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SENATE BILL 259

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO DOMESTIC VIOLENCE; PROHIBITING A PERSON SUBJECT TO
CERTAIN ORDERS OF PROTECTION FROM POSSESSING OR PURCHASING
FIREARMS; PROVIDING PROCEDURES FOR RELINQUISHMENT AND RETURN 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. "authorized recipient" means a:

(1) law enforcement agency;

(2) federally licensed firearms dealer; or

(3) neutral third party;

[A.] B. "continuing personal relationship" means a

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1 dating or intimate relationship;

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

5 [C.] D. "court" means the district court of the
6 judicial district where an alleged victim of domestic abuse
7 resides or is found;

8 [D.] E. "domestic abuse":

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

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

- 13 (a) physical harm;
- 14 (b) severe emotional distress;
- 15 (c) bodily injury or assault;
- 16 (d) a threat causing imminent fear of
17 bodily injury by any household member;
- 18 (e) criminal trespass;
- 19 (f) criminal damage to property;
- 20 (g) repeatedly driving by a residence or
21 work place;
- 22 (h) telephone harassment;
- 23 (i) harassment; or
- 24 (j) harm or threatened harm to children
25 as set forth in this paragraph; and

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

3 F. "federally licensed firearms dealer" means a
4 licensed importer, licensed manufacturer or licensed dealer who
5 is required to conduct national instant criminal background
6 checks pursuant to 18 U.S.C. Section 922(t);

7 G. "firearm" means any weapon that will or is
8 designed to or may readily be converted to expel a projectile
9 by action of an explosion, the frame or receiver of any such
10 weapon or any firearm muffler or firearm silencer;

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

18 ~~[F.]~~ I. "mutual order of protection" means an order
19 of protection that includes provisions that protect both
20 parties;

21 J. "neutral third party" means person who has
22 completed a background check, is not prohibited by federal or
23 state law from purchasing or possessing a firearm and does not
24 reside with a restrained party;

25 ~~[G.]~~ K. "order of protection" means an injunction

1 or a restraining or other court order granted for the
2 protection of a victim of domestic abuse;

3 [H.] L. "protected party" means a person protected
4 by an order of protection; and

5 [I.] M. "restrained party" means a person who is
6 restrained by an order of protection."

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

9 "40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE
10 TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

11 A. Upon finding that domestic abuse has occurred or
12 upon stipulation of the parties, and unless the court makes a
13 specific finding on the record that there is no credible threat
14 to the safety of a household member or that there is a
15 substantial and compelling reason not to enter an order of
16 protection, the court shall enter an order of protection
17 ordering the restrained party:

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

20 (2) after the restrained party has received
21 notice of the order and had an opportunity to be heard:

22 (a) to relinquish any firearm in the
23 restrained party's possession to an authorized recipient; and

24 (b) to refrain from purchasing,
25 receiving, possessing or attempting to purchase, receive or

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1 possess any firearm while the order of protection is in effect.

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

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

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

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

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

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1 order is served or communicated to the restrained party;

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

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

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

16 [~~B.~~] C. The order of protection shall contain a
17 notice that violation of any provision of the order constitutes
18 contempt of court and may result in a fine or imprisonment or
19 both. The court shall notify the relevant district attorney of
20 a violation of an order of protection.

21 [~~E.~~] D. 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

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.] E. 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] F. Notwithstanding provisions of the
13 Family Violence Protection Act that require a restrained party
14 to relinquish a firearm, an order issued [under the Family
15 Violence Protection] pursuant to that act shall not affect
16 title to any property or allow a party to transfer, conceal,
17 encumber or otherwise dispose of another party's property or
18 the joint or community property of the parties.

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

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

25 SECTION 3. A new section of the Family Violence

1 Protection Act is enacted to read:

2 "[NEW MATERIAL] REMOVAL OF FIREARMS--PENALTY.--

3 A. Relinquishment of a firearm ordered pursuant to
4 Section 40-13-5 NMSA 1978 shall occur by the restrained party
5 surrendering any firearm in the restrained party's possession
6 in a safe manner to an authorized recipient on or before the
7 business day following service of the order of protection.

