

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 328

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

AN ACT

RELATING TO DOMESTIC VIOLENCE; EXPANDING THE CATEGORIES OF
PERSONS WHO CANNOT RECEIVE, TRANSPORT OR POSSESS A FIREARM;
PROVIDING THAT A PERSON SUBJECT TO AN ORDER OF PROTECTION SHALL
NOT POSSESS, CARE FOR OR HAVE CUSTODY OR CONTROL OF A FIREARM;
PROVIDING PENALTIES.

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

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981,
Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
TRANSPORTATION OR POSSESSION BY [~~A FELON~~] CERTAIN PERSONS--
PENALTY.--

A. It is unlawful for [~~a felon~~] the following
persons to receive, transport or possess [~~any~~] a firearm or
destructive device in this state:

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- 1 (1) a felon;
- 2 (2) a person subject to an order of protection
- 3 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or
- 4 (3) a person convicted of any of the following
- 5 crimes:
 - 6 (a) battery against a household member
 - 7 pursuant to Section 30-3-15 NMSA 1978;
 - 8 (b) criminal damage to property of a
 - 9 household member pursuant to Section 30-3-18 NMSA 1978;
 - 10 (c) a first offense of stalking pursuant
 - 11 to Section 30-3A-3 NMSA 1978; or
 - 12 (d) a crime listed in 18 U.S.C. 922.

13 B. ~~[Any person violating the provisions of this~~

14 ~~section]~~ A felon found in possession of a firearm shall be

15 guilty of a fourth degree felony and shall be sentenced in

16 accordance with the provisions of the Criminal Sentencing Act;

17 provided that the violation of and the sentence imposed

18 pursuant to this subsection shall be increased to a violation

19 of and the sentence for a third degree felony if the person has

20 previously been convicted of a capital felony or a serious

21 violent offense provided in ~~[Subparagraphs (a) through (n) of]~~

22 Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978.

23 C. Any person subject to an order of protection

24 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted

25 of a crime listed in Paragraph (3) of Subsection A of this

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1 section who receives, transports or possesses a firearm or
2 destructive device is guilty of a misdemeanor.

3 [~~G-~~] D. As used in this section:

4 (1) except as provided in Paragraph (2) of
5 this subsection, "destructive device" means:

6 (a) any explosive, incendiary or poison
7 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
8 of more than four ounces; 4) missile having an explosive or
9 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
10 similar device;

11 (b) any type of weapon by whatever name
12 known that will, or that may be readily converted to, expel a
13 projectile by the action of an explosive or other propellant,
14 the barrel or barrels of which have a bore of more than one-
15 half inch in diameter, except a shotgun or shotgun shell that
16 is generally recognized as particularly suitable for sporting
17 purposes; or

18 (c) any combination of parts either
19 designed or intended for use in converting any device into a
20 destructive device as defined in this paragraph and from which
21 a destructive device may be readily assembled;

22 (2) the term "destructive device" does not
23 include any device that is neither designed nor redesigned for
24 use as a weapon or any device, although originally designed for
25 use as a weapon, that is redesigned for use as a signaling,

.214626.2

1 pyrotechnic, line throwing, safety or similar device;

2 (3) "felon" means a person convicted of a
3 felony offense by a court of the United States or of any state
4 or political subdivision thereof and:

5 (a) less than ten years have passed
6 since the person completed serving a sentence or period of
7 probation for the felony conviction, whichever is later;

8 (b) the person has not been pardoned for
9 the felony conviction by the proper authority; and

10 (c) the person has not received a
11 deferred sentence; and

12 (4) "firearm" means any weapon that will or is
13 designed to or may readily be converted to expel a projectile
14 by the action of an explosion or the frame or receiver of any
15 such weapon [~~or any firearm muffler or firearm silencer.~~

16 ~~"Firearm" includes any handgun, rifle or shotgun]."~~

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

19 "40-13-2. DEFINITIONS.--As used in the Family Violence
20 Protection Act:

21 A. "continuing personal relationship" means a
22 dating or intimate relationship;

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

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1 C. "court" means the district court of the judicial
2 district where an alleged victim of domestic abuse resides or
3 is found;

4 D. "domestic abuse":

5 (1) means an incident of stalking or sexual
6 assault whether committed by a household member or not;

7 (2) means an incident by a household member
8 against another household member consisting of or resulting in:

- 9 (a) physical harm;
- 10 (b) severe emotional distress;
- 11 (c) bodily injury or assault;
- 12 (d) a threat causing imminent fear of
13 bodily injury by any household member;
- 14 (e) criminal trespass;
- 15 (f) criminal damage to property;
- 16 (g) repeatedly driving by a residence or
17 work place;

- 18 (h) telephone harassment;
- 19 (i) harassment;
- 20 (j) strangulation;
- 21 (k) suffocation; or
- 22 (l) harm or threatened harm to children
23 as set forth in this paragraph; and

