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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 TO CHANGE THE DEFINED TERM "DOMESTIC ABUSE" TO "ABUSE" AND TO EXPAND THE DEFINITION; MAKING CONFORMING AMENDMENTS.

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

SECTION 1. Section 40-13-1.1 NMSA 1978 (being Laws 2002, Chapter 34, Section 2 and Laws 2002, Chapter 35, Section 2) is amended to read:

"40-13-1.1. LEGISLATIVE FINDINGS--STATE POLICY--DUAL ARRESTS.--The legislature finds that [~~domestic~~] abuse incidents are complex and require special training on the part of law enforcement officers to respond appropriately to [~~domestic~~] abuse incidents. The state [~~of New Mexico~~] discourages dual arrests of persons involved in incidents of [~~domestic~~] abuse.

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1 A law enforcement officer, in making arrests for [~~domestic~~]  
2 abuse, shall seek to identify and shall consider whether one of  
3 the parties acted in self defense."

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

6 "40-13-2. DEFINITIONS.--As used in the Family Violence  
7 Protection Act:

8 A. "abuse" means:

9 (1) an incident or pattern of stalking or  
10 sexual assault, whether committed by a household member or not;  
11 or

12 (2) an incident or pattern of behavior by a  
13 household member against another household member consisting of  
14 or resulting in:

15 (a) physical harm, including temporary  
16 or permanent bodily injury;

17 (b) battery, assault or threats causing  
18 fear of imminent physical harm;

19 (c) strangulation or suffocation;

20 (d) severe emotional distress, including  
21 fear, depression, anxiety or loss of sleep;

22 (e) harassment or intimidation,  
23 including the act of repeatedly driving by a residence or  
24 workplace of another without a lawful purpose or the act of  
25 following another in a public place;

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1                    (f) telephone harassment, internet  
2 harassment or harassment through other digital or electronic  
3 means;

4                    (g) kidnapping, false imprisonment or  
5 the restriction or prohibition of movement;

6                    (h) interference with communication;

7                    (i) exploitation or forced criminal  
8 activity;

9                    (j) criminal damage to or deprivation of  
10 real or personal property of another or damage to jointly owned  
11 or community property;

12                    (k) harm or threatened harm to children;

13                    (l) harm or threatened harm to an  
14 animal;

15                    (m) unauthorized distribution of  
16 sensitive images;

17                    (n) criminal trespass; or

18                    (o) threats to disclose immigration  
19 status;

20                    [~~A-~~] B. "continuing personal relationship" means a  
21 dating or intimate relationship;

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

25                    [~~G-~~] D. "court" means the district court of the

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1 judicial district where an alleged victim of [~~domestic~~] abuse  
2 resides or is found;

3 [~~D. "domestic abuse":~~

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

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

8 ~~(a) physical harm;~~

9 ~~(b) severe emotional distress;~~

10 ~~(c) bodily injury or assault;~~

11 ~~(d) a threat causing imminent fear of~~  
12 ~~bodily injury by any household member;~~

13 ~~(e) criminal trespass;~~

14 ~~(f) criminal damage to property;~~

15 ~~(g) repeatedly driving by a residence or~~  
16 ~~work place;~~

17 ~~(h) telephone harassment;~~

18 ~~(i) harassment;~~

19 ~~(j) strangulation;~~

20 ~~(k) suffocation; or~~

21 ~~(l) harm or threatened harm to children~~  
22 ~~as set forth in this paragraph; and~~

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

25 E. "firearm" means any weapon that will or is

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1 designed to or may readily be converted to expel a projectile  
2 by the action of an explosion or the frame or receiver of any  
3 such weapon;

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

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

16 H. "mutual order of protection" means an order of  
17 protection that includes provisions that protect both parties;

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

21 J. "protected party" means a person protected by an  
22 order of protection;

23 K. "restrained party" means a person who is  
24 restrained by an order of protection;

25 L. "strangulation" has the same meaning as set

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1       forth in Section 30-3-11 NMSA 1978; and

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

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

6               "40-13-3. PETITION FOR ORDER OF PROTECTION--CONTENTS--  
7       STANDARD FORMS.--

8               A. A victim of [~~domestic~~] abuse may petition the  
9       court under the Family Violence Protection Act for an order of  
10      protection.

