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HOUSE BILL 123

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

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING THE FAMILY VIOLENCE PROTECTION ACT; ALLOWING FOR THE ISSUANCE OF PERMANENT NO CONTACT ORDERS.

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

SECTION 1. A new section of the Family Violence Protection Act, Section 40-13-5.1 NMSA 1978, is enacted to read:

"40-13-5.1. [NEW MATERIAL] PERMANENT NO CONTACT ORDER.--

A. Upon finding that domestic abuse has occurred resulting in serious physical harm or severe emotional distress, the judge may enhance an order of protection by issuing a permanent no contact order.

B. The judge shall include in the record of the case a written memorandum of the findings underlying the

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1 issuance of a permanent no contact order.

2 C. A conviction for a violent crime or a sex
3 offense for which a person is required to register pursuant to
4 the Sex Offender Registration and Notification Act shall serve
5 as prima facie evidence of the need to issue a permanent no
6 contact order.

7 D. The protected party under a permanent no contact
8 order shall be permitted to be represented at any hearing or
9 court proceeding concerning an order of protection by counsel,
10 without having to appear in court in person."

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

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

15 A. "continuing personal relationship" means a
16 dating or intimate relationship;

17 B. "co-parents" means persons who have a child in
18 common, regardless of whether they have been married or have
19 lived together at any time;

20 C. "court" means the district court of the judicial
21 district where an alleged victim of domestic abuse resides or
22 is found;

23 D. "domestic abuse":

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

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1 (2) means an incident by a household member
2 against another household member consisting of or resulting in:

- 3 (a) physical harm;
4 (b) severe emotional distress;
5 (c) bodily injury or assault;
6 (d) a threat causing imminent fear of
7 bodily injury by any household member;
8 (e) criminal trespass;
9 (f) criminal damage to property;
10 (g) repeatedly driving by a residence or
11 work place;
12 (h) telephone harassment;
13 (i) harassment; or
14 (j) harm or threatened harm to children
15 as set forth in this paragraph; and

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

18 E. "household member" means a spouse, former
19 spouse, parent, present or former stepparent, present or former
20 parent in-law, grandparent, grandparent-in-law, child,
21 stepchild, grandchild, co-parent of a child or a person with
22 whom the petitioner has had a continuing personal relationship.
23 Cohabitation is not necessary to be deemed a household member
24 for purposes of this section;

25 F. "mutual order of protection" means an order of

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1 protection that includes provisions that protect both parties;

2 G. "order of protection" means an injunction or a
3 restraining or other court order granted for the protection of
4 a victim of domestic abuse;

5 H. "permanent no contact order" means an order of
6 protection that permits the protected party to be represented
7 in court by counsel without having to appear in person;

8 [~~H.~~] I. "protected party" means a person protected
9 by an order of protection; and

10 [~~I.~~] J. "restrained party" means a person who is
11 restrained by an order of protection."

12 SECTION 3. Section 40-13-4 NMSA 1978 (being Laws 1987,
13 Chapter 286, Section 4, as amended) is amended to read:

14 "40-13-4. TEMPORARY ORDER OF PROTECTION--HEARING--
15 DISMISSAL.--

16 A. Upon the filing of a petition for order of
17 protection, the court shall:

18 (1) immediately grant an ex parte temporary
19 order of protection without bond if there is probable cause
20 from the specific facts shown by the affidavit or by the
21 petition to give the judge reason to believe that an act of
22 domestic abuse has occurred;

23 (2) cause the temporary order of protection
24 together with notice of hearing to be served immediately on the
25 alleged perpetrator of the domestic abuse; and

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1 (3) within ten days after the granting of the
2 temporary order of protection, hold a hearing on the question
3 of continuing the order; or

4 (4) if an ex parte order is not granted, serve
5 notice to appear upon the parties and hold a hearing on the
6 petition for order of protection within seventy-two hours after
7 the filing of the petition; provided if notice of hearing
8 cannot be served within seventy-two hours, the temporary order
9 of protection shall be automatically extended for ten days.

