

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

SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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:

.211034.1

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

- 1 (1) a felon;
- 2 (2) a person subject to an order of protection
- 3 pursuant to Section 40-13-5 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) aggravated battery against a
- 9 household member pursuant to Section 30-3-16 NMSA 1978;
- 10 (c) criminal damage to property of a
- 11 household member pursuant to Section 30-3-18 NMSA 1978; or
- 12 (d) stalking pursuant to Section 30-3A-3
- 13 NMSA 1978.

14 B. Any person violating [~~the provisions~~] a

15 provision of this section shall be guilty of a fourth degree

16 felony and shall be sentenced in accordance with the provisions

17 of the Criminal Sentencing Act; provided that the violation of

18 and the sentence imposed pursuant to this subsection shall be

19 increased to a violation of and the sentence for a third degree

20 felony if the person has previously been convicted of a capital

21 felony or a serious violent offense provided in Subparagraphs

22 (a) through (n) of Paragraph (4) of Subsection L of Section

23 33-2-34 NMSA 1978.

24 C. As used in this section:

25 (1) except as provided in Paragraph (2) of

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

1 this subsection, "destructive device" means:

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

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

14 (c) any combination of parts either
15 designed or intended for use in converting any device into a
16 destructive device as defined in this paragraph and from which
17 a destructive device may be readily assembled;

18 (2) the term "destructive device" does not
19 include any device that is neither designed nor redesigned for
20 use as a weapon or any device, although originally designed for
21 use as a weapon, that is redesigned for use as a signaling,
22 pyrotechnic, line throwing, safety or similar device;

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

.211034.1

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

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

6 (c) the person has not received a
7 deferred sentence; and

8 (4) "firearm" means any weapon that will or is
9 designed to or may readily be converted to expel a projectile
10 by the action of an explosion; the frame or receiver of any
11 such weapon; or any firearm muffler or firearm silencer.

12 "Firearm" includes any handgun, rifle or shotgun."

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

15 "40-13-2. DEFINITIONS.--As used in the Family Violence
16 Protection Act:

17 A. "continuing personal relationship" means a
18 dating or intimate relationship;

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

22 C. "court" means the district court of the judicial
23 district where an alleged victim of domestic abuse resides or
24 is found;

25 D. "domestic abuse":

.211034.1

underscored material = new
[bracketed material] = delete

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

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

- 5 (a) physical harm;
- 6 (b) severe emotional distress;
- 7 (c) bodily injury or assault;
- 8 (d) a threat causing imminent fear of
9 bodily injury by any household member;
- 10 (e) criminal trespass;
- 11 (f) criminal damage to property;
- 12 (g) repeatedly driving by a residence or
13 work place;
- 14 (h) telephone harassment;
- 15 (i) harassment;
- 16 (j) strangulation;
- 17 (k) suffocation; or
- 18 (l) harm or threatened harm to children
19 as set forth in this paragraph; and

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

22 E. "firearm" means any weapon that will or is
23 designed to or may readily be converted to expel a projectile
24 by the action of an explosion; the frame or receiver of any
25 such weapon; or any firearm muffler or firearm silencer.

.211034.1

underscored material = new
[bracketed material] = delete

1 "Firearm" includes any handgun, rifle or shotgun;

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

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

14 ~~[F-]~~ H. "mutual order of protection" means an order
15 of protection that includes provisions that protect both
16 parties;

17 ~~[G-]~~ I. "order of protection" means an injunction
18 or a restraining or other court order granted for the
19 protection of a victim of domestic abuse;

20 ~~[H-]~~ J. "protected party" means a person protected
21 by an order of protection;

22 ~~[I-]~~ K. "restrained party" means a person who is or
23 who has been restrained by an order of protection;

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

.211034.1

underscored material = new
[bracketed material] = delete

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

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

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

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

10 (1) refrain from abusing the protected party
11 or any other household member;

12 (2) relinquish any firearm owned by the
13 restrained party or in the restrained party's possession, care,
14 custody or control to a law enforcement officer or law
15 enforcement agency while the order of protection is in effect;
16 and

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

20 B. In any case involving a law enforcement officer
21 who, as a condition of employment, requires the ability to
22 carry a firearm, a court may allow the law enforcement officer
23 to continue to carry a firearm, either on duty or off duty, if
24 the court finds by a preponderance of the evidence that the
25 officer does not pose a threat of harm to a household member.

