

SENATE BILL 18

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Antoinette Sedillo Lopez

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO DOMESTIC AFFAIRS; RENAMING THE FAMILY VIOLENCE PROTECTION ACT AS THE PROTECTION AGAINST ABUSE AND VIOLENCE ACT; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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, as amended) is amended to read:

"40-13-1. SHORT TITLE.--Chapter 40, Article 13 NMSA 1978

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may be cited as the "~~[Family Violence]~~ Protection Against Abuse and Violence Act"."

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

"40-13-2. DEFINITIONS.--As used in the ~~[Family Violence]~~ Protection Against Abuse and Violence Act:

A. "abuse" means:

(1) an incident or pattern of stalking or sexual assault, whether committed by a household member or not; and

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

(a) physical harm or battery, whether the injury is temporary or permanent;

(b) severe emotional distress that may include fear, depression, anxiety or loss of sleep;

(c) bodily injury or assault;

(d) a threat causing imminent fear of abuse;

(e) criminal trespass;

(f) criminal damage to or deprivation of property, real or personal, or damage to jointly owned or community property;

(g) repeatedly driving by a residence or

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workplace for no lawful purpose or following in a public place;

(h) harassment, whether in person or by telephone, internet or digital or electronic means;

(i) strangulation;

(j) suffocation;

(k) kidnapping or false imprisonment, restricting or inhibiting movement or forced criminal activity;

(l) interference with communication;

(m) threats to disclose immigration status;

(n) harm or threatened harm to an animal to intimidate, threaten or harass a person;

(o) unauthorized distribution of sensitive images; or

(p) harm or threatened harm to children as set forth in this paragraph;

B. "animal" means any living nonhuman creature, domestic or wild;

~~[A.]~~ C. "continuing personal relationship" means a dating or intimate relationship;

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

~~[C.]~~ E. "court" means the district court of the judicial district where an alleged victim of [~~domestic~~] abuse

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resides or is found or where the alleged abuse occurred;

[D. ~~"domestic abuse"~~:

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

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

~~(a) physical harm;~~

~~(b) severe emotional distress;~~

~~(c) bodily injury or assault;~~

~~(d) a threat causing imminent fear of bodily injury by any household member;~~

~~(e) criminal trespass;~~

~~(f) criminal damage to property;~~

~~(g) repeatedly driving by a residence or work place;~~

~~(h) telephone harassment;~~

~~(i) harassment;~~

~~(j) strangulation;~~

~~(k) suffocation; or~~

~~(l) harm or threatened harm to children as set forth in this paragraph; and~~

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

F. "credible threat" means a statement, act or course of conduct that serves no legitimate purpose and is done

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with the intent and apparent ability to carry out the threat and that would cause a person who is the target of the threat to fear for the person's safety or life or to fear bodily injury. The threat need not be directly expressed if the totality of the conduct would cause the person who is the target of the threat to feel that fear. A "credible threat" does not require the use or threatened use of a firearm;

[E-] G. "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon;

[F-] H. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent-in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section;

[G-] I. "law enforcement officer" means a public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes;

[H. ~~"mutual order of protection" means an order of protection that includes provisions that protect both parties;~~]

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J. "minor" means a person under the age of eighteen;

[H.] K. "order of protection" means an injunction or a restraining or other court order granted for the protection of a victim of [~~domestic~~] abuse;

[J.] L. "protected party" means a person protected by an order of protection;

[K.] M. "restrained party" means a person who is restrained by an order of protection;

[H.] N. "strangulation" has the same meaning as set forth in Section 30-3-11 NMSA 1978; and

[M.] O. "suffocation" has the same meaning as set forth in Section 30-3-11 NMSA 1978."

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

"40-13-3. PETITION FOR ORDER OF PROTECTION--CONTENTS--STANDARD FORMS.--

A. A victim of [~~domestic~~] abuse may petition the court under the [~~Family Violence~~] Protection Against Abuse and Violence Act for an order of protection.