11              B. The petition shall be made under oath or shall  
12      be accompanied by a sworn affidavit setting out specific facts  
13      showing the alleged [~~domestic~~] abuse.

14              C. The petition shall state whether any other  
15      domestic action is pending between the petitioner and the  
16      respondent.

17              D. If any other domestic action is pending between  
18      the petitioner and the respondent, the parties shall not be  
19      compelled to mediate any aspect of the case arising from the  
20      Family Violence Protection Act unless the court finds that  
21      appropriate safeguards exist to protect each of the parties and  
22      that both parties can fairly mediate with such safeguards.

23              E. An action brought under the Family Violence  
24      Protection Act is independent of any proceeding for annulment,  
25      separation or divorce between the parties.

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1 F. Remedies granted pursuant to the Family Violence  
2 Protection Act are in addition to and shall not limit other  
3 civil or criminal remedies available to the parties.

4 G. Standard simplified petition forms with  
5 instructions for completion shall be available to all parties.  
6 Law enforcement agencies shall keep such forms and make them  
7 available upon request to alleged victims of [~~domestic~~] abuse."

8 SECTION 4. Section 40-13-3.1 NMSA 1978 (being Laws 1995,  
9 Chapter 176, Section 1, as amended) is amended to read:

10 "40-13-3.1. FORBEARANCE OF COSTS ASSOCIATED WITH  
11 [~~DOMESTIC~~] ABUSE OFFENSES.--

12 A. An alleged victim of [~~domestic~~] abuse shall not  
13 be required to bear the cost of:

14 (1) the prosecution of a misdemeanor or felony  
15 offense arising out of an incident of [~~domestic~~] abuse,  
16 including costs associated with filing a criminal charge  
17 against the alleged perpetrator of the abuse;

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

20 (3) the filing, issuance or service of a  
21 witness subpoena;

22 (4) the filing, issuance or service of a  
23 petition for an order of protection;

24 (5) the filing, issuance or service of an  
25 order of protection; or

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1 (6) obtaining law enforcement reports or  
2 photographs or copies of photographs relating to the alleged  
3 abuse or pattern of abuse.

4 B. No witness fee shall be charged where prohibited  
5 by federal law."

6 SECTION 5. Section 40-13-3.2 NMSA 1978 (being Laws 1999,  
7 Chapter 142, Section 2, as amended) is amended to read:

8 "40-13-3.2. EX PARTE EMERGENCY ORDERS OF PROTECTION.--

9 A. The district court may issue an ex parte written  
10 emergency order of protection when a law enforcement officer  
11 states to the court in person, by telephone or via facsimile  
12 and files a sworn written statement, setting forth the need for  
13 an emergency order of protection, and the court finds  
14 reasonable grounds to believe that the alleged victim or the  
15 alleged victim's child is in immediate danger of [~~domestic~~]  
16 abuse following an incident of [~~domestic~~] abuse. The written  
17 statement shall include the location and telephone number of  
18 the alleged perpetrator, if known.

19 B. A law enforcement officer who receives an  
20 emergency order of protection, whether in writing, by telephone  
21 or by facsimile transmission, from the court shall:

22 (1) if necessary, pursuant to the judge's oral  
23 approval, write and sign the order on an approved form;

24 (2) if possible, immediately serve a signed  
25 copy of the order on the restrained party and complete the

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1 appropriate affidavit of service;

2 (3) immediately provide the protected party  
3 with a signed copy of the order; and

4 (4) provide the original order to the court by  
5 the close of business on the next judicial day.

6 C. The court may grant the following relief in an  
7 emergency order of protection upon a probable cause finding  
8 that [~~domestic~~] abuse has occurred:

9 (1) enjoin the restrained party from  
10 threatening to commit or committing acts of [~~domestic~~] abuse  
11 against the protected party or any designated household  
12 members;

13 (2) enjoin the restrained party from any  
14 contact with the protected party, including harassing,  
15 telephoning, contacting or otherwise communicating with the  
16 protected party; and

17 (3) grant temporary custody of any minor child  
18 in common with the parties to the protected party, if  
19 necessary.

20 D. A district judge shall be available as  
21 determined by each judicial district to hear petitions for  
22 emergency orders of protection.

