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AN ACT

RELATING TO DOMESTIC VIOLENCE; PROHIBITING A PERSON SUBJECT
TO CERTAIN ORDERS OF PROTECTION FROM POSSESSING OR PURCHASING
FIREARMS; PROVIDING PROCEDURES FOR DELIVERY OF FIREARMS.

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

SECTION 1. 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 Act:

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

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

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;

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

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

15 E. "firearm" means any weapon that will or is
16 designed to or may readily be converted to expel a projectile
17 by action of an explosion and the frame or receiver of any
18 such weapon;

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

1 G. "mutual order of protection" means an order of
2 protection that includes provisions that protect both
3 parties;

4 H. "order of protection" means an injunction or a
5 restraining or other court order granted for the protection
6 of a victim of domestic abuse;

7 I. "protected party" means a person protected by
8 an order of protection; and

9 J. "restrained party" means a person who is
10 restrained by an order of protection."

11 SECTION 2. Section 40-13-5 NMSA 1978 (being Laws 1987,
12 Chapter 286, Section 5, as amended) is amended to read:

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

15 A. Upon finding that domestic abuse has occurred
16 or upon stipulation of the parties, the court shall enter an
17 order of protection ordering the restrained party:

18 (1) to refrain from abusing the protected
19 party or any other household member; and

20 (2) if the order is issued pursuant to this
21 section and if the court determines that the restrained party
22 presents a credible threat to the physical safety of the
23 household member after the restrained party has received
24 notice and had an opportunity to be heard or by stipulation
25 of the parties:

1 (a) to deliver any firearm in the
2 restrained party's possession, care, custody or control while
3 the order of protection is in effect; and

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

8 B. If the court finds that it is reasonably
9 necessary for the restrained party to retain, purchase or
10 possess a firearm as a condition of the restrained party's
11 employment, the court may enter an order of protection that
12 includes only the provision in Paragraph (1) of Subsection A
13 of this section and may impose any restrictions reasonably
14 calculated to protect the protected party.

15 C. In an order of protection entered pursuant to
16 Subsection A of this section, the court shall specifically
17 describe the acts the court has ordered the restrained party
18 to do or refrain from doing. As a part of any order of
19 protection, the court may:

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

1 (2) award temporary custody of any children
2 involved when appropriate and provide for visitation rights,
3 child support and temporary support for the protected party
4 on a basis that gives primary consideration to the safety of
5 the protected party and the children;

6 (3) order that the restrained party shall
7 not initiate contact with the protected party;

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

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

22 (6) order the restrained party to
23 participate in, at the restrained party's expense,
24 professional counseling programs deemed appropriate by the
25 court, including counseling programs for perpetrators of

1 domestic abuse, alcohol abuse or abuse of controlled
2 substances; and

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

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

11 E. If the order of protection supersedes or alters
12 prior orders of the court pertaining to domestic matters
13 between the parties, the order shall say so on its face. If
14 an action relating to child custody or child support is
15 pending or has concluded with entry of an order at the time
16 the petition for an order of protection was filed, the court
17 may enter an initial order of protection, but the portion of
18 the order dealing with child custody or child support will
19 then be transferred to the court that has or continues to
20 have jurisdiction over the pending or prior custody or
21 support action.

22 F. A mutual order of protection shall be issued
23 only in cases where both parties have petitioned the court
24 and the court makes detailed findings of fact indicating that
25 both parties acted primarily as aggressors and that neither

1 party acted primarily in self-defense.

2 G. An order issued under the Family Violence
3 Protection Act shall not affect title to any property or
4 allow a party to transfer, conceal, encumber or otherwise
5 dispose of another party's property or the joint or community
6 property of the parties.

7 H. Either party may request a review hearing to
8 amend an order of protection. An order of protection
9 involving child custody or support may be modified without
10 proof of a substantial or material change of circumstances.

11 I. An order of protection shall not be issued
12 unless a petition or a counter petition has been filed."

13 SECTION 3. A new section of the Family Violence
14 Protection Act is enacted to read:

15 "DELIVERY OF FIREARMS--PENALTY.--

16 A. A delivery of firearms ordered pursuant to
17 Section 40-13-5 NMSA 1978 shall occur by the restrained party
18 delivering any firearm in the restrained party's immediate
19 possession, care, custody or control to a third party who is
20 not prohibited from possessing a firearm by state or federal
21 law on or before the business day following the day on which
22 the restrained party is served with the order of protection.
23 To deliver the firearm, the restrained party may:

24 (1) sell or deliver the firearm to a
25 federally licensed firearms dealer;

1 (2) arrange for the storage of the firearm
2 by a law enforcement agency; or

3 (3) sell or otherwise deliver the firearm in
4 accordance with federal and state law to a party who may
5 legally possess the firearm and who does not reside in the
6 same household as the restrained party.

7 B. An individual or entity who receives a firearm
8 pursuant to Subsection A of this section shall issue a
9 receipt that indicates the date and time of the delivery to
10 the person delivering the firearm at the time of delivery.

11 A restrained party shall file a copy of a receipt issued
12 pursuant to this subsection with the court that issued the
13 order of protection within three business days of the day the
14 receipt was issued to the restrained party. If the
15 restrained party willfully fails to file the receipt, that
16 failure shall constitute a violation of the order of
17 protection.

18 C. The provisions of Subsection A of this section
19 shall not be interpreted to require a:

20 (1) federally licensed firearms dealer to
21 purchase or accept possession of a firearm from a restrained
22 party; or

23 (2) law enforcement agency to store a
24 firearm or ammunition for a restrained party; provided that,
25 if the agency elects to store a firearm for a restrained

1 party, the agency may charge a fee for storing the firearm.

2 D. A person who is prohibited by state or federal
3 law from possessing a firearm and who, in good faith, delivers
4 a firearm in accordance with this section shall not be
5 arrested, charged, prosecuted or otherwise penalized for
6 possessing a firearm if the evidence for the alleged violation
7 of federal or state law for possessing the firearm was gained
8 as a result of the person's delivery of the firearm in
9 accordance with this section."

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