24 (3) does not mean the use of force in self-
25 defense or the defense of another;

.214626.2

1 E. "firearm" means any weapon that will or is
2 designed to or may readily be converted to expel a projectile
3 by the action of an explosion or the frame or receiver of any
4 such weapon;

5 ~~[E.]~~ F. "household member" means a spouse, former
6 spouse, parent, present or former stepparent, present or former
7 ~~parent-in-law~~ parent-in-law, grandparent, grandparent-in-law,
8 child, stepchild, grandchild, co-parent of a child or a person
9 with whom the petitioner has had a continuing personal
10 relationship. Cohabitation is not necessary to be deemed a
11 household member for purposes of this section;

12 G. "law enforcement officer" means a public
13 official or public officer vested by law with a duty to
14 maintain public order or to make arrests for crime, whether
15 that duty extends to all crimes or is limited to specific
16 crimes;

17 ~~[F.]~~ H. "mutual order of protection" means an order
18 of protection that includes provisions that protect both
19 parties;

20 ~~[G.]~~ I. "order of protection" means an injunction
21 or a restraining or other court order granted for the
22 protection of a victim of domestic abuse;

23 ~~[H.]~~ J. "protected party" means a person protected
24 by an order of protection;

25 ~~[I.]~~ K. "restrained party" means a person who is

1 restrained by an order of protection;

2 ~~[J-]~~ L. "strangulation" has the same meaning as set
3 forth in Section 30-3-11 NMSA 1978; and

4 ~~[K-]~~ M. "suffocation" has the same meaning as set
5 forth in Section 30-3-11 NMSA 1978."

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

8 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
9 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

10 A. Upon finding that domestic abuse has occurred or
11 upon stipulation of the parties, the court shall enter an order
12 of protection ordering the restrained party to:

13 (1) refrain from abusing the protected party
14 or any other household member; and

15 (2) if the order is issued pursuant to this
16 section and if the court also determines that the restrained
17 party presents a credible threat to the physical safety of the
18 household member after the restrained party has received notice
19 and had an opportunity to be heard or by stipulation of the
20 parties, to:

21 (a) deliver any firearm in the
22 restrained party's possession, care, custody or control to a
23 law enforcement agency, law enforcement officer or federal
24 firearms licensee while the order of protection is in effect;
25 and

.214626.2

1 (b) refrain from purchasing, receiving,
2 or possessing or attempting to purchase, receive or possess any
3 firearm while the order of protection is in effect.

4 B. In an order of protection entered pursuant to
5 Subsection A of this section, the court shall specifically
6 describe the acts the court has ordered the restrained party to
7 do or refrain from doing. As a part of any order of
8 protection, the court may:

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

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

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

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

1 require the parties to account to the court for all such
2 transferances, encumbrances and expenditures made after the
3 order is served or communicated to the restrained party;

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

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

15 (7) order other injunctive relief as the court
16 deems necessary for the protection of a party, including orders
17 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. The order of protection shall contain notice
23 that violation of any provision of the order of protection may
24 be a crime pursuant to federal and state law.

25 ~~[E.]~~ D. If the order of protection supersedes or

1 alters prior orders of the court pertaining to domestic matters
2 between the parties, the order shall say so on its face. If an
3 action relating to child custody or child support is pending or
4 has concluded with entry of an order at the time the petition
5 for an order of protection was filed, the court may enter an
6 initial order of protection, but the portion of the order
7 dealing with child custody or child support will then be
8 transferred to the court that has or continues to have
9 jurisdiction over the pending or prior custody or support
10 action.

11 ~~[D.]~~ E. A mutual order of protection shall be
12 issued only in cases where both parties have petitioned the
13 court and the court makes detailed findings of fact indicating
14 that both parties acted primarily as aggressors and that
15 neither party acted primarily in self-defense.

16 ~~[E.]~~ F. No order issued under the Family Violence
17 Protection Act shall affect title to any property or allow a
18 party to transfer, conceal, encumber or otherwise dispose of
19 another party's property or the joint or community property of
20 the parties.

21 ~~[F.]~~ G. Either party may request a review hearing
22 to amend an order of protection. An order of protection
23 involving child custody or support may be modified without
24 proof of a substantial or material change of circumstances.

25 ~~[G.]~~ H. An order of protection shall not be issued

1 unless a petition or a counter petition has been filed."

2 SECTION 4. A new section of the Family Violence
3 Protection Act is enacted to read:

4 "[NEW MATERIAL] RELINQUISHMENT OF FIREARMS--PENALTY.--

5 A. After the court has issued notice that the
6 restrained party is subject to the provisions of Paragraph (2)
7 of Subsection A of Section 40-13-5 NMSA 1978, the restrained
8 party shall relinquish all firearms in the restrained party's
9 immediate possession or control or subject to the restrained
10 party's possession or control in a safe manner to a law
11 enforcement officer, a law enforcement agency or federal
12 firearms licensee within forty-eight hours of service of the
13 order.