10 B. If the court grants a temporary order of
11 protection, it may award temporary custody and visitation of
12 any children involved when appropriate.

13 C. Except for petitions alleging stalking or sexual
14 assault, if the court finds that the alleged perpetrator is not
15 a household member, the court shall dismiss the petition.

16 D. If there is probable cause from the specific
17 facts shown by the affidavit or by the petition to give the
18 judge reason to believe that it would be detrimental to the
19 protected party to appear in court for a hearing on the
20 question of continuing the order of protection, the judge may
21 permit the protected party to be represented at the hearing by
22 counsel without appearing in court in person."

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

25 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE

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1 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

2 A. Upon finding that domestic abuse has occurred or
3 upon stipulation of the parties, the court shall enter an order
4 of protection ordering the restrained party to refrain from
5 abusing the protected party or any other household member. The
6 court shall specifically describe the acts the court has
7 ordered the restrained party to do or refrain from doing. As a
8 part of any order of protection, the court may:

9 (1) grant sole possession of the residence or
10 household to the protected party during the period the order of
11 protection is effective or order the restrained party to
12 provide temporary suitable alternative housing for the
13 protected party and any children to whom the restrained party
14 owes a legal obligation of support;

15 (2) award temporary custody of any children
16 involved when appropriate and provide for visitation rights,
17 child support and temporary support for the protected party on
18 a basis that gives primary consideration to the safety of the
19 protected party and the children;

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

22 (4) restrain a party from transferring,
23 concealing, encumbering or otherwise disposing of the other
24 party's property or the joint property of the parties except in
25 the usual course of business or for the necessities of life and

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1 require the parties to account to the court for all such
2 transferences, encumbrances and expenditures made after the
3 order is served or communicated to the restrained party;

4 (5) order the restrained party to reimburse
5 the protected party or any other household member for expenses
6 reasonably related to the occurrence of domestic abuse,
7 including medical expenses, counseling expenses, the expense of
8 seeking temporary shelter, expenses for the replacement or
9 repair of damaged property or the expense of lost wages;

10 (6) order the restrained party to participate
11 in, at the restrained party's expense, professional counseling
12 programs deemed appropriate by the court, including counseling
13 programs for perpetrators of domestic abuse, alcohol abuse or
14 abuse of controlled substances; [~~and~~]

15 (7) issue a permanent no contact order; and

16 [~~(7)~~] (8) order other injunctive relief as the
17 court deems necessary for the protection of a party, including
18 orders to law enforcement agencies as provided by this section.

19 B. The order of protection shall contain a notice
20 that violation of any provision of the order constitutes
21 contempt of court and may result in a fine or imprisonment or
22 both.

23 C. If the order of protection supersedes or alters
24 prior orders of the court pertaining to domestic matters
25 between the parties, the order shall say so on its face. If an

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1 action relating to child custody or child support is pending or
2 has concluded with entry of an order at the time the petition
3 for an order of protection was filed, the court may enter an
4 initial order of protection, but the portion of the order
5 dealing with child custody or child support will then be
6 transferred to the court that has or continues to have
7 jurisdiction over the pending or prior custody or support
8 action.

9 D. A mutual order of protection shall be issued
10 only in cases where both parties have petitioned the court and
11 the court makes detailed findings of fact indicating that both
12 parties acted primarily as aggressors and that neither party
13 acted primarily in self-defense.

14 E. No order issued under the Family Violence
15 Protection Act shall affect title to any property or allow a
16 party to transfer, conceal, encumber or otherwise dispose of
17 another party's property or the joint or community property of
18 the parties.

19 F. Either party may request a review hearing to
20 amend an order of protection. An order of protection involving
21 child custody or support may be modified without proof of a
22 substantial or material change of circumstances.