.211034.1

underscored material = new
[bracketed material] = delete

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

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

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

17 (3) order that the restrained party shall not
18 initiate contact with the protected party;

19 (4) restrain a party from transferring,
20 concealing, encumbering or otherwise disposing of the other
21 party's property or the joint property of the parties except in
22 the usual course of business or for the necessities of life and
23 require the parties to account to the court for all such
24 transferences, encumbrances and expenditures made after the
25 order is served or communicated to the restrained party;

underscored material = new
[bracketed material] = delete

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

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

12 (7) order other injunctive relief as the court
13 deems necessary for the protection of a party, including orders
14 to law enforcement agencies as provided by this section.

15 ~~[B-]~~ D. The order of protection shall contain a
16 notice that violation of any provision of the order constitutes
17 contempt of court and may result in a fine or imprisonment or
18 both.

19 ~~[G-]~~ E. If the order of protection supersedes or
20 alters prior orders of the court pertaining to domestic matters
21 between the parties, the order shall say so on its face. If an
22 action relating to child custody or child support is pending or
23 has concluded with entry of an order at the time the petition
24 for an order of protection was filed, the court may enter an
25 initial order of protection, but the portion of the order

.211034.1

underscored material = new
[bracketed material] = delete

1 dealing with child custody or child support will then be
2 transferred to the court that has or continues to have
3 jurisdiction over the pending or prior custody or support
4 action.

5 ~~[D-]~~ F. A mutual order of protection shall be
6 issued only in cases where both parties have petitioned the
7 court and the court makes detailed findings of fact indicating
8 that both parties acted primarily as aggressors and that
9 neither party acted primarily in self-defense.

10 ~~[E-]~~ G. No order issued under the Family Violence
11 Protection Act shall affect title to any property or allow a
12 party to transfer, conceal, encumber or otherwise dispose of
13 another party's property or the joint or community property of
14 the parties.

15 ~~[F-]~~ H. Either party may request a review hearing
16 to amend an order of protection. An order of protection
17 involving child custody or support may be modified without
18 proof of a substantial or material change of circumstances.

19 ~~[G-]~~ I. An order of protection shall not be issued
20 unless a petition or a counter petition has been filed."

21 **SECTION 4.** A new section of the Family Violence
22 Protection Act is enacted to read:

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

24 A. A restrained party served with an order of
25 protection pursuant to Section 40-13-6 NMSA 1978 shall, upon

.211034.1

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

1 request of a law enforcement officer, immediately surrender to
2 the control of the law enforcement officer in a safe manner any
3 firearm owned by the restrained party, in the restrained
4 party's immediate possession or control or subject to the
5 restrained party's possession or control.

6 B. A law enforcement officer serving an order of
7 protection that indicates that the restrained party owns or
8 possesses a firearm shall request that all firearms owned by
9 the restrained party, in the restrained party's immediate
10 possession or control or subject to the restrained party's
11 possession or control, be immediately surrendered, and the
12 officer shall take possession of all firearms that are
13 surrendered, in plain sight or discovered pursuant to a lawful
14 search.

15 C. If a restrained party does not surrender a
16 firearm owned by the restrained party or in the restrained
17 party's possession, custody or control to a law enforcement
18 officer at the time of service of the order of protection
19 because the firearm was not present, or because the restrained
20 party was not present when service was effected or was served
21 at the hearing, the restrained party shall surrender the
22 firearm to the control of a law enforcement officer or law
23 enforcement agency in a safe manner within forty-eight hours of
24 being served with the order of protection pursuant to Section
25 40-13-6 NMSA 1978.

.211034.1

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

1 D. A law enforcement officer or law enforcement
2 agency that takes possession of a firearm pursuant to this
3 section shall:

4 (1) prepare a receipt identifying all firearms
5 that have been surrendered or seized;

6 (2) provide a copy of the receipt to the
7 restrained party;

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

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

14 (5) ensure that the law enforcement agency
15 retains a copy of the receipt.

