

ARTICLE 13

Family Violence Protection

40-13-1. Short title.

[Chapter 40, Article 13](#) NMSA 1978 may be cited as the "Family Violence Protection Act".

History: Laws 1987, ch. 286, § 1; 1999, ch. 142, § 1.

40-13-1.1. Legislative findings; state policy; dual arrests.

The legislature finds that domestic abuse incidents are complex and require special training on the part of law enforcement officers to respond appropriately to domestic abuse incidents. The state of New Mexico discourages dual arrests of persons involved in incidents of domestic abuse. A law enforcement officer, in making arrests for domestic abuse, shall seek to identify and shall consider whether one of the parties acted in self defense.

History: Laws 2002, ch. 34, § 2 and Laws 2002, ch. 35, § 2.

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;
 - (b) severe emotional distress;
 - (c) bodily injury or assault;
 - (d) a threat causing imminent fear of bodily injury by any household member;
 - (e) criminal trespass;
 - (f) criminal damage to property;
 - (g) repeatedly driving by a residence or work place;
 - (h) telephone harassment;
 - (i) harassment; or
 - (j) harm or threatened harm to children as set forth in this paragraph; and
 - (3) does not mean the use of force in self-defense or the defense of another;
- E. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section;
- F. "mutual order of protection" means an order of protection that includes provisions that protect both parties;

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

H. "protected party" means a person protected by an order of protection; and

I. "restrained party" means a person who is restrained by an order of protection.

History: Laws 1987, ch. 286, § 2; 1993, ch. 109, § 1; 1995, ch. 23, § 3; 2008, ch. 40, § 2; 2010, ch. 85, § 2.

40-13-3. Petition for order of protection; contents; standard forms.

A. A victim of domestic abuse may petition the court under the Family Violence Protection Act 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 domestic abuse.

C. The petition shall state whether any other domestic action is pending between the petitioner and the respondent.

D. If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from the Family Violence Protection Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.

E. An action brought under the Family Violence Protection Act is independent of any proceeding for annulment, separation or divorce between the parties.

F. Remedies granted pursuant to the Family Violence Protection Act are in addition to and shall not limit other civil or criminal remedies available to the parties.

G. Standard simplified petition forms with instructions for completion shall be available to all parties. Law enforcement agencies shall keep such forms and make them available upon request to alleged victims of domestic abuse.

History: Laws 1987, ch. 286, § 3; 1993, ch. 109, § 2; 2008, ch. 40, § 3.

40-13-3.1. Forbearance of costs associated with domestic abuse offenses.

A. An alleged victim of domestic abuse shall not be required to bear the cost of:

(1) the prosecution of a misdemeanor or felony offense arising out of an incident of domestic abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;

(2) the filing, issuance or service of a warrant;

(3) the filing, issuance or service of a witness subpoena;

(4) the filing, issuance or service of a petition for an order of protection;

(5) the filing, issuance or service of an order of protection; or

(6) obtaining law enforcement reports or photographs or copies of photographs relating to the alleged abuse or pattern of abuse.

B. No witness fee shall be charged where prohibited by federal law.

History: Laws 1995, ch. 176, § 1; 2008, ch. 40, § 4; 2011, ch. 8, § 1.

40-13-3.2. Ex parte emergency orders of protection.

A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in

immediate danger of domestic abuse following an incident of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.

B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:

(1) if necessary, pursuant to the judge's oral approval, write and sign the order on an approved form;

(2) if possible, immediately serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;

(3) immediately provide the protected party with a signed copy of the order; and

(4) provide the original order to the court by the close of business on the next judicial day.

C. The court may grant the following relief in an emergency order of protection upon a probable cause finding that domestic abuse has occurred:

(1) enjoin the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members;

(2) enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and

(3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.

D. A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.

E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.

F. A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.

G. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.

H. Emergency orders of protection are enforceable in the same manner as other orders of protection issued pursuant to the provisions of the Family Violence Protection Act.

History: Laws 1999, ch. 142, § 2; 2008, ch. 40, § 5.

40-13-4. Temporary order of protection; hearing; dismissal.

A. Upon the filing of a petition for order of protection, the court shall:

(1) immediately grant an ex parte temporary order of protection without bond if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic abuse has occurred;

(2) cause the temporary order of protection together with notice of hearing to be served immediately on the alleged perpetrator of the domestic abuse; and

(3) within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or

(4) if an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the

petition; provided if notice of hearing cannot be served within seventy-two hours, the temporary order of protection shall be automatically extended for ten days.

B. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate.

C. Except for petitions alleging stalking or sexual assault, if the court finds that the alleged perpetrator is not a household member, the court shall dismiss the petition.

History: Laws 1987, ch. 286, § 4; 2008, ch. 40, § 6.

40-13-5. Order of protection; contents; remedies; title to property not affected; mutual order of protection.

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

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

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

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

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

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

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

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

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

C. If the order of protection supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the

court that has or continues to have jurisdiction over the pending or prior custody or support action.

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

E. No order issued under the Family Violence Protection Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.

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

G. An order of protection shall not be issued unless a petition or a counter petition has been filed.

History: Laws 1987, ch. 286, § 5; 1993, ch. 109, § 3; 2001, ch. 15, § 1; 2008, ch. 40, § 7.

