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SENATE BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DOMESTIC AFFAIRS; AMENDING THE FAMILY VIOLENCE PROTECTION ACT; DEFINING "CREDIBLE THREAT" FOR THE PURPOSES OF A COURT'S ISSUANCE OF A DOMESTIC VIOLENCE ORDER OF PROTECTION; MAKING CONFORMING AMENDMENTS.

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

SECTION 1. Section 40-13-5 NMSA 1978 (being Laws 1987, Chapter 286, Section 5, as amended) is amended to read:

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

A. [~~Upon finding~~] If a court hearing a petition for an order of protection determines that domestic abuse has occurred, or upon stipulation of the parties, the court shall [~~enter~~] issue an order of protection ordering the restrained party to [~~(1)~~] refrain from abusing the protected party or [~~any~~

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1 ~~other~~] another household member. [~~and~~

2 ~~(2)~~] B. If [~~the~~] an order of protection is issued
3 pursuant to Subsection A of this section and if the court also
4 determines, or the parties stipulate, that the restrained party
5 presents a credible threat to [~~the physical safety of the~~] a
6 household member [~~after~~] and that the restrained party has
7 received notice and had an opportunity to be heard, [~~or by~~
8 ~~stipulation of the parties~~] the court shall order the
9 restrained party to:

10 [~~(a)~~] (1) deliver [~~any firearm~~] firearms in
11 the restrained party's possession, care, custody or control to
12 a law enforcement agency, law enforcement officer or federal
13 firearms licensee to be held while the order of protection is
14 in effect; and

15 [~~(b)~~] (2) refrain from purchasing, receiving,
16 or possessing or attempting to purchase, receive or possess
17 [~~any~~] a firearm while the order of protection is in effect.

18 C. As used in this section, "credible threat" means
19 a condition or situation that causes a reasonable person, based
20 on the totality of the circumstances, to fear for the person's
21 physical safety or for the physical safety of another and may
22 be evidenced by a statement, an act or a course of conduct
23 attributed to the respondent and does not require the use or
24 threatened use of a firearm.

25 [~~B.—In~~] D. An order of protection entered pursuant

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

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

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

17 (3) [~~order that~~] prohibit the restrained party
18 [~~shall not initiate~~] from initiating contact with the protected
19 party;

20 (4) restrain a party from transferring,
21 concealing, encumbering or otherwise disposing of the other
22 party's property or the joint or community property of the
23 parties except when done in the usual course of business or for
24 the necessities of life, and require the parties to account to
25 the court for [~~all such transferences~~] transfers, encumbrances

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1 [and] or expenditures made [~~after~~] while the order is [~~served~~
2 ~~or communicated to the restrained party~~] in effect;

3 (5) [~~order~~] require the restrained party to
4 reimburse the protected party or [~~any other~~] another household
5 member for expenses reasonably related to the [~~occurrence of~~]
6 domestic abuse that gave rise to the order of protection,
7 including medical expenses, counseling expenses, [~~the expense~~
8 ~~of~~] expenses for seeking temporary shelter, expenses for the
9 replacement or repair of damaged property or [~~the expense of~~]
10 lost wages;

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

17 (7) order other injunctive relief [~~as~~] the
18 court deems necessary for the protection of a party, including
19 orders to law enforcement agencies. [~~as provided by this~~
20 ~~section~~

21 G.] E. The order of protection shall contain notice
22 that a violation of [~~any provision of~~] the order of protection
23 [~~is~~] constitutes a separate violation of state [~~law~~] and [~~that~~]
24 federal law [~~18 U.S.C. 922, et seq., prohibits~~] that prohibit
25 the possession of firearms by certain persons.

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1 ~~[D.]~~ F. If ~~[the]~~ an order of protection supersedes
2 or alters a prior ~~[orders]~~ order of the court pertaining to
3 domestic matters between the parties, the order shall say so on
4 its face. If an action relating to child custody or child
5 support is pending or ~~[has concluded with entry of an]~~ if a
6 child custody or child support order is in effect at the time
7 the petition for an order of protection ~~[was]~~ is filed, the
8 court may enter an initial order of protection, but ~~[the~~
9 ~~portion of the order]~~ final determination on the issues dealing
10 with child custody or child support ~~[will then]~~ shall be
11 ~~[transferred to]~~ made by the court ~~[that has or continues to~~
12 ~~have]~~ with jurisdiction over the pending action or ~~[prior]~~ the
13 child custody or child support ~~[action]~~ order.

14 ~~[E.]~~ G. A mutual order of protection ~~[shall]~~ may be
15 issued only ~~[in cases where]~~ if both parties ~~[have petitioned~~
16 ~~the court]~~ file petitions for orders of protection and the
17 court makes detailed findings of fact indicating that both
18 parties acted ~~[primarily]~~ as aggressors and that neither party
19 acted primarily in self-defense.

20 ~~[F.—No]~~ H. An order issued ~~[under]~~ pursuant to the
21 Family Violence Protection Act shall not affect title to ~~[any]~~
22 property or allow a party to transfer, conceal, encumber or
23 otherwise dispose of another party's property or the joint or
24 community property of the parties.

25 ~~[G.—Either]~~ I. A party may request a review

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1 hearing to amend an order of protection. An order of
2 protection involving child custody or child support may be
3 modified without proof of a substantial or material change of
4 circumstances.

5 [H.] J. An order of protection shall not be issued
6 unless a petition or [a] counter petition has been filed."

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