

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 227

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

AN ACT

RELATING TO DOMESTIC ABUSE; EXPANDING AND CLARIFYING
DEFINITIONS; GRANTING FREE PROCESS TO VICTIMS; PROVIDING FOR
MUTUAL ORDERS OF PROTECTION; PROVIDING LIMITS ON INTERNET
PUBLICATION; CLARIFYING PROVISIONS OF THE FAMILY VIOLENCE
PROTECTION ACT; 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 30-1-15 NMSA 1978 (being Laws 2002,
Chapter 34, Section 1 and Laws 2002, Chapter 35, Section 1) is
amended to read:

"30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

A. An alleged victim of an offense specified in
Subsection B of this section is not required to bear the cost

.172692.2

underscored material = new
[bracketed material] = delete

1 of:

2 (1) the prosecution of a misdemeanor or felony
3 domestic violence offense, including costs associated with
4 filing a criminal charge against an alleged perpetrator of the
5 offense;

6 (2) the filing, issuance or service of a
7 warrant;

8 (3) the filing, issuance or service of a
9 witness subpoena; or

10 (4) the filing, issuance, registration or
11 service of a protection order.

12 B. The provisions of Subsection A of this section
13 apply to:

14 (1) alleged victims of domestic abuse as
15 defined in Section 40-13-2 NMSA 1978; [~~and:~~

16 ~~(1)]~~ (2) sexual offenses described in Sections
17 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

18 ~~(2)]~~ (3) crimes against household members
19 described in Sections 30-3-12 through 30-3-16 NMSA 1978;

20 ~~(3)]~~ (4) harassment, stalking and aggravated
21 stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA
22 1978; and

23 ~~(4)]~~ (5) the violation of an order of
24 protection [~~described in Subsection E of Section 40-13-6 NMSA~~
25 1978] that is issued pursuant to the Family Violence Protection

.172692.2

1 Act or entitled to full faith and credit."

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

4 "40-13-2. DEFINITIONS.--As used in the Family Violence
5 Protection Act:

6 A. "co-parents" means persons who have a child in
7 common, regardless of whether they have been married or have
8 lived together at any time;

9 B. "court" means the district court of the judicial
10 district where an alleged victim of domestic abuse resides or
11 is found;

12 C. "domestic abuse":

13 (1) means an incident of stalking or sexual
14 assault whether committed by a household member or not;

15 (2) means [any] an incident by a household
16 member against another household member consisting of or
17 resulting in:

18 [~~1~~] (a) physical harm;

19 [~~2~~] (b) severe emotional distress;

20 [~~3~~] (c) bodily injury or assault;

21 [~~4~~] (d) a threat causing imminent fear
22 of bodily injury by any household member;

23 [~~5~~] (e) criminal trespass;

24 [~~6~~] (f) criminal damage to property;

25 [~~7~~] (g) repeatedly driving by a

.172692.2

1 residence or work place;

2 [~~(8)~~] (h) telephone harassment;

3 [~~(9)~~] ~~stalking~~;

4 [~~(10)~~] (i) harassment; or

5 [~~(11)~~] (j) harm or threatened harm to
6 children as set forth in ~~[the paragraphs of this subsection]~~
7 this paragraph; and

8 (3) does not mean the use of force in self-
9 defense or the defense of another;

10 D. "household member" means a spouse; former
11 spouse; family member, including a relative, parent, present or
12 former stepparent, present or former in-law, child or co-parent
13 of a child; or a person with whom the petitioner has had a
14 continuing personal relationship. Cohabitation is not
15 necessary to be deemed a household member for purposes of this
16 section; ~~[and]~~

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

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

22 G. "protected party" means a person protected by an
23 order of protection; and

24 H. "restrained party" means a person who is
25 restrained by an order of protection."

underscoring material = new
[bracketed material] = delete

1 Section 3. Section 40-13-3 NMSA 1978 (being Laws 1987,
2 Chapter 286, Section 3, as amended) is amended to read:

3 "40-13-3. PETITION FOR ORDER OF PROTECTION--CONTENTS
4 [~~INDIGENT PETITIONERS~~]~~--STANDARD FORMS.--~~

5 A. A victim of domestic abuse may petition the
6 court under the Family Violence Protection Act for an order of
7 protection.

8 B. The petition shall be made under oath or shall
9 be accompanied by a sworn affidavit setting out specific facts
10 showing the alleged domestic abuse.

