

1 SENATE BILL 495

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO CRIMINAL LAW; PROHIBITING FIREARM POSSESSION BY  
12 CERTAIN PERSONS CONVICTED OF DOMESTIC VIOLENCE OFFENSES OR  
13 SUBJECT TO CERTAIN ORDERS OF PROTECTION; REQUIRING TRANSFER OF  
14 FIREARMS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

17 SECTION 1. A new section of the Crimes Against Household  
18 Members Act is enacted to read:

19 "[NEW MATERIAL] TRANSFER OF FIREARMS BY PERSONS CONVICTED  
20 OF DOMESTIC VIOLENCE OFFENSES.--If a person is convicted of a  
21 misdemeanor crime of domestic violence as described in Section  
22 30-7-16 NMSA 1978, that person shall be prohibited from  
23 receiving, transporting or possessing firearms and the court  
24 shall inform the person of that prohibition and shall order the  
25 person to transfer all firearms owned by the person or in the

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1 person's possession as follows:

2 A. the transfer shall be made within twenty-four  
3 hours of conviction to a state or local law enforcement agency  
4 or to a federally licensed firearms dealer. A law enforcement  
5 agency or federally licensed firearms dealer that takes  
6 possession of the firearms shall issue a proof of transfer to  
7 the person transferring the firearms. The proof of transfer  
8 shall include the name of the person, the date of transfer and  
9 the serial number, make and model of all transferred firearms;

10 B. within forty-eight hours after being served with  
11 the order to transfer the person shall either:

12 (1) file a copy of the proof of transfer with  
13 the court of conviction and attest that all firearms owned by  
14 the person or in the person's possession at the time of  
15 conviction have been transferred in accordance with this  
16 section and that the person currently owns no firearms and has  
17 no firearms in the person's possession; or

18 (2) attest that, at the time of conviction,  
19 the person owned no firearms and had no firearms in the  
20 person's possession and that the person currently owns no  
21 firearms and has no firearms in the person's possession; and

22 C. if the person transfers a firearm to a law  
23 enforcement agency, the law enforcement agency may dispose of  
24 the firearm; provided that the person is notified of the  
25 disposal and that the person receives any financial value

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1 received from the disposal, less the cost associated with  
2 taking possession of, storing and disposing of the firearm."

3 SECTION 2. Section 30-3-12 NMSA 1978 (being Laws 1995,  
4 Chapter 221, Section 3) is amended to read:

5 "30-3-12. ASSAULT AGAINST A HOUSEHOLD MEMBER.--

6 A. Assault against a household member consists of:

7 (1) an attempt to commit a battery against a  
8 household member; or

9 (2) any unlawful act, threat or menacing  
10 conduct that causes a household member to reasonably believe  
11 that ~~[he]~~ the household member is in danger of receiving an  
12 immediate battery.

13 B. Whoever commits assault against a household  
14 member is guilty of a petty misdemeanor.

15 C. The court shall indicate on the record of  
16 conviction for assault against a household member whether the  
17 conviction is pursuant to Paragraph (1) or (2) of Subsection A  
18 of this section. If the conviction is pursuant to Paragraph  
19 (1) of Subsection A of this section, the court shall inform the  
20 offender that the offender is prohibited from receiving,  
21 transporting or possessing firearms pursuant to Paragraph (2)  
22 of Subsection A of Section 30-7-16 NMSA 1978 and shall order  
23 the offender to transfer any firearms in the offender's  
24 possession in accordance with Section 1 of this 2015 act. If  
25 the conviction is pursuant to Paragraph (2) of Subsection A of

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1 this section, the court shall indicate on the record of  
2 conviction whether the offense involved a battery or attempted  
3 battery or the threatened use of a firearm. If a conviction  
4 pursuant to Paragraph (2) of Subsection A of this section  
5 involved a battery or attempted battery, or the threatened use  
6 of a firearm, the court shall inform the offender that the  
7 offender is prohibited from receiving, transporting or  
8 possessing firearms pursuant to Paragraph (2) of Subsection A  
9 of Section 30-7-16 NMSA 1978 and shall order the offender to  
10 transfer any firearms in the offender's possession in  
11 accordance with Section 1 of this 2015 act."

12 SECTION 3. Section 30-3-15 NMSA 1978 (being Laws 1995,  
13 Chapter 221, Section 6, as amended) is amended to read:

14 "30-3-15. BATTERY AGAINST A HOUSEHOLD MEMBER.--

15 A. Battery against a household member consists of  
16 the unlawful, intentional touching or application of force to  
17 the person of a household member, when done in a rude, insolent  
18 or angry manner.