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

C. The petition shall state whether any [~~other~~] domestic action is pending between the petitioner and the

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respondent.

D. [~~If any other domestic action is pending between the petitioner and the respondent~~] The parties shall not be compelled to mediate any aspect of the case arising from the [~~Family Violence~~] Protection Against Abuse and Violence Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.

E. An action brought under the [~~Family Violence~~] Protection Against Abuse and Violence Act is independent of any proceeding for annulment, separation or divorce between the parties, any other civil or criminal case that involves the parties and any other judicial action in any other court.

F. Remedies granted pursuant to the [~~Family Violence~~] Protection Against Abuse and Violence Act are in addition to and shall not limit other civil or criminal remedies available to the parties.

G. Standard simplified petition forms with instructions for completion shall be available to all parties. Law enforcement agencies shall keep such forms and make them available upon request to alleged victims of [~~domestic~~] abuse.

H. The petitioner shall advise the court if the petitioner or respondent speaks a language other than English and, upon that advisement, the clerk of the court shall access language translation for documents from the administrative

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office of the courts.

I. An order of protection may be issued to protect or restrain a minor.

J. A minor who is thirteen years of age or older and a victim of abuse may petition the court for an order of protection on the minor's own behalf if the minor files a petition:

(1) for protection against the minor's co-parent or a person with whom the minor has had a continuing personal relationship; or

(2) that contains allegations of stalking or sexual assault."

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

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

A. An alleged victim of [~~domestic~~] abuse shall not be required to bear the cost of:

(1) the prosecution of a misdemeanor or felony offense arising out of an incident of [~~domestic~~] abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;

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

(3) the filing, issuance or service of a

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witness subpoena;

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

(5) the filing, issuance or service of an order of protection; or

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

B. No witness fee shall be charged where prohibited by federal law."

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

"40-13-3.2. ~~[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 alleged victim or the alleged victim's child is in immediate danger of domestic abuse following an incident of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.]~~ A law enforcement officer may request an emergency order of protection by written petition to the court in person or by telephone, facsimile or

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other electronic means. The law enforcement officer shall inform the victim that an officer may petition the court for an emergency order of protection on the victim's behalf. The petition shall set forth the need for the emergency order of protection and, if known, include the location and telephone number of the alleged perpetrator. A criminal complaint does not have to be filed in order for a law enforcement officer to request an emergency order of protection. The court may issue an emergency order of protection when the court finds reasonable grounds that the alleged victim and any other household members are in immediate danger or that an act of abuse has occurred or may occur.

B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone, [☒] by facsimile transmission or by other electronic means from the court shall:

(1) if necessary, pursuant to the judge'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 restrained party and complete the appropriate affidavit of service;

(3) immediately provide the protected party with a physical and electronic signed copy of the order; and

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

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open.

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

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

(2) enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and

(3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.

D. A district judge shall be available [~~as determined by~~] at all times in 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 the court is open, 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

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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 issued pursuant to the provisions of the [~~Family Violence~~] Protection Against Abuse and Violence Act."

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

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

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

(1) [~~immediately grant~~] on the same day, issue an ex parte temporary order of protection without bond if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of [~~domestic~~] abuse has occurred or that there is immediate danger of abuse;

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

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

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

B. [~~If the court grants a~~] In the temporary order of protection, [~~it may award temporary custody and visitation of any children involved when appropriate~~] the court shall:

(1) enjoin the restrained party from committing or threatening to commit acts of abuse against the protected party or member of the protected party's household;

(2) enjoin the restrained party from any contact or communication with the protected party; and

(3) when appropriate, award temporary custody and visitation or supervised visitation with any child or children and give primary consideration to the safety of the protected party and child or children.

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

D. If, upon review of a petition for an order of

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protection, the court does not have sufficient information to find or does not find probable cause to believe that an act of abuse has occurred, the court shall hold a hearing within seventy-two hours to allow the petitioner to provide additional information to the court. Personal service is not required to conduct a seventy-two-hour hearing. At the conclusion of the hearing, the court shall issue either a temporary order of protection or an order dismissing the petition."