23 G. If a permanent no contact order is issued under
24 Section 40-13-5.1 NMSA 1978, the protected party is not
25 required to appear in court in person, but may be represented

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1 in court by counsel.

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

4 SECTION 5. Section 40-13-6 NMSA 1978 (being Laws 1987,
5 Chapter 286, Section 6, as amended) is amended to read:

6 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
7 NOT EXCLUSIVE.--

8 A. An order of protection granted under the Family
9 Violence Protection Act shall be filed with the clerk of the
10 court, and a copy shall be sent by the clerk to the local law
11 enforcement agency. The order shall be personally served upon
12 the restrained party, unless the restrained party or the
13 restrained party's attorney was present at the time the order
14 was issued. The order shall be filed and served without cost
15 to the protected party.

16 B. A local law enforcement agency receiving an
17 order of protection from the clerk of the court that was issued
18 under the Family Violence Protection Act shall have the order
19 entered in the national crime information center's order of
20 protection file within seventy-two hours of receipt. This does
21 not include temporary orders of protection entered pursuant to
22 the provisions of Section 40-13-4 NMSA 1978.

23 C. An order of protection granted by the court
24 involving custody or support shall be effective for a fixed
25 period of time not to exceed six months. The order may be

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1 extended for good cause upon motion of the protected party for
2 an additional period of time not to exceed six months.

3 Injunctive orders shall continue until modified or rescinded
4 upon motion by either party or until the court approves a
5 subsequent consent agreement entered into by the parties.

6 D. If a permanent no contact order is issued under
7 Section 40-13-5.1 NMSA 1978, the protected party is not
8 required to appear in court in person, but may be represented
9 in court by counsel.

10 ~~[D-]~~ E. A peace officer may arrest without a
11 warrant and take into custody a restrained party whom the peace
12 officer has probable cause to believe has violated an order of
13 protection that is issued pursuant to the Family Violence
14 Protection Act or entitled to full faith and credit.

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

23 ~~[F-]~~ G. In addition to any other punishment
24 provided in the Family Violence Protection Act, the court shall
25 order a person convicted to make full restitution to the party

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1 injured by the violation of an order of protection and shall
2 order the person convicted to participate in and complete a
3 program of professional counseling, at the person's own
4 expense, if possible.

5 ~~[G.]~~ H. In addition to charging the person with
6 violating an order of protection, a peace officer shall file
7 all other possible criminal charges arising from an incident of
8 domestic abuse when probable cause exists.

9 ~~[H.]~~ I. The remedies provided in the Family
10 Violence Protection Act are in addition to any other civil or
11 criminal remedy available to the protected party or the state."

12 **SECTION 6.** Section 31-21-10.1 NMSA 1978 (being Laws 2003
13 (1st S.S.), Chapter 1, Section 9, as amended by Laws 2007,
14 Chapter 68, Section 4 and by Laws 2007, Chapter 69, Section 4)
15 is amended to read:

16 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
17 CONDITIONS OF PAROLE.--

18 A. If the district court sentences a sex offender
19 to a term of incarceration in a facility designated by the
20 corrections department, the district court shall include a
21 provision in the judgment and sentence that specifically
22 requires the sex offender to serve an indeterminate period of
23 supervised parole for a period of:

24 (1) not less than five years and not in excess
25 of twenty years for the offense of kidnapping when committed

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1 with intent to inflict a sexual offense upon the victim,
2 criminal sexual penetration in the third degree, criminal
3 sexual contact of a minor in the fourth degree, ~~[or]~~ sexual
4 exploitation of children in the second degree or child
5 solicitation by electronic communication device; or

6 (2) not less than five years and up to the
7 natural life of the sex offender for the offense of aggravated
8 criminal sexual penetration, criminal sexual penetration in the
9 first or second degree, criminal sexual contact of a minor in
10 the second or third degree or sexual exploitation of children
11 by prostitution in the first or second degree.

12 A sex offender's period of supervised parole may be for a
13 period of less than the maximum if, at a review hearing
14 provided for in Subsection C of this section, the state is
15 unable to prove that the sex offender should remain on parole.

