

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DOMESTIC VIOLENCE; PROHIBITING INDIVIDUALS SUBJECT
TO CERTAIN ORDERS OF PROTECTION FROM POSSESSING OR PURCHASING
FIREARMS; PROVIDING PROCEDURES FOR RELINQUISHMENT AND RETURN OF
FIREARMS; PROVIDING A PENALTY.

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 that domestic abuse has occurred or
upon stipulation of the parties, the court shall enter an order
of protection ordering the restrained party:

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

.204414.6

underscored material = new
[bracketed material] = delete

1 (2) if the order is not a temporary order of
2 protection and after a restrained party has received notice of
3 the order and had an opportunity to be heard:

4 (a) to relinquish any firearm in the
5 restrained party's immediate possession, care, custody or
6 control or subject to the restrained party's immediate
7 possession, care, custody or control; and

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

11 B. In an order of protection entered pursuant to
12 Subsection A of this section, the court shall specifically
13 describe the acts the court has ordered the restrained party to
14 do or refrain from doing. As a part of any order of
15 protection, the court may:

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

22 (2) award temporary custody of any children
23 involved when appropriate and provide for visitation rights,
24 child support and temporary support for the protected party on
25 a basis that gives primary consideration to the safety of the

1 protected party and the children;

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

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

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

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

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

25 [B-] C. The order of protection shall contain a

1 notice that violation of any provision of the order constitutes
2 contempt of court and may result in a fine or imprisonment or
3 both. The court shall notify the relevant district attorney of
4 a violation of an order of protection.

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

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

21 [E.—No] F. Notwithstanding provisions of the
22 Family Violence Protection Act that require a restrained party
23 to relinquish firearms, an order issued [under the Family
24 Violence Protection] pursuant to that act shall not affect
25 title to any property or allow a party to transfer, conceal,

1 encumber or otherwise dispose of another party's property or
2 the joint or community property of the parties.

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

7 ~~[G-]~~ H. An order of protection shall not be issued
8 unless a petition or a counter petition has been filed."

9 **SECTION 2.** A new section of the Family Violence
10 Protection Act is enacted to read:

11 "[NEW MATERIAL] REMOVAL OF FIREARMS--PENALTY.--

12 A. A relinquishment of firearms ordered pursuant to
13 Section 40-13-5 NMSA 1978 shall occur by the restrained party
14 immediately surrendering any firearm in the restrained party's
15 immediate possession, care, custody or control or subject to
16 the restrained party's immediate possession, care, custody or
17 control in a safe manner, upon request of a law enforcement
18 officer, to the control of that officer, after the restrained
19 party is served with the order of protection. A law
20 enforcement officer who serves an order of protection that
21 indicates that the restrained party possesses a firearm shall
22 request that any firearm in the restrained party's immediate
23 possession, care, custody or control or subject to the
24 restrained party's immediate possession, care, custody or
25 control be immediately surrendered. Alternatively, if a

1 request is not made by a law enforcement officer, or if a
2 restrained party states that the restrained party wishes to
3 surrender a firearm to a federally licensed firearms dealer,
4 the relinquishment shall occur within twenty-four hours of the
5 service of the order on the restrained party by surrendering
6 the firearm in a safe manner to the control of a law
7 enforcement official or to a federally licensed firearms
8 dealer. A law enforcement officer or federally licensed
9 firearms dealer taking possession of a firearm pursuant to this
10 subsection shall issue a receipt to the person relinquishing
11 the firearm at the time of relinquishment.

12 B. If a restrained party surrenders a firearm to a
13 law enforcement officer or federally licensed firearms dealer,
14 the restrained party shall, within forty-eight hours after
15 being served with the order of protection, file:

16 (1) the receipt issued to the restrained party
17 pursuant to Subsection A of this section with the court that
18 issued the order of protection. Failure to file a receipt
19 shall constitute a violation of the order of protection; and

20 (2) a copy of the receipt issued to the
21 restrained party pursuant to Subsection A of this section with
22 the law enforcement agency that served the order of protection.
23 Failure to file a copy of the receipt shall constitute a
24 violation of the order of protection.