14 B. A law enforcement officer or law enforcement
15 agency shall take possession of all firearms subject to the
16 order of protection that are relinquished by the restrained
17 party or are in plain sight or are discovered pursuant to a
18 lawful search.

19 C. A law enforcement officer or law enforcement
20 agency that takes temporary possession of a firearm pursuant to
21 this section shall:

22 (1) prepare a receipt identifying all firearms
23 that have been relinquished or taken;

24 (2) provide a copy of the receipt to the
25 restrained party;

.214626.2

1 (3) provide a copy of the receipt to the
2 petitioner within seventy-two hours of taking possession of the
3 firearm;

4 (4) file the original receipt with the court
5 that issued the order of protection within seventy-two hours of
6 taking possession of the firearm; and

7 (5) ensure that the law enforcement agency
8 retains a copy of the receipt.

9 D. A court that has probable cause to believe that
10 a restrained party has failed to relinquish a firearm in
11 violation of an order of protection or received or purchased a
12 firearm while subject to the order of protection shall issue a
13 search warrant pursuant to Rule 5-211 NMRA:

14 (1) describing the firearm;

15 (2) authorizing a search of the location where
16 the firearm is reasonably believed to be; and

17 (3) authorizing the seizure of any firearm
18 discovered pursuant to the search.

19 E. An order of protection issued pursuant to
20 Section 40-13-5 NMSA 1978 shall include:

21 (1) a statement that the restrained party
22 shall not purchase, receive, transport, possess or have custody
23 or control of a firearm while the order of protection is in
24 effect;

25 (2) a description of the requirements for the

1 relinquishment of firearms as provided in this section;

2 (3) a statement that within seventy-two hours
3 of the issuance of the order of protection the restrained party
4 must file with the court issuing the order:

5 (a) a receipt identifying all firearms
6 that have been relinquished or taken by a law enforcement
7 officer or law enforcement agency; or

8 (b) a declaration of non-relinquishment;

9 (4) the expiration date of relinquishment;

10 (5) the address of the court that issued the
11 order of protection; and

12 (6) a statement that violation of any
13 provision of the order of protection is a crime pursuant to
14 federal and state law.

15 F. If the respondent is present at the hearing on
16 the order of protection, the court shall provide the respondent
17 with a receipt form to identify all firearms to be surrendered
18 or, if the respondent has no firearms to relinquish, a
19 declaration of non-relinquishment. The court shall accept the
20 completed form from the respondent for immediate filing.

21 G. A law enforcement officer and law enforcement
22 agency shall be immune from civil or criminal liability for any
23 damage or deterioration of firearms stored or transported
24 pursuant to this section. This subsection shall not apply if
25 the damage or deterioration was the result of recklessness,

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1 gross negligence or intentional misconduct by the law
2 enforcement officer or law enforcement agency.

3 H. Evidence establishing ownership or possession of
4 a firearm pursuant to this section shall not be admissible as
5 evidence in any unrelated criminal proceeding.

6 I. The local law enforcement agency shall make a
7 firearm available within thirty days of receipt of a request
8 from a formerly restrained party who is then currently eligible
9 to own and possess a firearm.

10 J. A formerly restrained party who has surrendered
11 or had firearms taken by a law enforcement officer or law
12 enforcement agency pursuant to this section who does not wish
13 the firearm returned or who is no longer eligible to possess a
14 firearm may sell or transfer the firearm to a licensed firearms
15 dealer. The law enforcement agency shall not release the
16 firearm to a licensed firearms dealer until:

17 (1) the licensed firearms dealer has displayed
18 proof that the formerly restrained party has transferred the
19 firearm to the dealer; and

20 (2) the law enforcement agency has verified
21 the transfer with the formerly restrained party.

22 K. A law enforcement agency holding a firearm
23 relinquished pursuant to this section may dispose of the
24 firearm six months from the date of proper notice to the
25 formerly restrained party of the intent to dispose of the

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1 firearm, unless another person claiming to be the lawful owner
2 presents written proof of ownership. If the firearm remains
3 unclaimed after six months from the date of notice, no party
4 shall assert ownership and the law enforcement agency may
5 dispose of the firearm. For the purposes of this subsection,
6 "dispose" means to destroy a firearm or sell or transfer the
7 firearm to a licensed firearms dealer.

8 L. This section shall not affect the ability of a
9 law enforcement officer to remove a firearm from a person
10 pursuant to other lawful authority.

11 M. The administrative office of the courts shall
12 develop a standard receipt form and declaration of non-
13 relinquishment form for use under this section."

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

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