19 B. Whoever commits battery against a household  
20 member is guilty of a misdemeanor.

21 C. Upon conviction pursuant to this section, an  
22 offender shall be required to participate in and complete a  
23 domestic violence offender treatment or intervention program  
24 approved by the children, youth and families department  
25 pursuant to rules promulgated by the department that define the

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1 criteria for such programs.

2 D. Notwithstanding any provision of law to the  
3 contrary, if a sentence imposed pursuant to this section is  
4 suspended or deferred in whole or in part, the period of  
5 probation may extend beyond three hundred sixty-four days but  
6 may not exceed two years. If an offender violates a condition  
7 of probation, the court may impose any sentence that the court  
8 could originally have imposed and credit shall not be given for  
9 time served by the offender on probation; provided that the  
10 total period of incarceration shall not exceed three hundred  
11 sixty-four days and the combined period of incarceration and  
12 probation shall not exceed two years.

13 E. The offender shall be prohibited from receiving,  
14 transporting or possessing firearms pursuant to Paragraph (2)  
15 of Subsection A of Section 30-7-16 NMSA 1978. The court shall  
16 inform the offender of the offender's prohibited status and  
17 shall order the offender to transfer any firearms in the  
18 offender's possession in accordance with Section 1 of this 2015  
19 act."

20 SECTION 4. Section 30-7-16 NMSA 1978 (being Laws 1981,  
21 Chapter 225, Section 1, as amended) is amended to read:

22 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,  
23 TRANSPORTATION OR POSSESSION BY A FELON--PENALTY.--

24 A. It is unlawful for a [~~felon~~] person to receive,  
25 transport or possess any firearm or destructive device in this

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1 state if the person:

2 (1) is a felon;

3 (2) has been convicted of a misdemeanor crime  
4 of domestic violence; or

5 (3) is subject to a domestic violence order of  
6 protection.

7 B. Any person violating the provisions of this  
8 section shall be guilty of a fourth degree felony and shall be  
9 sentenced in accordance with the provisions of the Criminal  
10 Sentencing Act.

11 C. As used in this section:

12 (1) "destructive device" means:

13 (a) any explosive, incendiary or poison  
14 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge  
15 of more than four ounces; 4) missile having an explosive or  
16 incendiary charge of more than one-fourth ounce; 5) mine; or 6)  
17 similar device;

18 (b) any type of weapon by whatever name  
19 known that will, or that may be readily converted to, expel a  
20 projectile by the action of an explosive or other propellant,  
21 the barrel or barrels of which have a bore of more than one-  
22 half inch in diameter, except a shotgun or shotgun shell that  
23 is generally recognized as particularly suitable for sporting  
24 purposes; and

25 (c) any combination of parts either

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1 designed or intended for use in converting any device into a  
2 destructive device as defined in this paragraph and from which  
3 a destructive device may be readily assembled.

4 The term "destructive device" does not include any device  
5 that is neither designed nor redesigned for use as a weapon or  
6 any device, although originally designed for use as a weapon,  
7 that is redesigned for use as a signaling, pyrotechnic, line  
8 throwing, safety or similar device;

9 (2) "domestic violence order of protection"  
10 means an order issued pursuant to the Family Violence  
11 Protection Act or an equivalent order by any federal, state or  
12 local court that:

13 (a) includes a finding of domestic abuse  
14 as defined in Section 40-13-2 NMSA 1978; and

15 (b) was issued after the restrained  
16 party received notice of the proceedings and had an opportunity  
17 to be heard;

18 [~~2~~] (3) "felon" means a person convicted of  
19 a felony offense by a court of the United States or of any  
20 state or political subdivision thereof and:

21 (a) less than ten years have passed  
22 since the person completed serving [~~his~~] a sentence or period  
23 of probation for the felony conviction, whichever is later;

24 (b) the person has not been pardoned for  
25 the felony conviction by the proper authority; and

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1 (c) the person has not received a  
2 deferred sentence; [~~and~~

3 ~~(3)] (4) "firearm" means any weapon that will  
4 or is designed to or may readily be converted to expel a  
5 projectile by the action of an [~~explosion~~] explosive; the frame  
6 or receiver of any such weapon; or any firearm muffler or  
7 firearm silencer. "Firearm" includes any handgun, rifle or  
8 shotgun; and~~

9 (5) "misdemeanor crime of domestic violence"  
10 means a conviction for a misdemeanor by a federal, state or  
11 local court that involves the use or attempted use of force, or  
12 the threatened use of a firearm, against a household member as  
13 defined in Section 30-3-11 NMSA 1978; provided that:

14 (a) less than ten years have passed  
15 since the person completed serving a sentence or period of  
16 probation for the conviction, whichever is later;

17 (b) the person has not been pardoned for  
18 the conviction by the proper authority; and

19 (c) the person has not had the  
20 misdemeanor crime of domestic violence charges dismissed after  
21 completing the terms of a deferred sentence."