23 E. An emergency order of protection expires  
24 seventy-two hours after issuance or at the end of the next  
25 judicial day, whichever time is latest. The expiration date

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1 shall be clearly stated on the emergency order of protection.

2 F. A person may appeal the issuance of an emergency  
3 order of protection to the court that issued the order. An  
4 appeal may be heard as soon as the judicial day following the  
5 issuance of the order.

6 G. Upon a proper petition, a district court may  
7 issue a temporary order of protection that is based upon the  
8 same incident of [~~domestic~~] abuse that was alleged in an  
9 emergency order of protection.

10 H. Emergency orders of protection are enforceable  
11 in the same manner as other orders of protection issued  
12 pursuant to the provisions of the Family Violence Protection  
13 Act."

14 SECTION 6. Section 40-13-4 NMSA 1978 (being Laws 1987,  
15 Chapter 286, Section 4, as amended) is amended to read:

16 "40-13-4. TEMPORARY ORDER OF PROTECTION--HEARING--  
17 DISMISSAL.--

18 A. Upon the filing of a petition for order of  
19 protection, the court shall:

20 (1) immediately grant an ex parte temporary  
21 order of protection without bond if there is probable cause  
22 from the specific facts shown by the affidavit or by the  
23 petition to give the judge reason to believe that an act of  
24 [~~domestic~~] abuse has occurred and:

25 [~~(2)~~] (a) cause the temporary order of

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1 protection together with notice of hearing to be served  
2 immediately on the alleged perpetrator of the [~~domestic~~] abuse;  
3 and

4 [~~(3)~~] (b) within ten days after the  
5 granting of the temporary order of protection, hold a hearing  
6 on the question of continuing the order; or

7 [~~(4)~~] (2) if an ex parte order is not granted,  
8 serve notice to appear upon the parties and hold a hearing on  
9 the petition for order of protection within seventy-two hours  
10 after the filing of the petition; provided if notice of hearing  
11 cannot be served within seventy-two hours, the temporary order  
12 of protection shall be automatically extended for ten days.

13 B. If the court grants a temporary order of  
14 protection, it may award temporary custody and visitation of  
15 any children involved when appropriate.

16 C. Except for petitions alleging stalking or sexual  
17 assault, if the court finds that the alleged perpetrator is not  
18 a household member, the court shall dismiss the petition."

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

21 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE  
22 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

23 A. Upon finding that [~~domestic~~] abuse has occurred  
24 or upon stipulation of the parties, the court shall enter an  
25 order of protection ordering the restrained party to:

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

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

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

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

17 B. In an order of protection entered pursuant to  
18 Subsection A of this section, the court shall specifically  
19 describe the acts the court has ordered the restrained party to  
20 do or refrain from doing. As a part of any order of  
21 protection, the court may:

22 (1) grant sole possession of the residence or  
23 household to the protected party during the period the order of  
24 protection is effective or order the restrained party to  
25 provide temporary suitable alternative housing for the

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1 protected party and any children to whom the restrained party  
2 owes a legal obligation of support;

3 (2) award temporary custody of any children  
4 involved when appropriate and provide for visitation rights,  
5 child support and temporary support for the protected party on  
6 a basis that gives primary consideration to the safety of the  
7 protected party and the children;

8 (3) order that the restrained party shall not  
9 initiate contact with the protected party;

10 (4) restrain a party from transferring,  
11 concealing, encumbering or otherwise disposing of the other  
12 party's property or the joint property of the parties except in  
13 the usual course of business or for the necessities of life and  
14 require the parties to account to the court for all such  
15 transferences, encumbrances and expenditures made after the  
16 order is served or communicated to the restrained party;

17 (5) order the restrained party to reimburse  
18 the protected party or any other household member for expenses  
19 reasonably related to the occurrence of [~~domestic~~] abuse,  
20 including medical expenses, counseling expenses, the expense of  
21 seeking temporary shelter, expenses for the replacement or  
22 repair of damaged property or the expense of lost wages;

23 (6) order the restrained party to participate  
24 in, at the restrained party's expense, professional counseling  
25 programs deemed appropriate by the court, including counseling

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1 programs for perpetrators of [~~domestic~~] abuse, alcohol abuse or  
2 abuse of controlled substances; and

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

6 C. The order of protection shall contain notice  
7 that violation of any provision of the order of protection is a  
8 violation of state law and that federal law, 18 U.S.C. 922, et  
9 seq., prohibits possession of firearms by certain persons.

