 (3) the filing, issuance or service of a
6 witness subpoena; or

7 (4) the filing, issuance, registration or
8 service of a protection order.

9 B. The provisions of Subsection A of this section
10 apply to:

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

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

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

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

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

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

25 SECTION 5. Section 40-13A-2 NMSA 1978 (being Laws 2013,

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1 Chapter 47, Section 2) is amended to read:

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

5 A. "foreign protection order" means a protection
6 order issued by a tribunal of another state;

7 B. "issuing state" means the state whose tribunal
8 issues a protection order;

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

13 D. "protected individual" means a person protected
14 by a protection order;

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

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

23 G. "state" means a state of the United States, the
24 District of Columbia, Puerto Rico, the United States Virgin
25 Islands or any territory or insular possession subject to the

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1 jurisdiction of the United States. "State" includes an Indian
2 pueblo, tribe, nation or band that has jurisdiction to issue
3 protection orders; and

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

6 SECTION 6. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2018.

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