11 C. The petition shall state whether any other
12 domestic action is pending between the petitioner and the
13 respondent.

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

20 E. [~~Any~~] An action brought under [~~that~~] the Family
21 Violence Protection Act is independent of any proceeding for
22 annulment, separation or divorce between the [~~petitioner and~~
23 ~~the respondent~~] parties.

24 F. [~~Any~~] Remedies granted pursuant to the Family
25 Violence Protection Act are in addition to and shall not limit

.172692.2

1 other ~~[available]~~ civil or criminal remedies available to the
2 parties.

3 ~~[G. If the petition is accompanied by an affidavit~~
4 ~~showing that the petitioner is unable to pay the costs of the~~
5 ~~proceeding, the court may order that the petitioner be~~
6 ~~permitted to proceed as an indigent without payment of court~~
7 ~~costs. In determining the financial status of the petitioner~~
8 ~~for the purpose of this subsection, the income of the~~
9 ~~respondent shall not be considered.~~

10 H.] G. Standard simplified petition forms with
11 instructions for completion shall be available to ~~[petitioners~~
12 ~~not represented by counsel]~~ all parties. Law enforcement
13 agencies shall keep such forms and make them available upon
14 request to alleged victims of domestic ~~[violence]~~ abuse."

15 Section 4. Section 40-13-3.1 NMSA 1978 (being Laws 1995,
16 Chapter 176, Section 1) is amended to read:

17 "40-13-3.1. FORBEARANCE OF COSTS ~~[OF CRIMINAL PROCESSES]~~
18 ASSOCIATED WITH DOMESTIC ABUSE OFFENSES.--

19 A. An alleged victim of domestic abuse shall not be
20 required to bear the cost of:

21 ~~[A.]~~ (1) the prosecution of a misdemeanor or
22 felony offense arising out of an incident of domestic abuse,
23 including costs associated with filing a criminal charge
24 against ~~[an]~~ the alleged ~~[abusing household member]~~ perpetrator
25 of the abuse;

1 ~~[B.]~~ (2) the filing, issuance or service of a
2 warrant;

3 ~~[C.]~~ (3) the filing, issuance or service of a
4 witness subpoena; ~~[or]~~

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

7 ~~[D.]~~ (5) the filing, issuance or service of
8 [a] an order of protection [order]; or

9 (6) obtaining law enforcement reports relating
10 to the alleged abuse or pattern of abuse.

11 B. A law enforcement officer shall not charge a
12 witness fee for appearing at a hearing pursuant to the Family
13 Violence Protection Act."

14 Section 5. Section 40-13-3.2 NMSA 1978 (being Laws 1999,
15 Chapter 142, Section 2) is amended to read:

16 "40-13-3.2. EX PARTE EMERGENCY ORDERS OF PROTECTION.--

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

.172692.2

underscored material = new
[bracketed material] = delete

1 shall include the location and telephone number of the
2 [~~respondent~~] alleged perpetrator, if known.

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

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

9 (2) if possible, immediately serve a signed
10 copy of the order on the [~~respondent~~] restrained party and
11 complete the appropriate affidavit of service;

12 (3) immediately provide the [~~petitioner~~]
13 protected party with a signed copy of the order; and

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

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

19 (1) enjoin the [~~respondent~~] restrained party
20 from threatening to commit or committing acts of domestic abuse
21 against the [~~petitioner~~] protected party or any designated
22 household members;

23 (2) enjoin the [~~respondent~~] restrained party
24 from any contact with the [~~petitioner~~] protected party,
25 including harassing, telephoning, contacting or otherwise

.172692.2

1 communicating with the [~~petitioner~~] protected party; and

2 (3) grant temporary custody of any minor child
3 in common with the [~~petitioner and the respondent to the~~
4 ~~petitioner~~] parties to the protected party, if necessary.

5 D. A district judge shall be available as
6 determined by each judicial district to hear petitions for
7 emergency orders of protection.

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

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

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

20 H. Emergency orders of protection are enforceable
21 in the same manner as other orders of protection [~~that are~~]
22 issued pursuant to the provisions of the Family Violence
23 Protection Act."