16 B. Prior to placing a sex offender on parole, the
17 board shall conduct a hearing to determine the terms and
18 conditions of supervised parole for the sex offender. The
19 board may consider any relevant factors, including:

20 (1) the nature and circumstances of the
21 offense for which the sex offender was incarcerated;

22 (2) the nature and circumstances of a prior
23 sex offense committed by the sex offender;

24 (3) rehabilitation efforts engaged in by the
25 sex offender, including participation in treatment programs

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1 while incarcerated or elsewhere;

2 (4) the danger to the community posed by the
3 sex offender; and

4 (5) a risk and needs assessment regarding the
5 sex offender, developed by the sex offender management board of
6 the New Mexico sentencing commission or another appropriate
7 entity, to be used by appropriate parole board personnel.

8 C. When a sex offender has served the initial five
9 years of supervised parole, and at two and one-half year
10 intervals thereafter, the board shall review the duration of
11 the sex offender's supervised parole. At each review hearing,
12 the attorney general shall bear the burden of proving by clear
13 and convincing evidence that the sex offender should remain on
14 parole.

15 D. The board may order a sex offender released on
16 parole to abide by reasonable terms and conditions of parole,
17 including:

18 (1) being subject to intensive supervision by
19 a parole officer of the corrections department;

20 (2) participating in an outpatient or
21 inpatient sex offender treatment program;

22 (3) a parole agreement by the sex offender not
23 to use alcohol or drugs;

24 (4) a parole agreement by the sex offender not
25 to have contact with certain persons or classes of persons,

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1 including through use of a permanent no contact order pursuant
2 to the Family Violence Protection Act; and

3 (5) being subject to alcohol testing, drug
4 testing or polygraph examinations used to determine if the sex
5 offender is in compliance with the terms and conditions of the
6 sex offender's parole.

7 E. The board shall require electronic real-time
8 monitoring of every sex offender released on parole for the
9 entire time the sex offender is on parole. The electronic
10 monitoring shall use global positioning system monitoring
11 technology or any successor technology that would give
12 continuous information on the sex offender's whereabouts and
13 enable law enforcement and the corrections department to
14 determine the real-time position of a sex offender to a high
15 level of accuracy.

16 F. The board shall notify the chief public defender
17 of an upcoming parole hearing for a sex offender pursuant to
18 Subsection C of this section, and the chief public defender
19 shall make representation available to the sex offender at the
20 parole hearing.

21 G. If the board finds that a sex offender has
22 violated the terms and conditions of the sex offender's parole,
23 the board may revoke the sex offender's parole or may modify
24 the terms and conditions of parole.

25 H. The provisions of this section shall apply to

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1 all sex offenders, except geriatric, permanently incapacitated
2 and terminally ill inmates eligible for the medical and
3 geriatric parole program as provided by the Parole Board Act.

4 I. As used in this section, "sex offender" means a
5 person who is convicted of, pleads guilty to or pleads nolo
6 contendere to any one of the following offenses:

7 (1) kidnapping, as provided in Section 30-4-1
8 NMSA 1978, when committed with intent to inflict a sexual
9 offense upon the victim;

10 (2) aggravated criminal sexual penetration or
11 criminal sexual penetration in the first, second or third
12 degree, as provided in Section 30-9-11 NMSA 1978;

13 (3) criminal sexual contact of a minor in the
14 second, third or fourth degree, as provided in Section 30-9-13
15 NMSA 1978;

16 (4) sexual exploitation of children in the
17 second degree, as provided in Section 30-6A-3 NMSA 1978;

18 (5) sexual exploitation of children by
19 prostitution in the first or second degree, as provided in
20 Section 30-6A-4 NMSA 1978; or

21 (6) child solicitation by electronic
22 communication device, as provided in Section 30-37-3.2 NMSA
23 1978."

24 SECTION 7. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2015.

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