

AN ACT

RELATING TO DOMESTIC ABUSE; PROVIDING FOR THE ISSUANCE OF EX PARTE EMERGENCY ORDERS OF PROTECTION; AMENDING AND ENACTING SECTIONS OF THE FAMILY VIOLENCE PROTECTION ACT.

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

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

"40-13-1. SHORT TITLE.--Chapter 40, Article 13 NMSA 1978 may be cited as the "Family Violence Protection Act"."

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

"EX PARTE EMERGENCY ORDERS OF PROTECTION.--

A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the petitioner or the petitioner's child is in immediate danger of domestic abuse following an incident of domestic abuse by a household member. The written statement shall include the location and telephone number of the respondent, if known.

B. A law enforcement officer who receives an emergency order of protection, whether in writing, by

telephone or by facsimile transmission, from the court shall:

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

(2) if possible, immediately serve a signed copy of the order on the respondent and complete the appropriate affidavit of service;

(3) immediately provide the petitioner with a signed copy of the order; and

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

C. The court may grant the following relief in an emergency order for protection upon a probable cause finding that domestic abuse has occurred:

(1) enjoin the respondent from threatening to commit or committing acts of domestic abuse against the petitioner or any designated household members;

(2) enjoin the respondent from any contact with the petitioner, including harassing, telephoning, contacting or otherwise communicating with the petitioner; and

(3) grant temporary custody of any minor child in common with the petitioner and the respondent to the petitioner, if necessary.

D. A district judge shall be available as

determined by each judicial district to hear petitions for emergency orders of protection.

E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.

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

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

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

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____