22 SECTION 5. Section 30-9-12 NMSA 1978 (being Laws 1975,  
23 Chapter 109, Section 3, as amended) is amended to read:

24 "30-9-12. CRIMINAL SEXUAL CONTACT.--

25 A. Criminal sexual contact is the unlawful and

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1 intentional touching of or application of force, without  
2 consent, to the unclothed intimate parts of another who has  
3 reached [~~his eighteenth birthday~~] eighteen years of age, or  
4 intentionally causing another who has reached [~~his eighteenth~~  
5 ~~birthday~~] eighteen years of age to touch one's intimate parts.

6 B. Criminal sexual contact does not include  
7 touching by a psychotherapist on [~~his~~] a patient that is:

- 8 (1) inadvertent;  
9 (2) casual social contact not intended to be  
10 sexual in nature; or  
11 (3) generally recognized by mental health  
12 professionals as being a legitimate element of psychotherapy.

13 C. Criminal sexual contact in the fourth degree  
14 consists of all criminal sexual contact perpetrated:

- 15 (1) by the use of force or coercion that  
16 results in personal injury to the victim;  
17 (2) by the use of force or coercion when the  
18 perpetrator is aided or abetted by one or more persons; or  
19 (3) when the perpetrator is armed with a  
20 deadly weapon.

21 D. Whoever commits criminal sexual contact in the  
22 fourth degree is guilty of a fourth degree felony.

23 [~~D.~~] E. Criminal sexual contact is a misdemeanor  
24 when perpetrated with the use of force or coercion.

25 [~~E.~~] F. For the purposes of this section, "intimate

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1 parts" means the primary genital area, groin, buttocks, anus or  
2 breast.

3 G. The court shall indicate on the record of  
4 conviction for misdemeanor criminal sexual contact whether the  
5 offense was committed against a household member as defined in  
6 Section 30-3-11 NMSA 1978. If the offense was committed  
7 against a household member, the offender shall be prohibited  
8 from receiving, transporting or possessing firearms pursuant to  
9 Paragraph (2) of Subsection A of Section 30-7-16 NMSA 1978.  
10 The court shall inform the offender of the offender's  
11 prohibited status and shall order the offender to transfer any  
12 firearms in the offender's possession in the same manner as  
13 required by Section 1 of this 2015 act."

14 SECTION 6. Section 30-20-1 NMSA 1978 (being Laws 1963,  
15 Chapter 303, Section 20-1, as amended) is amended to read:

16 "30-20-1. DISORDERLY CONDUCT.--

17 A. Disorderly conduct consists of:

18 [~~A.~~] (1) engaging in violent, abusive,  
19 indecent, profane, boisterous, unreasonably loud or otherwise  
20 disorderly conduct [~~which~~] that tends to disturb the peace; or

21 [~~B.~~] (2) maliciously disturbing, threatening  
22 or, in an insolent manner, intentionally touching any house  
23 occupied by any person.

24 B. Whoever commits disorderly conduct is guilty of  
25 a petty misdemeanor.

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1           C. The court shall indicate on the record of  
2 conviction for disorderly conduct whether the offense involved  
3 the use or attempted use of force or the threatened use of a  
4 deadly weapon against a household member as defined in Section  
5 30-3-11 NMSA 1978. If the offense involved the use or  
6 attempted use of force or the threatened use of a deadly weapon  
7 against a household member, the offender shall be prohibited  
8 from receiving, transporting or possessing firearms pursuant to  
9 Paragraph (2) of Subsection A of Section 30-7-16 NMSA 1978.  
10 The court shall inform the offender of the offender's  
11 prohibited status and shall order the offender to transfer any  
12 firearms in the offender's possession in the same manner as  
13 required by Section 1 of this 2015 act."