24 Section 6. Section 40-13-4 NMSA 1978 (being Laws 1987,
25 Chapter 286, Section 4) is amended to read:

.172692.2

1 "40-13-4. TEMPORARY ORDER OF PROTECTION--HEARING--
2 DISMISSAL.--

3 A. Upon the filing of a petition for order of
4 protection, the court shall:

5 [~~A.~~] (1) immediately grant an ex parte
6 temporary order of protection without bond if there is probable
7 cause from the specific facts shown by the affidavit or by the
8 petition to give the judge reason to believe that an act of
9 domestic abuse has occurred;

10 [~~B.~~] (2) cause the temporary order of
11 protection together with notice of hearing to be served
12 immediately on the alleged perpetrator of the domestic abuse;
13 and

14 [~~C.~~] (3) within ten days after the granting of
15 the temporary order of protection, hold a hearing on the
16 question of continuing the order; or

17 [~~D.~~] (4) if an ex parte order is not granted,
18 serve notice to appear upon the parties and hold a hearing on
19 the petition for order of protection within seventy-two hours
20 after the filing of the petition; provided if notice of hearing
21 cannot be served within seventy-two hours, the temporary order
22 of protection shall be automatically extended for ten days.

23 B. If the court grants a temporary order of
24 protection, it may award custody, visitation and temporary
25 support as appropriate.

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

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

6 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
7 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION--

8 A. Upon finding that domestic abuse has occurred or
9 upon stipulation of the parties, the court shall enter an order
10 of protection ordering the [~~respondent~~] restrained party to
11 refrain from abusing the [~~petitioner~~] protected party or any
12 other household member. The court shall specifically describe
13 the acts the court has ordered the [~~respondent~~] restrained
14 party to 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 [~~petitioner~~] protected party during the period
18 the order of protection is effective or order the [~~respondent~~]
19 restrained party to provide temporary suitable alternative
20 housing for the [~~petitioner~~] protected party and any children
21 to whom the [~~respondent~~] restrained party owes a legal
22 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 [~~petitioner~~]

.172692.2

underscored material = new
[bracketed material] = delete

1 protected party on a basis that gives primary consideration to
2 the safety of the [~~victim~~] protected party and the children;

3 (3) order that the [~~respondent~~] restrained
4 party shall not initiate contact with the [~~petitioner~~]
5 protected party;

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

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

21 (6) order the [~~respondent~~] restrained party to
22 participate in, at the [~~respondent's~~] restrained party's
23 expense, professional counseling programs deemed appropriate by
24 the court, including counseling programs for perpetrators of
25 domestic abuse, alcohol abuse or abuse of controlled

1 substances; and

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

6 B. The order of protection shall contain a notice
7 that violation of any provision of the order constitutes
8 contempt of court and may result in a fine or imprisonment or
9 both.

10 C. 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 D. 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.

.172692.2

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

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

10 G. 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 ~~[respondent]~~ restrained party, unless the ~~[respondent]~~
21 restrained party or the ~~[respondent's]~~ restrained party's
22 attorney was present at the time the order was issued. The
23 order shall be filed and served without cost to the
24 ~~[petitioner]~~ protected party.

25 B. ~~[The]~~ A local law enforcement agency receiving

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

7 C. An order of protection granted by the court
 8 involving custody or support shall be effective for a fixed
 9 period of time not to exceed six months. The order may be
 10 extended for good cause upon motion of the [~~petitioner~~]
 11 protected party for an additional period of time not to exceed
 12 six months. Injunctive orders shall continue until modified or
 13 rescinded upon motion by either party or until the court
 14 approves a subsequent consent agreement entered into by the
 15 [~~petitioner and the respondent~~] parties.

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

22 E. State courts shall give full faith and credit to
 23 tribal court orders of protection and orders of protection
 24 issued by courts of other states. A protection order issued by
 25 a state or tribal court against one who has petitioned, filed a

.172692.2

1 complaint or otherwise filed a written pleading for protection
2 against abuse by a spouse or intimate partner is not entitled
3 to full faith and credit if:

4 (1) no cross or counter petition, complaint or
5 other written pleading was filed seeking such a protection
6 order; or

7 (2) a cross or counter petition has been filed
8 and the court did not make specific findings that each party
9 was entitled to such an order.

10 F. A ~~[person]~~ restrained party convicted of
11 violating an order of protection granted by a court under the
12 Family Violence Protection Act is guilty of a misdemeanor and
13 shall be sentenced in accordance with Section 31-19-1 NMSA
14 1978. Upon a second or subsequent conviction, an offender
15 shall be sentenced to a jail term of not less than seventy-two
16 consecutive hours that shall not be suspended, deferred or
17 taken under advisement.