25 C. A restrained party shall file a declaration of

1 non-surrender with the court that issued the order of
2 protection and the law enforcement agency that served the order
3 if the restrained party does not have a firearm in the
4 restrained party's immediate possession, care, custody or
5 control or subject to the restrained party's immediate
6 possession, care, custody or control.

7 D. A law enforcement agency that serves an order of
8 protection or takes possession of relinquished firearms as
9 provided in this section shall inform the protected party of
10 the relinquishment within five days of relinquishment or of
11 receiving a receipt filed pursuant to Subsection C of this
12 section.

13 E. A law enforcement agency is immune from civil or
14 criminal liability for any damage or deterioration of
15 relinquished firearms stored or transported pursuant to this
16 section. This subsection shall not apply if the damage or
17 deterioration occurred as a result of recklessness, gross
18 negligence or intentional misconduct by the law enforcement
19 agency.

20 F. A search warrant may be issued for any firearm
21 that is owned by, or is in the possession of or is in the care,
22 custody or control of, a person who is prohibited from
23 possessing a firearm pursuant to Section 30-7-16 NMSA 1978, if
24 the person has been lawfully served with an order in accordance
25 with Section 40-13-5 NMSA 1978 and the person has failed to

1 relinquish any firearms as ordered.

2 G. If a restrained party declines to relinquish any
3 firearm based on the assertion of the right against
4 self-incrimination as provided by the fifth amendment to the
5 United States constitution and Article 2, Section 15 of the
6 constitution of New Mexico, the court may grant use immunity
7 for the act of relinquishing a firearm pursuant to this
8 section.

9 H. Upon expiration or termination of an order of
10 protection:

11 (1) the restrained party may petition for the
12 return of any relinquished firearms. Within thirty days of the
13 receipt of a petition for the return of relinquished firearms,
14 the law enforcement agency to which the firearms were
15 surrendered shall return the firearms unless:

16 (a) the firearms have been stolen;
17 (b) the restrained party is prohibited
18 from possessing a firearm under state or federal law; or
19 (c) another order of protection pursuant
20 to the Family Violence Protection Act is issued against the
21 restrained party; and

22 (2) the restrained party may request return of
23 relinquished firearms from a federally licensed firearms dealer
24 to whom the firearms were surrendered. The federally licensed
25 firearms dealer shall transfer the firearms as if the dealer

1 were selling the firearms from the dealer's own inventory.

2 I. A law enforcement agency that returns firearms
3 as provided in Subsection H of this section shall notify the
4 protected party of the return of the firearms to the restrained
5 party within five days of return.

6 J. If a restrained party fails to petition for the
7 return of relinquished firearms, the law enforcement agency in
8 possession of the relinquished firearms may dispose of the
9 firearms as allowed by law.

10 K. If a restrained party who seeks return of
11 relinquished firearms is prohibited from possessing a firearm
12 under state or federal law, the restrained party shall be
13 afforded an opportunity to sell the firearm through a federally
14 licensed firearms dealer.

15 L. If a firearm that was relinquished has been
16 stolen, upon recovery, the firearm shall be restored to the
17 restrained party upon the restrained party's identification of
18 the firearm and provision of proof of ownership, unless the
19 restrained party is not allowed to possess a firearm pursuant
20 to this section or any or state or federal law.

21 M. A restrained party owning or possessing a
22 firearm in violation of this section or an order entered
23 pursuant to Section 40-13-5 NMSA 1978 is guilty of a
24 misdemeanor.

25 N. As used in this section:

1 (1) "federally licensed firearms dealer" means
2 a licensed importer, licensed manufacturer or licensed dealer
3 required to conduct national instant criminal background checks
4 under 18 U.S.C. Section 922(t);

5 (2) "firearm" means any weapon that will or is
6 designed to or may readily be converted to expel a projectile
7 by the action of an explosion; the frame or receiver of any
8 such weapon; or any firearm muffler or firearm silencer.

9 "Firearm" includes any handgun, rifle or shotgun;

10 (3) "protected party" means a person who is or
11 was protected by an order of protection; and

12 (4) "restrained party" means a person who is
13 or was restrained by an order of protection."