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HOUSE BILL 329

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Mimi Stewart

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

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. -- [~~This act~~] 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:

"[NEW MATERIAL] EX PARTE EMERGENCY ORDERS OF PROTECTION. --

A. The district court may issue an ex parte

underscored material = new
[bracketed material] = delete

1 written emergency order of protection when a law enforcement
2 officer or the officer's designee states to the court in
3 person, by telephone or via facsimile upon a written statement
4 made by a person petitioning for an emergency order of
5 protection, and the court finds reasonable grounds to believe,
6 that the petitioner is in immediate danger of domestic abuse
7 following an incident of domestic abuse by a household member.
8 The statement shall include the location and telephone number
9 of the respondent, if known.

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

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

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

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

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

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

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

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

7 (3) temporarily remove and exclude the
8 respondent from the residence of the petitioner, regardless of
9 ownership of the residence;

10 (4) enjoin the respondent from contacting the
11 petitioner or any household member at the residence, school
12 and place of employment of the petitioner and any other
13 specified place frequented by the petitioner and any
14 designated household members;

15 (5) order temporary possession or use of the
16 parties' automobile or other personal effects, as enumerated
17 by the court, regardless of their ownership, and direct the
18 appropriate law enforcement officer to accompany the
19 petitioner at a specified time to safely obtain these items or
20 to accompany and supervise the petitioner's or respondent's
21 removal of personal belongings;

22 (6) grant temporary legal or physical custody
23 of any minor child to the petitioner, if necessary; and

24 (7) order other relief as deemed necessary to
25 protect and provide for the safety of the petitioner and any

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1 designated household members.

2 D. A district judge or a designated judicial
3 officer with authority to issue an order for protection shall
4 be available as determined by each judicial district to hear
5 petitions for emergency orders of protection.

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

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

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

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

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

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 20, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 329

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17 1. On pages 1 and 2, strike Subsection A in its
18 entirety and insert in lieu thereof:

19 "A. The district court may issue an ex parte
20 written emergency order of protection when a law enforcement
21 officer states to the court in person, by telephone or via
22 facsimile and files a sworn written statement, setting forth
23 the need for an emergency order of protection, and the court
24 finds reasonable grounds to believe that the petitioner or
25 the petitioner's child is in immediate danger of domestic
abuse following an incident of domestic abuse by a household

FORTY-FOURTH LEGISLATURE
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member. The written statement shall include the location
and telephone number of the respondent, if known."

2. On page 3, line 6, after the semicolon insert
"and".

3. On pages 3 and 4, strike Paragraphs (3) through (7)
in their entirety and insert in lieu thereof:

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

Respectfully submitted,

R. David Pederson, Chairman

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3 HJ/HB 329

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4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 9 For 0 Against

11 Yes: 9

12 Excused: Luna, Rios, Sanchez

13 Absent: None

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1 FORTY- FOURTH LEGI SLATURE

2 FIRST SESSI ON, 1999

HB 329/a

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4 March 8, 1999

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6 Mr. Presi dent:

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8 Your JUDI CIARY COMMI TTEE, to whom has been referred

9 HOUSE BILL 329

10
11 has had it under consideration and reports same with
12 recommendat ion that it DO PASS, amended as follows:

- 13
14 1. On page 4, lines 2 and 3, strike "or a designated
15 judicial officer with authority to issue an order for
16 protection".

17 Respectfully submi tted,

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FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

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Adopted _____ Not

Adopted _____

(Chi ef Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Aragon, Lopez, McSorley

Absent: None

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