SECTION 7. 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 that there is immediate danger of abuse or upon stipulation of the parties, the court shall enter an order of protection on the same day ordering the restrained party to:

- (1) refrain from abusing the protected party or any other household member; and
- (2) if the order is issued pursuant to this section and if the court also determines that the restrained party presents a credible threat to the physical safety of the household member after the restrained party has received notice and had an opportunity to be heard or by stipulation of the parties, to:

(a) deliver any firearm in the

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restrained party's possession, care, custody or control to a law enforcement agency, law enforcement officer or federal firearms licensee while the order of protection is in effect; and

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

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

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

(2) may award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected party and the children; provided that any child custody and visitation order issued with the order of protection may only be effective for a period of six months.

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Any custody or visitation order may be extended for good cause shown for no longer than an additional six months;

(3) may issue the order of protection between the parties for a period of time independent of any custody or property attachment;

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

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

(6) may grant to a party the exclusive or shared possession and control of any animal kept, owned or leased by either party or by the minor child or minor children residing in the household of either party. The court may order a party to stay away from the animal and may forbid a party from taking, transferring, concealing, mistreating, harming or disposing of the animal;

[~~(5)~~] (7) may order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of [~~domestic~~] abuse, including medical expenses, counseling expenses, the

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expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;

[(-6)] (8) may order the restrained party to participate in, at the restrained party's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of [~~domestic~~] abuse, alcohol abuse or abuse of controlled substances; [~~and~~]

[(-7)] (9) may order other injunctive relief as the court deems necessary for the protection of a party, including orders to law enforcement agencies as provided by this section; and

(10) shall not order that the protected party participate in treatment or counseling related to abuse because the court does not have that authority pursuant to the Protection from Abuse and Violence Act.

C. The order of protection shall contain notice that violation of any provision of the order of protection is a violation of state law and that federal law, 18 U.S.C. 922, et seq., prohibits possession of firearms by certain persons. The order of protection shall contain notice that all restrained parties are prohibited from owning or SHPAC→possession←SHPAC SHPAC→possessing←SHPAC a firearm pursuant to state law while the order of protection is in effect. Firearms prohibitions pursuant to state law also apply to stipulated orders and to

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orders when the respondent has been served with notice of the hearing and has had the opportunity to participate.

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

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

F.] E. No order issued under the [~~Family Violence~~] Protection Against Abuse and Violence Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.

~~[G.]~~ F. Either party may request a review hearing to amend an order of protection. An order of protection

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involving child custody or support may be modified without proof of a substantial or material change of circumstances.

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

H. An order of protection may be issued against a party who has been served with a copy of a petition for an order of protection and a notice to appear and has had an opportunity to participate; provided that the proof of service is in the court file. If a party fails to appear at the ten-day hearing in which an order of protection is issued, the court shall mail a copy of the order to the party's address of record."

SECTION 8. Section 40-13-5.1 NMSA 1978 (being Laws 2016, Chapter 32, Section 1 and Laws 2016, Chapter 33, Section 1) is amended to read:

"40-13-5.1. EXTENDED ORDER OF PROTECTION.--

A. In the sentencing proceeding for a person convicted of criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978, a prosecutor may request that the criminal court grant the victim an order of protection to remain in effect for the duration of the criminal court's jurisdiction over the person.

B. At any time after the expiration of a criminal court's jurisdiction over a person against whom an order of protection was granted pursuant to a request pursuant to

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Subsection A of this section, the victim may:

(1) file a petition for an order of protection against the person; and

(2) submit evidence of the person's conviction for criminal sexual penetration, including out-of-state, as cause for the court to grant the order of protection.

C. Based on evidence submitted pursuant to Subsection B of this section, a court may take judicial notice of the facts that led to a person's conviction for criminal sexual penetration and a victim shall not be required to appear before the court on the victim's petition for an order of protection; provided, however, that another person may appear on the victim's behalf.

