

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 268

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO ORDERS OF PROTECTION; ALLOWING FOR THE USE OF
EXCLUSION ZONES MONITORED BY A GLOBAL POSITIONING SATELLITE
TRACKING SYSTEM UPON VIOLATION OF AN ORDER OF PROTECTION;
CREATING THE DOMESTIC VIOLENCE SURVEILLANCE FUND; MAKING AN
APPROPRIATION.

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

SECTION 1. A new section of the Family Violence
Protection Act is enacted to read:

"[NEW MATERIAL] USE OF GLOBAL POSITIONING SATELLITE
TRACKING SYSTEM UPON VIOLATION OF AN ORDER OF PROTECTION.--

A. When a restrained party has been found to
violate an order of protection and is not facing criminal
charges for that violation, the court may, in addition to other
remedies, establish geographic exclusion zones into which the

1 restrained party cannot enter. The scope and area encompassed
2 by the exclusion zone shall be determined by the court and may
3 include:

- 4 (1) the protected party's residence;
- 5 (2) the protected party's place of employment;
- 6 (3) the protected party's school, college or
7 other place for education or training;
- 8 (4) the protected party's child's or
9 children's school, college, or other place for education or
10 training, taking into account the underlying order of
11 protection; and
- 12 (5) other areas that the court determines are
13 necessary for the safety of the protected party.

14 B. If a restrained party enters an exclusion zone,
15 the restrained party shall be considered to have violated the
16 order of protection, unless the court finds that the entry into
17 the exclusion zone was inadvertent or otherwise permissible.

18 C. An order establishing an exclusion zone issued
19 by the court involving custody or support shall be effective
20 for a fixed period of time not to exceed six months. The order
21 may be extended for good cause upon motion of the protected
22 party for an additional period of time not to exceed six
23 months.

24 D. To enforce the exclusion zones, the court may
25 order that the restrained party wear a global positioning

1 satellite tracking device designed to transmit and record the
 2 restrained party's location data. If the restrained party
 3 enters a court-defined exclusion zone, the restrained party's
 4 location data shall be immediately transmitted to the protected
 5 party, law enforcement and the corrections department.

6 E. The administrative office of the courts shall
 7 operate, or contract with a third party to operate, a global
 8 positioning satellite tracking system. The global positioning
 9 satellite tracking system used pursuant to this section shall
 10 use the best available global positioning satellite technology
 11 with the capability to:

12 (1) immediately notify law enforcement or
 13 other monitors of any breach of the court-ordered exclusion
 14 zone boundaries;

15 (2) notify the protected party in near-real
 16 time of any breach;

17 (3) allow monitors to speak to the restrained
 18 party through a cell phone or similar technology implanted in
 19 the global positioning system device; and

20 (4) activate a loud alarm to warn the
 21 protected party of the restrained party's presence in an
 22 exclusion zone."

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

25 "[NEW MATERIAL] DOMESTIC VIOLENCE SURVEILLANCE FUND--

.200918.2

1 COSTS--ADMINISTRATION--USE OF MONEY IN FUND.--

2 A. The "domestic violence surveillance fund" is
3 created in the state treasury to be administered by the
4 administrative office of the courts.

5 B. If the court orders the establishment of an
6 exclusion zone monitored by a global positioning satellite
7 tracking system, the court shall order the use of a global
8 positioning satellite tracking system. The administrative
9 office of the courts may collect costs for the use of the
10 global positioning satellite tracking system on the restrained
11 party, which shall be determined based on the restrained
12 party's financial ability to pay. The costs shall be in
13 addition to any other penalties that may be imposed for the
14 violation of an order of protection. The money collected for
15 costs shall be deposited in the domestic violence surveillance
16 fund.

17 C. All balances in the domestic violence
18 surveillance fund are appropriated to the administrative office
19 of the courts for the primary purpose of employing personnel
20 and purchasing equipment and services to establish and maintain
21 the global positioning satellite tracking system established in
22 Section 1 of this 2015 act.

23 D. Payments from the domestic violence surveillance
24 fund shall be made upon warrants drawn by the secretary of
25 finance and administration pursuant to vouchers issued and

.200918.2

underscoring material = new
[bracketed material] = delete

1 signed by the director of the administrative office of the
 2 courts.

3 E. Any balance remaining in the domestic violence
 4 surveillance fund at the end of a fiscal year shall not revert
 5 to the general fund."

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 refrain from
 13 abusing the protected party or any other household member. The
 14 court shall specifically describe the acts the court has
 15 ordered the restrained party to do or refrain from doing. As a
 16 part of any order of protection, the court may:

17 (1) grant sole possession of the residence or
 18 household to the protected party during the period the order of
 19 protection is effective or order the restrained party to
 20 provide temporary suitable alternative housing for the
 21 protected party and any children to whom the restrained party
 22 owes a legal obligation of support;

23 (2) award temporary custody of any children
 24 involved when appropriate and provide for visitation rights,
 25 child support and temporary support for the protected party on

.200918.2

underscored material = new
 [bracketed material] = delete

1 a basis that gives primary consideration to the safety of the
2 protected party and the children;

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

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

12 (5) order the restrained party to reimburse
13 the protected party or any other household member for expenses
14 reasonably related to the occurrence of domestic abuse,
15 including medical expenses, counseling expenses, the expense of
16 seeking temporary shelter, expenses for the replacement or
17 repair of damaged property or the expense of lost wages;

18 (6) order the restrained party to participate
19 in, at the restrained party's expense, professional counseling
20 programs deemed appropriate by the court, including counseling
21 programs for perpetrators of domestic abuse, alcohol abuse or
22 abuse of controlled substances; and

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

.200918.2

1 B. The order of protection shall contain a notice
2 that violation of any provision of the order constitutes
3 contempt of court and may result in a fine, ~~[or]~~ imprisonment
4 or ~~[both]~~ monitoring by a global positioning satellite tracking
5 system, or any combination of these.

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

17 D. A mutual order of protection shall be issued
18 only in cases where both parties have petitioned the court and
19 the court makes detailed findings of fact indicating that both
20 parties acted primarily as aggressors and that neither party
21 acted primarily in self-defense.

22 E. No order issued under the Family Violence
23 Protection Act shall affect title to any property or allow a
24 party to transfer, conceal, encumber or otherwise dispose of
25 another party's property or the joint or community property of

.200918.2

1 the parties.

2 F. Either party may request a review hearing to
3 amend an order of protection. An order of protection involving
4 child custody or support may be modified without proof of a
5 substantial or material change of circumstances.

6 G. An order of protection shall not be issued
7 unless a petition or a counter petition has been filed."

8 SECTION 4. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2015.