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HOUSE BILL 190

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Kelly K. Fajardo

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 CERTAIN SEXUAL OFFENSES AGAINST CHILDREN MUST
COMMENCE WITHIN TEN YEARS AFTER THE VICTIM'S EIGHTEENTH
BIRTHDAY.

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

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1 regarding whether a permanent no contact order should be
2 issued; and

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

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

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

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

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

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

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

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

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

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

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

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

5 J. As used in this section:

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

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

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

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

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

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

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

24 (1) who is a missing person; and

25 (2) about whom there is a clear indication

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

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

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

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

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

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

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

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

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

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

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1 (6) is or was protected by a permanent no
2 contact order issued pursuant to Section 1 of this 2019 act;

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

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

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

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

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

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

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

24 (2) the person voluntarily left the care and
25 control of the custodian without the custodian's consent and

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1 without intent to return;

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

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

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

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

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

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

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

18 (1) who is a missing person;

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

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

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

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

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

6 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A
7 person shall not be prosecuted, tried or punished in any court
8 of this state unless the indictment is found or information or
9 complaint is filed within the time as provided:

10 A. for a second degree felony, within six years
11 from the time the crime was committed;

12 B. for a third or fourth degree felony, within five
13 years from the time the crime was committed;

14 C. for a misdemeanor, within two years from the
15 time the crime was committed;

16 D. for a petty misdemeanor, within one year from
17 the time the crime was committed;

18 E. for any crime against or violation of Section
19 51-1-38 NMSA 1978, within three years from the time the crime
20 was committed;

21 F. for a felony pursuant to Section 7-1-71.3,
22 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
23 crime was committed; provided that for a series of crimes
24 involving multiple filing periods within one calendar year, the
25 limitation shall begin to run on December 31 of the year in

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1 which the crimes occurred;

2 G. for an identity theft crime pursuant to Section
3 30-16-24.1 NMSA 1978, within five years from the time the crime
4 was discovered;

5 H. for a violation of Section 30-9-11 NMSA 1978,
6 when the victim is a child, or Section 30-9-13 NMSA 1978,
7 within ten years after the victim attains the age of eighteen;

8 [~~H.~~] I. for any crime not contained in the Criminal
9 Code or where a limitation is not otherwise provided for,
10 within three years from the time the crime was committed; and

11 [~~H.~~] J. for a capital felony or a first degree
12 violent felony, no limitation period shall exist and
13 prosecution for these crimes may commence at any time after the
14 occurrence of the crime."

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

18 "30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
19 SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

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

23 (1) the prosecution of a misdemeanor or felony
24 domestic violence offense, including costs associated with
25 filing a criminal charge against an alleged perpetrator of the

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1 offense;

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

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

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

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

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

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

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

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

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

22 (6) the violation of a permanent no contact
23 order issued pursuant to Section 1 of this 2019 act."

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

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1 "40-13A-2. DEFINITIONS.--As used in the Uniform
2 Interstate Enforcement of Domestic Violence Protection Orders
3 Act:

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

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

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

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

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

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

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

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1 pueblo, tribe, nation or band that has jurisdiction to issue
2 protection orders; and

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

5 SECTION 6. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2019.

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