D. A court may grant an order of protection pursuant to this section for any length of time, including for a victim's lifetime.

E. Notwithstanding the provisions of Subsection C of Section 40-13-6 NMSA 1978, an order of protection granted pursuant to this section shall continue until the expiration provided in the order, if any, or until modified or rescinded upon a motion by the ~~[victim]~~ protected party."

SECTION 9. Section 40-13-6 NMSA 1978 (being Laws 1987, Chapter 286, Section 6, as amended) is amended to read:

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

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A. An order of protection granted under the [~~Family Violence~~] Protection Against Abuse and Violence Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be [~~personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued~~] provided to the parties or the parties' attorneys. The order shall be filed and [~~served~~] provided to the parties and a local law enforcement agency without cost to the protected party.

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

C. An order of protection [~~granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months.~~] Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a

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~~subsequent consent agreement entered into by the parties]~~
issued by the court may be in effect for a fixed period of time of any length; provided that the court deems the period of time appropriate to protect the safety of the protected party. Upon motion and after a hearing, an existing order of protection that may expire may be extended for good cause shown.

D. A [~~peace~~] law enforcement officer may arrest without a warrant and take into custody a restrained party [~~whom~~] who the [~~peace~~] officer has probable cause to believe has violated an order of protection that is issued pursuant to the [~~Family Violence~~] Protection Against Abuse and Violence Act or entitled to full faith and credit.

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

F. In addition to any other punishment provided in the [~~Family Violence~~] Protection Against Abuse and Violence Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to

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participate in and complete a [~~program of professional counseling~~] domestic violence offender treatment or intervention program or other relevant treatment or intervention program, at the person's own expense, if possible.

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

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

SECTION 10. Section 40-13-7 NMSA 1978 (being Laws 1987, Chapter 286, Section 7, as amended) is amended to read:

"40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO VICTIMS WHEN AN ALLEGED PERPETRATOR IS RELEASED FROM DETENTION--STATEMENT IN JUDGMENT AND SENTENCE DOCUMENT.--

A. A person who allegedly has been a victim of [~~domestic~~] abuse may request the assistance of a local law enforcement agency.

B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim and other

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household members from further [~~domestic~~] abuse, including:

(1) [~~advising~~] informing the victim of the remedies available under the [~~Family Violence~~] Protection Against Abuse and Violence Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of [~~domestic~~] violence shelters, medical care, counseling and other services;

(2) upon the request of the victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;

(3) upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;

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

(5) arresting the alleged perpetrator [~~when appropriate~~] and including a written statement in the [~~attendant~~] police report to indicate that the arrest of the alleged perpetrator was [~~in whole or in part, premised~~] based upon probable cause to believe that the alleged perpetrator committed [~~domestic~~] abuse against the victim. [~~and, when~~

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~~appropriate~~] A law enforcement officer, in making arrests for abuse, shall identify whether one of the parties acted in self-defense and indicate that the party arrested was the predominant aggressor; [and]

(6) ~~[advising]~~ informing the victim ~~[when appropriate]~~ of the procedure for initiating proceedings under the ~~[Family Violence]~~ Protection Against Abuse and Violence Act or criminal proceedings and of the importance of preserving evidence, including digital evidence; and

(7) identifying and documenting in the criminal complaint and incident report names and relationships between people present at the incident, including any additional victims or witnesses.

C. The jail or detention center shall make [a] reasonable ~~[attempt]~~ efforts to notify the arresting law enforcement agency or officer and victim when the alleged perpetrator of abuse, stalking or sexual assault or a restrained party in violation of an order of protection escapes from custody, is released from custody or is transferred to another facility. The arresting law enforcement agency shall make [a] reasonable ~~[attempt]~~ efforts to notify the victim that the alleged perpetrator is released from custody.

D. Any law enforcement officer responding to a request for assistance under the ~~[Family Violence]~~ Protection Against Abuse and Violence Act is immune from civil liability

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to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.