10 D. If the order of protection supersedes or alters  
11 prior orders of the court pertaining to domestic matters  
12 between the parties, the order shall say so on its face. If an  
13 action relating to child custody or child support is pending or  
14 has concluded with entry of an order at the time the petition  
15 for an order of protection was filed, the court may enter an  
16 initial order of protection, but the portion of the order  
17 dealing with child custody or child support will then be  
18 transferred to the court that has or continues to have  
19 jurisdiction over the pending or prior custody or support  
20 action.

21 E. A mutual order of protection shall be issued  
22 only in cases where both parties have petitioned the court and  
23 the court makes detailed findings of fact indicating that both  
24 parties acted primarily as aggressors and that neither party  
25 acted primarily in self-defense.

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1           F. No order issued under the Family Violence  
2 Protection Act shall affect title to any property or allow a  
3 party to transfer, conceal, encumber or otherwise dispose of  
4 another party's property or the joint or community property of  
5 the parties.

6           G. Either party may request a review hearing to  
7 amend an order of protection. An order of protection involving  
8 child custody or support may be modified without proof of a  
9 substantial or material change of circumstances.

10           H. An order of protection shall not be issued  
11 unless a petition or a counter petition has been filed."

12           SECTION 8. Section 40-13-6 NMSA 1978 (being Laws 1987,  
13 Chapter 286, Section 6, as amended) is amended to read:

14           "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES  
15 NOT EXCLUSIVE.--

16           A. An order of protection granted under the Family  
17 Violence Protection Act shall be filed with the clerk of the  
18 court, and a copy shall be sent by the clerk to the local law  
19 enforcement agency. The order shall be personally served upon  
20 the restrained party, unless the restrained party or the  
21 restrained party's attorney was present at the time the order  
22 was issued. The order shall be filed and served without cost  
23 to the protected party.

24           B. A local law enforcement agency receiving an  
25 order of protection from the clerk of the court that was issued

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1 under the Family Violence Protection Act shall have the order  
2 entered in the national crime information center's order of  
3 protection file within seventy-two hours of receipt. This does  
4 not include temporary orders of protection entered pursuant to  
5 the provisions of Section 40-13-4 NMSA 1978.

6 C. An order of protection granted by the court  
7 involving custody or support shall be effective for a fixed  
8 period of time not to exceed six months. The order may be  
9 extended for good cause upon motion of the protected party for  
10 an additional period of time not to exceed six months.

11 Injunctive orders shall continue until modified or rescinded  
12 upon motion by either party or until the court approves a  
13 subsequent consent agreement entered into by the parties.

14 D. A peace officer may arrest without a warrant and  
15 take into custody a restrained party [~~whom~~] who the peace  
16 officer has probable cause to believe has violated an order of  
17 protection that is issued pursuant to the Family Violence  
18 Protection Act or entitled to full faith and credit.

19 E. A restrained party convicted of violating an  
20 order of protection granted by a court under the Family  
21 Violence Protection Act is guilty of a misdemeanor and shall be  
22 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a  
23 second or subsequent conviction, an offender shall be sentenced  
24 to a jail term of not less than seventy-two consecutive hours  
25 that shall not be suspended, deferred or taken under

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1       advisement.

2                   F. In addition to any other punishment provided in  
3 the Family Violence Protection Act, the court shall order a  
4 person convicted to make full restitution to the party injured  
5 by the violation of an order of protection and shall order the  
6 person convicted to participate in and complete a program of  
7 professional counseling, at the person's own expense, if  
8 possible.

9                   G. In addition to charging the person with  
10 violating an order of protection, a peace officer shall file  
11 all other possible criminal charges arising from an incident of  
12 [~~domestic~~] abuse when probable cause exists.

13                   H. The remedies provided in the Family Violence  
14 Protection Act are in addition to any other civil or criminal  
15 remedy available to the protected party or the state."