8 B. A neutral third party who takes possession of a
9 relinquished firearm shall, on the business day following the
10 relinquishment, take the firearm to a law enforcement agency or
11 a federally licensed firearms dealer and request that the
12 agency or dealer use the national crime information center
13 database to verify in writing that the neutral third party may
14 lawfully take possession of the firearm. The restrained party
15 shall, on or before the business day following the issuance of
16 verification to the neutral third party, file the verification
17 with the court that issued the order of protection. Failure to
18 file the verification shall constitute a violation of the order
19 of protection.

20 C. A law enforcement officer or federally licensed
21 firearms dealer that takes possession of a relinquished firearm
22 shall issue a receipt to the restrained party at the time of
23 relinquishment. The restrained party shall, on or before the
24 business day following the relinquishment, file the receipt for
25 the relinquished firearm with the court that issued the order

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1 of protection. Failure to file the receipt shall constitute a
2 violation of the order of protection.

3 D. A restrained party shall file a declaration of
4 non-surrender with the court that issued the order of
5 protection if the restrained party does not have a firearm in
6 the restrained party's possession.

7 E. An authorized recipient is immune from civil or
8 criminal liability for any damage or deterioration of a
9 relinquished firearm stored or transported pursuant to this
10 section. This subsection shall not apply if the damage or
11 deterioration occurred as a result of recklessness, gross
12 negligence or intentional misconduct by the authorized
13 recipient.

14 F. If a restrained party declines to relinquish a
15 firearm based on the assertion of the right against self-
16 incrimination as provided by the fifth amendment to the United
17 States constitution and Article 2, Section 15 of the
18 constitution of New Mexico, the court may grant use immunity
19 for the act of relinquishing a firearm pursuant to this
20 section.

21 G. Upon expiration or termination of an order of
22 protection:

23 (1) if the firearm was relinquished to a
24 neutral third party, the formerly restrained party and the
25 neutral third party shall report together with the relinquished

1 firearm to the law enforcement agency that served the order of
2 protection and the agency shall:

3 (a) determine whether the formerly
4 restrained party is prohibited by federal or state law from
5 purchasing or possessing a firearm;

6 (b) using the national crime information
7 center database, determine whether the formerly restrained
8 party may lawfully take possession of the firearm; and

9 (c) inform the neutral third party that
10 the relinquished firearm may lawfully be returned to the
11 formerly restrained party, or if the formerly restrained party
12 may not lawfully take possession of it, the agency shall take
13 possession of the firearm; and

14 (2) if the firearm was relinquished to a law
15 enforcement agency or a federally licensed firearms dealer, the
16 agency or dealer shall:

17 (a) determine whether the formerly
18 restrained party is prohibited by federal or state law from
19 purchasing or possessing a firearm;

20 (b) using the national crime information
21 center database, determine whether the formerly restrained
22 party may lawfully take possession of the firearm; and

23 (c) return the firearm to the formerly
24 restrained party if that person may lawfully possess the
25 firearm, or if the formerly restrained party may not lawfully

1 take possession of it, the agency or dealer shall retain
2 possession of the firearm. A federally licensed firearms
3 dealer that retains a firearm that may not be returned to a
4 formerly restrained party shall deliver that firearm to the law
5 enforcement agency that served the order of protection on the
6 formerly restrained party on or before the business day
7 following the dealer's determination that the firearm could not
8 be returned.

9 H. If a law enforcement agency or a federally
10 licensed firearms dealer determines, pursuant to Subsection
11 G of this section, that a formerly restrained party is
12 prohibited by federal or state law from possessing a firearm,
13 the formerly restrained party shall be afforded an opportunity
14 to sell the firearm through a federally licensed firearms
15 dealer.

16 I. If a firearm that was relinquished was stolen
17 from the authorized recipient to whom it was relinquished, upon
18 recovery, the authorized recipient shall follow the procedures
19 in Subsection G of this section."

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