18 G. In addition to any other punishment provided in
19 the Family Violence Protection Act, the court shall order a
20 person convicted to make full restitution to the party injured
21 by the violation of an order of protection and shall order the
22 person convicted to participate in and complete a program of
23 professional counseling, at the person's own expense, if
24 possible.

25 H. In addition to charging the person with

1 violating an order of protection, a peace officer shall file
 2 all other possible criminal charges arising from an incident of
 3 domestic abuse when probable cause exists.

4 I. The remedies provided in the Family Violence
 5 Protection Act are in addition to any other civil or criminal
 6 remedy available to the [~~petitioner~~] protected party or the
 7 state."

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

10 "40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY
 11 ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO
 12 VICTIMS WHEN AN [~~ABUSING HOUSEHOLD MEMBER~~] ALLEGED PERPETRATOR
 13 IS RELEASED FROM DETENTION--STATEMENT IN JUDGMENT AND SENTENCE
 14 DOCUMENT.--

15 A. A person who allegedly has been a victim of
 16 domestic abuse may request the assistance of a local law
 17 enforcement agency.

18 B. A local law enforcement officer responding to
 19 the request for assistance shall be required to take whatever
 20 steps are reasonably necessary to protect the victim from
 21 further domestic abuse, including:

22 (1) advising the victim of the remedies
 23 available under the Family Violence Protection Act; the right
 24 to file a written statement, [~~or~~] a criminal complaint and a
 25 request for an arrest warrant; and the availability of domestic

.172692.2

1 violence shelters, medical care, counseling and other services;

2 (2) upon the request of the [~~petitioner~~]
3 victim, providing or arranging for transportation of the victim
4 to a medical facility or place of shelter;

5 (3) upon the request of the [~~petitioner~~]
6 victim, accompanying the victim to the victim's residence to
7 [~~remove~~] obtain the victim's clothing and personal effects
8 required for immediate needs and the clothing and personal
9 effects of any children then in the care of the victim;

10 (4) upon the request of the [~~petitioner~~]
11 victim, assist in placing the [~~petitioner~~] victim in possession
12 of the dwelling or premises or otherwise assist in execution,
13 enforcement or service of [~~the~~] an order of protection;

14 (5) arresting the [~~abusing household member~~]
15 alleged perpetrator when appropriate and including a written
16 statement in the attendant police report to indicate that the
17 arrest of the [~~abusing household member~~] alleged perpetrator
18 was, in whole or in part, premised upon probable cause to
19 believe that the [~~abusing household member~~] alleged perpetrator
20 committed domestic abuse against the victim and, when
21 appropriate, indicate that the party arrested was the
22 predominant aggressor; and

23 (6) advising the victim when appropriate of
24 the procedure for initiating proceedings under the Family
25 Violence Protection Act or criminal proceedings and of the

underscored material = new
[bracketed material] = delete

1 importance of preserving evidence.

2 C. The jail or detention center shall make a
3 reasonable attempt to notify the arresting law enforcement
4 agency or officer when the [~~abusing household member~~] alleged
5 perpetrator is released from custody. The arresting law
6 enforcement agency shall make a reasonable attempt to notify
7 the victim that the [~~abusing household member~~] alleged
8 perpetrator is released from custody.

9 D. Any law enforcement officer responding to [~~the~~]
10 a request for assistance under the Family Violence Protection
11 Act is immune from civil liability to the extent allowed by
12 law. Any jail, detention center or law enforcement agency that
13 makes a reasonable attempt to provide notification that an
14 [~~abusing household member~~] alleged perpetrator is released from
15 custody is immune from civil liability to the extent allowed by
16 law.

17 E. A statement shall be included in a judgment and
18 sentence document to indicate when a conviction results from
19 the commission of domestic abuse."

20 Section 10. A new section of the Family Violence
21 Protection Act is enacted to read:

22 "[NEW MATERIAL] LIMITS ON INTERNET PUBLICATION.--A state
23 agency, court or political subdivision of the state, including
24 a magistrate or municipal court, judicial district, law
25 enforcement agency, county, municipality or home-rule

.172692.2

1 municipality, shall not make available publicly on the internet
2 any information that would likely reveal the identity or
3 location of the party protected under an order of protection.
4 A state agency, court or political subdivision may share court-
5 generated and law enforcement-generated information contained
6 in secure, government registries for protection order
7 enforcement purposes."

8 Section 11. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2008.