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HOUSE BILL 744

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

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO HARASSMENT AND STALKING; ENACTING NEW SECTIONS OF THE HARASSMENT AND STALKING ACT TO PROVIDE FOR ISSUANCE AND ENFORCEMENT OF PROTECTIVE ORDERS.

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

Section 1. A new section of the Harassment and Stalking Act is enacted to read:

" NEW MATERIAL PETITION FOR ORDER OF PROTECTION-- CONTENTS-- INDIGENT PETITIONERS-- STANDARD FORMS. --

A. A victim of harassment or stalking may petition a district court 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 harassment or stalking.

C. The petition shall state whether any other

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1 action is pending between the petitioner and the respondent.

2 D. If any other action is pending between the  
3 petitioner and the respondent, the parties shall not be  
4 compelled to mediate any aspect of the case unless the court  
5 finds that appropriate safeguards exist to protect each of the  
6 parties and that both parties can fairly mediate with such  
7 safeguards.

8 E. Any remedies granted are in addition to other  
9 available civil or criminal remedies.

10 F. If the petition is accompanied by an affidavit  
11 showing that the petitioner is unable to pay the costs of the  
12 proceeding, the court may order that the petitioner be  
13 permitted to proceed as an indigent without payment of court  
14 costs.

15 G. Standard simplified petition forms with  
16 instructions for completion shall be available to petitioners  
17 not represented by counsel. Law enforcement agencies shall  
18 keep such forms and make them available upon request to  
19 victims of harassment or stalking. "

20 Section 2. A new section of the Harassment and Stalking  
21 Act is enacted to read:

22 "[NEW MATERIAL] COSTS OF CRIMINAL PROCESSES ASSOCIATED  
23 WITH HARASSMENT OR STALKING OFFENSES. --An alleged victim of  
24 harassment or stalking shall not be required to bear the cost  
25 of:

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- 1           A. filing a criminal charge against an alleged
- 2 harasser or stalker;
- 3           B. the issuance or service of a warrant;
- 4           C. the issuance or service of a witness subpoena;
- 5 or
- 6           D. the issuance or service of a protection order. "

7           Section 3. A new section of the Harassment and Stalking  
8 Act is enacted to read:

9           "[NEW MATERIAL] TEMPORARY ORDER OF PROTECTION--HEARING. --

10 Upon the filing of a petition for order of protection, the  
11 court shall:

12           A. immediately grant an ex parte temporary order  
13 of protection without bond if there is probable cause from the  
14 specific facts shown by the affidavit or by the petition to  
15 give the judge reason to believe that an act of harassment or  
16 stalking has occurred;

17           B. cause the temporary order of protection  
18 together with notice of hearing to be served immediately on  
19 the alleged perpetrator of the harassment or stalking; and

20           C. within ten days after the granting of the  
21 temporary order of protection, hold a hearing on the question  
22 of continuing the order; or

23           D. if an ex parte order is not granted, serve  
24 notice to appear upon the parties and hold a hearing on the  
25 petition for order of protection within seventy-two hours

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1 after the filing of the petition; provided, if notice of  
2 hearing cannot be served within seventy-two hours, the  
3 temporary order of protection shall be automatically extended  
4 for ten days. "

5 Section 4. A new section of the Harassment and Stalking  
6 Act is enacted to read:

7 "[NEW MATERIAL] ORDER OF PROTECTION-- CONTENTS-- REMEDIES. --

8 A. Upon finding that harassment or stalking has  
9 occurred, the court shall enter an order of protection ordering  
10 the respondent to refrain from harassing or stalking the  
11 petitioner or any other person. The court shall specifically  
12 describe the acts the court has ordered the respondent to do or  
13 refrain from doing. As a part of any order of protection, the  
14 court may:

15 (1) order that the respondent shall not  
16 initiate contact with the petitioner; or

17 (2) order other injunctive relief as the court  
18 deems necessary for the protection of the petitioner, including  
19 orders to law enforcement agencies as provided by this section.

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

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

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1                   D. Either party may request a review hearing to  
2 amend the order. "

3                   Section 5. A new section of the Harassment and Stalking  
4 Act is enacted to read:

5                   "[NEW MATERIAL] SERVICE OF ORDER--DURATION--PENALTY--  
6 REMEDIES NOT EXCLUSIVE. --

7                   A. An order of protection granted under the  
8 Harassment and Stalking Act shall be filed with the clerk of the  
9 court and a copy shall be sent by the clerk to the local law  
10 enforcement agency. The order shall be personally served upon  
11 the respondent, unless he or his attorney was present at the  
12 time the order was issued. The order shall be filed and served  
13 without cost to the petitioner.

