

1 SENATE BILL 328

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Joseph Cervantes

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10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 40-13-2 NMSA 1978 (being Laws 1987,
17 Chapter 286, Section 2, as amended) is amended to read:

18 "40-13-2. DEFINITIONS.--As used in the Family Violence
19 Protection Act:

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

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

25 C. "court" means the district court of the judicial

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1 district where an alleged victim of domestic abuse resides or
2 is found;

3 D. "domestic abuse":

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

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

- 8 (a) physical harm;
- 9 (b) severe emotional distress;
- 10 (c) bodily injury or assault;
- 11 (d) a threat causing imminent fear of

12 bodily injury by any household member;

- 13 (e) criminal trespass;
- 14 (f) criminal damage to property;
- 15 (g) repeatedly driving by a residence or

16 work place;

- 17 (h) telephone harassment;
- 18 (i) harassment;
- 19 (j) strangulation;
- 20 (k) suffocation; or

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

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

25 E. "firearm" means any weapon that will or is

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1 designed to or may readily be converted to expel a projectile
2 by action of an explosion and the frame or receiver of any such
3 weapon;

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

11 ~~[F-]~~ G. "mutual order of protection" means an order
12 of protection that includes provisions that protect both
13 parties;

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

17 ~~[H-]~~ I. "protected party" means a person protected
18 by an order of protection;

19 ~~[I-]~~ J. "restrained party" means a person who is
20 restrained by an order of protection;

21 ~~[J-]~~ K. "strangulation" has the same meaning as set
22 forth in Section 30-3-11 NMSA 1978; and

23 ~~[K-]~~ L. "suffocation" has the same meaning as set
24 forth in Section 30-3-11 NMSA 1978."

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

2 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
3 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

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

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

9 (2) if the order is issued pursuant to this
10 section and if the court determines that the restrained party
11 presents a credible threat to the physical safety of the
12 household member after the restrained party has received notice
13 and had an opportunity to be heard or by stipulation of the
14 parties, to:

15 (a) deliver any firearm in the
16 restrained party's possession, care, custody or control while
17 the order of protection is in effect; and

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

21 B. If the court finds that it is reasonably
22 necessary for the restrained party to retain, purchase or
23 possess a firearm as a condition of the restrained party's
24 employment, the court may enter an order of protection that
25 includes only the provision in Paragraph (1) of Subsection A of

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1 this section and may impose any restrictions reasonably
2 calculated to protect the protected party.

3 C. In an order of protection entered pursuant to
4 Subsection A of this section, the court shall specifically
5 describe the acts the court has ordered the restrained party to
6 do or refrain from doing. As a part of any order of
7 protection, the court may:

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

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

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

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

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1 transferences, encumbrances and expenditures made after the
2 order is served or communicated to the restrained party;

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

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

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

17 ~~[B-]~~ D. The order of protection shall contain a
18 notice that violation of any provision of the order constitutes
19 contempt of court and may result in a fine or imprisonment or
20 both.

21 ~~[G-]~~ E. If the order of protection supersedes or
22 alters prior orders of the court pertaining to domestic matters
23 between the parties, the order shall say so on its face. If an
24 action relating to child custody or child support is pending or
25 has concluded with entry of an order at the time the petition

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

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

12 ~~[E.—No]~~ G. An order issued under the Family
13 Violence Protection Act shall not affect title to any property
14 or allow a party to transfer, conceal, encumber or otherwise
15 dispose of another party's property or the joint or community
16 property of the parties.

17 ~~[F.]~~ H. Either party may request a review hearing
18 to amend an order of protection. An order of protection
19 involving child custody or support may be modified without
20 proof of a substantial or material change of circumstances.

21 ~~[G.]~~ I. An order of protection shall not be issued
22 unless a petition or a counter petition has been filed."

23 **SECTION 3.** A new section of the Family Violence
24 Protection Act is enacted to read:

25 "[NEW MATERIAL] DELIVERY OF FIREARMS--PENALTY.--

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1 A. A delivery of firearms ordered pursuant to
2 Section 40-13-5 NMSA 1978 shall occur by the restrained party
3 delivering any firearm in the restrained party's immediate
4 possession, care, custody or control to a third party who is
5 not prohibited from possessing a firearm by state or federal
6 law on or before the business day following the day on which
7 the restrained party is served with the order of protection.
8 To deliver the firearm, the restrained party may:

9 (1) sell or deliver the firearm to a federally
10 licensed firearms dealer;

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

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

17 B. An individual or entity who receives a firearm
18 pursuant to Subsection A of this section shall issue a receipt
19 that indicates the date and time of the delivery to the person
20 delivering the firearm at the time of delivery. A restrained
21 party shall file a copy of a receipt issued pursuant to this
22 subsection with the court that issued the order of protection
23 within three business days of the day the receipt was issued to
24 the restrained party. If the restrained party willfully fails
25 to file the receipt, that failure shall constitute a violation

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1 of the order of protection.

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

4 (1) federally licensed firearms dealer to
5 purchase or accept possession of a firearm from a restrained
6 party; or

7 (2) law enforcement agency to store a firearm
8 or ammunition for a restrained party; provided that, if the
9 agency elects to store a firearm for a restrained party, the
10 agency may charge a fee for storing the firearm.

11 D. A person who is prohibited by state or federal
12 law from possessing a firearm and who, in good faith, delivers
13 a firearm in accordance with this section shall not be
14 arrested, charged, prosecuted or otherwise penalized for
15 possessing a firearm if the evidence for the alleged violation
16 of federal or state law for possessing the firearm was gained
17 as a result of the person's delivery of the firearm in
18 accordance with this section."