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

16           "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE  
17 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

18           A. Upon finding that domestic abuse has occurred or  
19 upon stipulation of the parties, the court shall enter an order  
20 of protection ordering the restrained party to refrain from  
21 abusing the protected party or any other household member. The  
22 court shall specifically describe the acts the court has  
23 ordered the restrained party to do or refrain from doing. As a  
24 part of any order of protection, the court may:

25                   (1) grant sole possession of the residence or

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1 household to the protected party during the period the order of  
2 protection is effective or order the restrained party to  
3 provide temporary suitable alternative housing for the  
4 protected party and any children to whom the restrained party  
5 owes a legal obligation of support;

6 (2) award temporary custody of any children  
7 involved when appropriate and provide for visitation rights,  
8 child support and temporary support for the protected party on  
9 a basis that gives primary consideration to the safety of the  
10 protected party and the children;

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

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

20 (5) order the restrained party to reimburse  
21 the protected party or any other household member for expenses  
22 reasonably related to the occurrence of domestic abuse,  
23 including medical expenses, counseling expenses, the expense of  
24 seeking temporary shelter, expenses for the replacement or  
25 repair of damaged property or the expense of lost wages;

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1 (6) order the restrained party to participate  
2 in, at the restrained party's expense, professional counseling  
3 programs deemed appropriate by the court, including counseling  
4 programs for perpetrators of domestic abuse, alcohol abuse or  
5 abuse of controlled substances; and

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

9 B. An order of protection that was issued after the  
10 restrained party received notice of the proceedings and had an  
11 opportunity to be heard shall prohibit the restrained party  
12 from receiving, transporting or possessing firearms pursuant to  
13 Paragraph (3) of Subsection A of Section 30-7-16 NMSA 1978 for  
14 the period of time that the order is in effect. The order  
15 shall inform the restrained party of the restrained party's  
16 prohibited status and shall require that the restrained party  
17 transfer all firearms in the restrained party's possession to  
18 law enforcement or to a federally licensed firearms dealer in  
19 accordance with Section 8 of this 2015 act.

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

24 [~~C.~~] D. If the order of protection supersedes or  
25 alters prior orders of the court pertaining to domestic matters

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

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

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

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

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

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1           SECTION 8. A new section of the Family Violence  
2 Protection Act is enacted to read:

3           "[NEW MATERIAL] TRANSFER OF FIREARMS BY A PERSON SUBJECT  
4 TO AN ORDER OF PROTECTION.--When a court grants an order of  
5 protection pursuant to the Family Violence Protection Act that  
6 was issued after the restrained party received notice of the  
7 proceedings and had an opportunity to be heard, the court shall  
8 inform the restrained party that the restrained party is  
9 prohibited from receiving, transporting or possessing firearms  
10 pursuant to Paragraph (3) of Subsection A of Section 30-7-16  
11 NMSA 1978 and shall order the restrained party to transfer all  
12 firearms owned by the restrained party or in the restrained  
13 party's possession as follows:

14           A. the transfer shall be made within twenty-four  
15 hours after the restrained party is served with the order to a  
16 state or local law enforcement agency or to a federally  
17 licensed firearms dealer. A law enforcement agency or  
18 federally licensed firearms dealer that takes possession of the  
19 firearms shall issue a proof of transfer to the restrained  
20 party transferring the firearms. The proof of transfer shall  
21 include the name of the restrained party, the date of transfer,  
22 whether the transfer is permanent or temporary and the serial  
23 number, make and model of all transferred firearms;

24           B. within forty-eight hours after being served with  
25 the order, the restrained party shall either:

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1 (1) file a copy of the proof of transfer with  
2 the court that issued the transfer order and attest that all  
3 firearms owned by the restrained party or in the restrained  
4 party's possession at the time the order was issued have been  
5 transferred in accordance with this section and that the  
6 restrained party currently has no firearms in the restrained  
7 party's possession; or

8 (2) attest that, at the time the order was  
9 issued, the restrained party owned no firearms and had no  
10 firearms in the restrained party's possession and that the  
11 restrained party currently owns no firearms and has no firearms  
12 in the restrained party's possession;

13 C. at the expiration of the order, the law  
14 enforcement agency or federally licensed firearms dealer shall,  
15 at the restrained party's request, return any temporarily  
16 transferred firearm to the restrained party, unless the order  
17 is extended or the restrained party is otherwise prohibited  
18 from possessing firearms under state or federal law. Prior to  
19 returning any firearm to the restrained party, the law  
20 enforcement agency shall conduct an appropriate check of  
21 available records and contact the national instant criminal  
22 background check system to ensure that the restrained party is  
23 no longer prohibited from possessing firearms under state or  
24 federal law; and

25 D. law enforcement agencies and federally licensed

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1 firearms dealers may establish policies for the disposition of  
2 abandoned firearms and may charge a fee in connection with the  
3 storage of any firearm held pursuant to this section. The fee  
4 charged by a law enforcement agency may not exceed the cost  
5 associated with storing the firearm."

6 SECTION 9. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2015.

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