16                   SECTION 9. Section 40-13-7 NMSA 1978 (being Laws 1987,  
17 Chapter 286, Section 7, as amended) is amended to read:

18                   "40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY  
19 ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO  
20 VICTIMS WHEN AN ALLEGED PERPETRATOR IS RELEASED FROM  
21 DETENTION--STATEMENT IN JUDGMENT AND SENTENCE DOCUMENT.--

22                   A. A person who allegedly has been a victim of  
23 [~~domestic~~] abuse may request the assistance of a local law  
24 enforcement agency.

25                   B. A local law enforcement officer responding to

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1 the request for assistance shall be required to take whatever  
2 steps are reasonably necessary to protect the victim from  
3 further [~~domestic~~] abuse, including:

4 (1) advising the victim of the remedies  
5 available under the Family Violence Protection Act; the right  
6 to file a written statement, a criminal complaint and a request  
7 for an arrest warrant; and the availability of domestic  
8 violence shelters, medical care, counseling and other services;

9 (2) upon the request of the victim, providing  
10 or arranging for transportation of the victim to a medical  
11 facility or place of shelter;

12 (3) upon the request of the victim,  
13 accompanying the victim to the victim's residence to obtain the  
14 victim's clothing and personal effects required for immediate  
15 needs and the clothing and personal effects of any children  
16 then in the care of the victim;

17 (4) upon the request of the victim, assist in  
18 placing the victim in possession of the dwelling or premises or  
19 otherwise assist in execution, enforcement or service of an  
20 order of protection;

21 (5) arresting the alleged perpetrator when  
22 appropriate and including a written statement in the attendant  
23 police report to indicate that the arrest of the alleged  
24 perpetrator was, in whole or in part, premised upon probable  
25 cause to believe that the alleged perpetrator committed

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1 [domestic] abuse against the victim and, when appropriate,  
2 indicate that the party arrested was the predominant aggressor;  
3 and

4 (6) advising the victim when appropriate of  
5 the procedure for initiating proceedings under the Family  
6 Violence Protection Act or criminal proceedings and of the  
7 importance of preserving evidence.

8 C. The jail or detention center shall make a  
9 reasonable attempt to notify the arresting law enforcement  
10 agency or officer when the alleged perpetrator is released from  
11 custody. The arresting law enforcement agency shall make a  
12 reasonable attempt to notify the victim that the alleged  
13 perpetrator is released from custody.

14 D. Any law enforcement officer responding to a  
15 request for assistance under the Family Violence Protection Act  
16 is immune from civil liability to the extent allowed by law.  
17 Any jail, detention center or law enforcement agency that makes  
18 a reasonable attempt to provide notification that an alleged  
19 perpetrator is released from custody is immune from civil  
20 liability to the extent allowed by law.

21 E. A statement shall be included in a judgment and  
22 sentence document to indicate when a conviction results from  
23 the commission of [domestic] abuse."

24 SECTION 10. Section 40-13-7.1 NMSA 1978 (being Laws  
25 2005, Chapter 281, Section 1) is amended to read:

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1 "40-13-7.1. MEDICAL PERSONNEL--DOCUMENTATION OF  
2 [~~DOMESTIC~~] ABUSE.--

3 A. When medical personnel who are interviewing,  
4 examining, attending or treating a person:

5 (1) receive a report from the person of an act  
6 of [~~domestic~~] abuse, the medical personnel shall document the  
7 nature of the abuse and the name of the alleged perpetrator of  
8 the abuse in the person's medical file and shall provide the  
9 person with information and referral to services for victims of  
10 [~~domestic~~] abuse; or

11 (2) may have reason to believe or suspect that  
12 the person is a victim of [~~domestic~~] abuse, the medical  
13 personnel shall provide the person with information and  
14 referral to services for victims of [~~domestic~~] abuse.

15 B. Medical and other health-care-related  
16 information or communications concerning [~~domestic~~] abuse of a  
17 person obtained by or from medical personnel during the course  
18 of an interview, examination, diagnosis or treatment are  
19 confidential communications unless released:

20 (1) with the prior written consent of the  
21 person;

22 (2) pursuant to a court order; or

23 (3) when necessary to provide treatment,  
24 payment and operations in accordance with the federal Health  
25 Insurance Portability and Accountability Act.

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C. As used in this section, "medical personnel"

means:

- (1) licensed health care practitioners;
  - (2) licensed emergency medical technicians;
  - (3) health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners;
- and
- (4) residents and interns."