16 E. A restrained party who does not own or have
17 possession, control or custody of a firearm shall file a
18 declaration of non-relinquishment with the court that issued
19 the order of protection and the law enforcement agency that
20 served the order of protection. The law enforcement agency
21 that served the order of protection shall provide a copy of the
22 declaration of non-relinquishment to the petitioner within five
23 days of receipt.

24 F. A court that has probable cause to believe that
25 a restrained party has failed to surrender a firearm in

.211034.1

1 violation of an order of protection or received or purchased a
2 firearm while subject to the order of protection shall issue a
3 search warrant pursuant to Rule 5-211 NMRA:

4 (1) describing the firearm;

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

7 (3) authorizing the seizure of any firearm
8 discovered pursuant to the search.

9 G. An order of protection issued pursuant to
10 Section 40-13-5 NMSA 1978 shall include:

11 (1) a statement that the restrained party
12 shall not purchase, receive, transport, possess or have custody
13 or control of a firearm while the order of protection is in
14 effect;

15 (2) a description of the requirements for the
16 relinquishment of firearms as provided in this section;

17 (3) a statement that within seventy-two hours
18 of service of the order of protection the restrained party must
19 file with the court issuing the order:

20 (a) a receipt identifying all firearms
21 that have been surrendered or seized by a law enforcement
22 officer or law enforcement agency; or

23 (b) a declaration of non-relinquishment;

24 (4) the expiration date of relinquishment;

25 (5) the address of the court that issued the

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

1 order of protection; and

2 (6) a statement that violation of any
3 provision of the order of protection shall subject the
4 restrained party to criminal liability.

5 H. A law enforcement officer and law enforcement
6 agency shall be immune from civil or criminal liability for any
7 damage or deterioration of firearms stored or transported
8 pursuant to this section. This subsection shall not apply if
9 the damage or deterioration was the result of recklessness,
10 gross negligence or intentional misconduct by the law
11 enforcement officer or law enforcement agency.

12 I. Evidence establishing ownership or possession of
13 a firearm pursuant to this section shall not be admissible as
14 evidence in any unrelated criminal proceeding.

15 J. The local law enforcement agency shall make a
16 firearm available within thirty days of receipt of a request
17 from a restrained party who is then currently eligible to own
18 and possess a firearm.

19 K. A restrained party who has surrendered or had
20 firearms seized by a law enforcement officer or law enforcement
21 agency pursuant to this section who does not wish the firearm
22 returned or who is no longer eligible to possess a firearm may
23 sell or transfer the firearm to a licensed firearms dealer.
24 The law enforcement agency shall not release the firearm to a
25 licensed firearms dealer until:

.211034.1

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

1 (1) the licensed firearms dealer has displayed
2 proof that the restrained party has transferred the firearm to
3 the dealer; and

4 (2) the law enforcement agency has verified
5 the transfer with the restrained party.

6 L. If a person other than the restrained party
7 claims title to a firearm surrendered or seized pursuant to
8 this section, and the person is determined by the law
9 enforcement agency to be the lawful owner of the firearm, the
10 firearm shall be returned to that person.

11 M. A law enforcement agency holding a firearm
12 relinquished pursuant to this section may dispose of the
13 firearm six months from the date of proper notice to the
14 restrained party of the intent to dispose of the firearm,
15 unless the firearm is claimed by the lawful owner. If the
16 firearm remains unclaimed after six months from the date of
17 notice, no party shall assert ownership and the law enforcement
18 agency may dispose of the firearm. For the purposes of this
19 subsection, "dispose" means to destroy a firearm or sell or
20 transfer the firearm to a licensed firearms dealer.

21 N. This section shall not affect the ability of a
22 law enforcement officer to remove a firearm from a person
23 pursuant to other lawful authority.

24 O. The administrative office of the courts shall
25 develop a standard receipt form and declaration of non-

.211034.1

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

1 relinquishment form for use under this section."

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

4 - 16 -

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