14                   B. An order of protection granted by the court shall  
15 be effective for a fixed period of time not to exceed six  
16 months. The order may be extended for good cause upon motion of  
17 the petitioner for an additional period of time not to exceed  
18 six months. Injunctive orders shall continue until modified or  
19 rescinded upon motion by either party or until the court  
20 approves a subsequent consent agreement entered into by the  
21 petitioner and the respondent.

22                   C. A peace officer shall arrest without a warrant  
23 and take into custody a person whom the peace officer has  
24 probable cause to believe has violated an order pursuant to the  
25 Harassment and Stalking Act.

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1           D. State courts shall give full faith and credit to  
2 tribal court orders of protection.

3           E. A person convicted of violating an order of  
4 protection granted by a court under the Harassment and Stalking  
5 Act is guilty of a misdemeanor and shall be sentenced in  
6 accordance with Section 31-19-1 NMSA 1978. Upon a second or  
7 subsequent conviction, an offender shall be sentenced to a jail  
8 term of not less than seventy-two consecutive hours that shall  
9 not be suspended, deferred or taken under advisement.

10           F. In addition to any other punishment provided in  
11 the Harassment and Stalking Act, the court shall order a person  
12 convicted to make full restitution to the party injured by the  
13 violation of an order of protection and order the person  
14 convicted to participate in and complete a program of  
15 professional counseling, at his own expense, if possible.

16           G. In addition to charging the person with violating  
17 an order of protection, a peace officer shall file all other  
18 possible criminal charges arising from an incident of harassment  
19 or stalking when probable cause exists.

20           H. The remedies provided in the Harassment and  
21 Stalking Act are in addition to any other civil or criminal  
22 remedy available to the petitioner. "

23           Section 6. A new section of the Harassment and Stalking  
24 Act is enacted to read:

25           "[NEW MATERIAL] LAW ENFORCEMENT OFFICERS-- EMERGENCY

1 ASSISTANCE-- LIMITED LIABILITY-- PROVIDING NOTIFICATION TO VICTIMS  
2 WHEN A PERPETRATOR IS RELEASED FROM DETENTION-- STATEMENT IN  
3 JUDGMENT AND SENTENCE DOCUMENT. --

4 A. A person who allegedly has been a victim of  
5 harassment or stalking may request the assistance of a local law  
6 enforcement agency.

7 B. A local law enforcement officer responding to the  
8 request for assistance shall be required to take whatever steps  
9 are reasonably necessary to protect the victim from further  
10 harassment or stalking, including:

11 (1) advising the victim of the remedies  
12 available under the Harassment and Stalking Act, the right to  
13 file a written statement or request for an arrest warrant;

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

17 (3) upon the request of the petitioner,  
18 accompanying the victim to the victim's residence to remove the  
19 victim's clothing and personal effects required for immediate  
20 needs and the clothing and personal effects of any children then  
21 in the care of the victim;

22 (4) upon the request of the petitioner, assist  
23 in placing the petitioner in possession of the dwelling or  
24 premises or otherwise assist in execution or service of the  
25 order of protection;

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1 (5) arresting the harasser or stalker when  
2 appropriate and including a written statement in the attendant  
3 police report to indicate that the arrest of the harasser or  
4 stalker was, in whole or in part, premised upon probable cause  
5 to believe that the harassment or stalking occurred; and

6 (6) advising the victim when appropriate of the  
7 procedure for initiating proceedings under the Harassment and  
8 Stalking Act or criminal proceedings and of the importance of  
9 preserving evidence.

10 C. The jail or detention center shall make a  
11 reasonable attempt to notify the arresting law enforcement  
12 agency or officer when the harasser or stalker is released from  
13 custody. The arresting law enforcement agency shall make a  
14 reasonable attempt to notify the victim that the harasser or  
15 stalker is released from custody.

16 D. Any law enforcement officer responding to the  
17 request for assistance under the Harassment and Stalking Act is  
18 immune from civil liability to the extent allowed by law. Any  
19 jail, detention center or law enforcement agency that makes a  
20 reasonable attempt to provide notification that a harasser or  
21 stalker is released from custody is immune from civil liability  
22 to the extent allowed by law.

23 E. A statement shall be included in a judgment and  
24 sentence document to indicate when a conviction results from the  
25 commission of harassment or stalking. "

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