40-13-6. Service of order; duration; penalty; remedies not exclusive.

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued. The order shall be filed and served without cost to the protected party.

B. A local law enforcement agency receiving an order of protection from the clerk of the court that was issued under the Family Violence Protection Act shall have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt. This does not include temporary orders of protection entered pursuant to the provisions of Section [40-13-4](#) NMSA 1978.

C. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the parties.

D. A peace officer shall arrest without a warrant and take into custody a restrained party whom the peace officer has probable cause to believe has violated an order of protection that is issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.

E. State courts shall give full faith and credit to tribal court orders of protection and orders of protection issued by courts of other states. A protection order issued by a state or tribal court against one who has petitioned, filed a complaint or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(1) no cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

F. A restrained party convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section [31-19-1](#) NMSA 1978. Upon a second or subsequent conviction, an

offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

G. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.

H. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.

I. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the protected party or the state.

History: Laws 1987, ch. 286, § 6; 1993, ch. 109, § 4; 1995, ch. 176, § 3; 1997, ch. 59, § 1; 1999, ch. 48, § 1; 2007, ch. 81, § 1; 2008, ch. 40, § 8.

40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an alleged perpetrator is released from detention; statement in judgment and sentence document.

A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

(1) advising the victim of the remedies available under the Family Violence Protection Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of domestic violence shelters, medical care, counseling and other services;

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

(3) upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;

(4) upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;

(5) arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and

(6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.

C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the alleged perpetrator is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the alleged perpetrator is released from custody.

D. Any law enforcement officer responding to a request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.

E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.

History: Laws 1987, ch. 286, § 7; 1995, ch. 54, § 1; 2008, ch. 40, § 9.

40-13-7.1. Medical personnel; documentation of domestic abuse.

A. When medical personnel who are interviewing, examining, attending or treating a person:

(1) receive a report from the person of an act of domestic abuse, the medical personnel shall document the nature of the abuse and the name of the alleged perpetrator of the abuse in the person's medical file and shall provide the person with information and referral to services for victims of domestic abuse; or

(2) may have reason to believe or suspect that the person is a victim of domestic abuse, the medical personnel shall provide the person with information and referral to services for victims of domestic abuse.

B. Medical and other health care related information or communications concerning domestic abuse of a person obtained by or from medical personnel during the course of an interview, examination, diagnosis or treatment are confidential communications unless released:

(1) with the prior written consent of the person;

(2) pursuant to a court order; or

(3) when necessary to provide treatment, payment and operations in accordance with the federal Health Insurance Portability and Accountability Act.

C. As used in this section, "medical personnel" means:

(1) licensed health care practitioners;

(2) licensed emergency medical technicians;

(3) health care practitioners who interview, examine, attend or treat a person and who are under the guidance or supervision of licensed health care practitioners; and

(4) residents and interns.

History: Laws 2005, ch. 281, § 1.

Section 8 repealed

40-13-9. Domestic violence special commissioners; appointment; qualifications.

A. A domestic violence special commissioner shall be appointed by and serve at the pleasure of the chief judge of the judicial district to which the officer is assigned.

B. A domestic violence special commissioner shall:

(1) be an attorney licensed to practice law in New Mexico;

(2) have a minimum of three years experience in the practice of law and be knowledgeable in the area of domestic relations and domestic violence matters; and

(3) conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any domestic violence special commissioner.

History: Laws 2005, ch. 30, § 1.

40-13-10. Special commissioners; powers; duties.

A. A domestic violence special commissioner shall perform the following duties in carrying out the provisions of the Family Violence Protection Act:

- (1) review petitions for orders of protection and motions to enforce, modify or terminate orders of protection;
- (2) if deemed necessary, interview petitioners. Any interview shall be on the record;
- (3) conduct hearings on the merits of petitions for orders of protection and motions to enforce, modify or terminate orders of protection; and
- (4) prepare recommendations to the district court regarding petitions for orders of protection and motions to enforce, modify or terminate orders of protection.

B. All orders must be signed by a district court judge before the recommendations of a domestic violence special commissioner become effective.

History: Laws 2005, ch. 30, § 2.

40-13-11. Substitute address.

A. A victim of domestic abuse, or the victim's representative pursuant to Section [31-26-3](#) NMSA 1978, who has good reason to believe that the victim's safety is at risk may apply to the secretary of state for the use of the secretary of state as a substitute address. The application shall be on a form provided by the secretary of state and shall include:

- (1) a statement that the secretary of state is acting as an agent of the victim for purposes of the forwarding of mail;
- (2) a mailing address for forwarding received mail and a telephone number where the victim can be contacted by the secretary of state;
- (3) payment of a seventy-five-dollar (\$75.00) application fee, which may be waived if the applicant is indigent; and
- (4) the signature of the victim or the victim's representative.

B. The secretary of state shall maintain a confidential record of applications for a substitute address and forward any mail received on behalf of a victim of domestic abuse to the new mailing address provided on the application.

History: Laws 2007, ch. 131, § 1.

40-13-12. Limits on internet publication.

A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes.

History: Laws 2008, ch. 40, § 10.