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

SECTION 11. Section 40-13-7.1 NMSA 1978 (being Laws 2005, Chapter 281, Section 1) is amended to read:

"40-13-7.1. [~~MEDICAL~~] HEALTH CARE PERSONNEL--
DOCUMENTATION OF [~~DOMESTIC~~] ABUSE.--

A. When [~~medical~~] health care personnel who are interviewing, examining, attending or treating a person:

(1) receive a report from the person of an act of [~~domestic~~] abuse, the [~~medical~~] health care personnel shall document the nature of the abuse and the name of the alleged perpetrator, if disclosed, of the abuse in the person's medical file and shall provide the person with information and referral to services for victims of [~~domestic~~] abuse; or

(2) may have reason to believe or suspect that the person is a victim of [~~domestic~~] abuse, the [~~medical~~] health care personnel shall provide the person with information and referral to services for victims of [~~domestic~~] abuse.

B. Medical and other health-care-related

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information or communications concerning [~~domestic~~] abuse of a person obtained by or from [~~medical~~] health care personnel during the course of an interview, examination, diagnosis or treatment are confidential communications unless released:

- (1) with the prior written consent of the person;
- (2) pursuant to a court order; or
- (3) when necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act of 1996.

C. As used in this section, "[~~medical~~] health care personnel" means:

(1) licensed health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners;

~~[(2) licensed emergency medical technicians;
(3) health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners;~~
and

~~(4) residents and interns]~~
(2) health care practitioners in training, including students, residents and interns; and
(3) licensed emergency medical technicians."

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SECTION 12. Section 40-13-9 NMSA 1978 (being Laws 2005, Chapter 30, Section 1) is amended to read:

"40-13-9. DOMESTIC VIOLENCE SPECIAL COMMISSIONERS--
APPOINTMENT--QUALIFICATIONS.--

A. A domestic violence special commissioner shall be appointed by and serve at the pleasure of the chief judge of the judicial district to which the officer is assigned.

B. A domestic violence special commissioner shall:

(1) be an attorney licensed to practice law in New Mexico;

(2) have a minimum of three years experience in the practice of law and be knowledgeable in the area of domestic relations and domestic violence matters; and

(3) conform to Canons 21-100 through [~~21-500 and 21-700~~] 21-400 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any domestic violence special commissioner."

SECTION 13. Section 40-13-10 NMSA 1978 (being Laws 2005, Chapter 30, Section 2) is amended to read:

"40-13-10. SPECIAL COMMISSIONERS--POWERS--DUTIES.--

A. A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the [~~Family Violence~~] Protection Against Abuse and Violence Act:

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(1) review [~~petitions~~] every petition for [~~orders~~] an order of protection and all motions to enforce, modify or terminate orders of protection or motions to show cause;

(2) if deemed necessary, interview petitioners. Any interview shall be on the record;

(3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate orders of protection or motions to show cause; and

(4) prepare recommendations to the [~~district~~] court regarding petitions for orders of protection and motions to enforce, modify or terminate orders of protection or motions to show cause.

B. All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective. The recommendation of the hearing officer shall be reviewed and signed on the same day of the hearing."

SECTION 14. Section 40-13-12 NMSA 1978 (being Laws 2008, Chapter 40, Section 10) is amended to read:

"40-13-12. LIMITS ON INTERNET PUBLICATION.--A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule

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municipality, shall not make available publicly on the internet any information [~~that would likely reveal the identity or location of the party protected under an order of protection~~] regarding the registration of, filing of a petition for or issuance of a protection order, restraining order or injunction pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, whether the filing or issuance occurred in New Mexico or any other state. This provision shall not apply to a filing or issuance on the New Mexico state judiciary's statewide case management and e-filing system, but the address of a protected person shall be redacted from that filing or issuance. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes."

SECTION 15. REPEAL.--Section 40-13-1.1 NMSA 1978 (being Laws 2002, Chapter 34, Section 2 and Laws 2002, Chapter 35, Section 2) is repealed.

SHPAC → SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023. ←SHPAC