

4 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

Copyright: 2007 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-1 (2007)

§ **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.

JUDICIAL DECISIONS

ANALYSIS
APPLICABILITY
DOUBLE JEOPARDY
RECORD
REMEDIES

APPLICABILITY

Family Violence Protection Act, **40-13-1** to **40-13-8** NMSA 1978, is only to be used in emergency situations, at least insofar as child custody matters are concerned, and as a temporary remedy that is limited in scope. *Lucero v. Pino*, 1997-NMCA-089, 124 **N.M.** 28, 946 P.2d 232, cert. denied, 123 **N.M.** 626, 944 P.2d 274 (1997).

DOUBLE JEOPARDY

Double jeopardy provisions, set forth in U.S. Const., amend. V and **N.M.** Const., art. II, § 15, prohibited defendant's prosecution for battery when he was previously adjudged in contempt of the battery prohibition contained in an order prohibiting domestic violence, issued under **40-13-1** NMSA 1978 et seq., which included all the elements of the criminal offense. *State v. Powers*, 1998-NMCA-133, 126 **N.M.** 114, 967 P.2d 454, quashed, 127 **N.M.** 392, 981 P.2d 1210 (1999).

RECORD

All domestic abuse actions, as defined in the Family Violence Protection Act, **40-13-1** NMSA 1978 et seq., should be tried on-record to further legislative intent. *State ex rel. Schwartz v. Sanchez*, 1997-NMSC-021, 123 **N.M.** 165, 936 P.2d 334.

REMEDIES

The **40-13-6H** NMSA 1978 specifies that the remedies provided by **40-13-1** NMSA 1978 to **40-13-7** NMSA 1978 are in addition to any other civil or criminal remedy available to a petitioner. *State v. Gonzales*, 1997-NMCA-039, 123 **N.M.** 337, 940 P.2d 185.

21 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

Copyright: 2007 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-1.1 (2007)

§ 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.

7 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-2 (2007)

§ 40-13-2. Definitions

As used in the Family Violence Protection Act [40-13-1 NMSA 1978]:

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

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

C. "domestic abuse" means any incident by a household member against another household member resulting in:

- (1) physical harm;
- (2) severe emotional distress;
- (3) bodily injury or assault;
- (4) a threat causing imminent fear of bodily injury by any household member;
- (5) criminal trespass;
- (6) criminal damage to property;
- (7) repeatedly driving by a residence or work place;
- (8) telephone harassment;
- (9) stalking;
- (10) harassment; or
- (11) harm or threatened harm to children as set forth in the paragraphs of this subsection;

D. "household member" means a spouse, former spouse, family member, including a relative, parent, present or former stepparent, present or former in-law, child or 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; and

E. "order of protection" means a court order granted for the protection of victims of domestic abuse.

HISTORY: Laws 1987, ch. 286, § 2; 1993, ch. 109, § 1; 1995, ch. 23, § 3.

NOTES:

STATUTORY NOTES

CROSS REFERENCES. --Alleged victims of domestic abuse, stalking or sexual assault; forbearance of costs, 30-1-15 NMSA 1978.

Disqualification for benefits, 51-1-7 NMSA 1978.

Tape recordings of proceedings; appeals on the record, 7-705 NMRA.

JUDICIAL DECISIONS

ANALYSIS

CONSTRUCTION WITH OTHER LAW

HOUSEHOLD MEMBER

LEGISLATIVE INTENT

VERBAL ABUSE

CONSTRUCTION WITH OTHER LAW

Definition of domestic violence contained in 34-8A-6C NMSA 1978 must be read in pari materia with the definition of domestic abuse contained in the Family Violence Protection Act, **40-13-2C** NMSA 1978. State Ex Rel. Schwartz v. Sanchez, 1997-NMSC-021, 123 **N.M.** 165, 936 P.2d 334.

HOUSEHOLD MEMBER

In prosecution for trespassing and harassment, week-long relationship between defendant and victim did not rise to the level of a "continuing personal relationship", and therefore victim was not a "household member" of defendant, and his actions did not constitute domestic abuse. State v. Wilson, 2006-NMSC-037, 140 **N.M.** 218, 141 P.3d 1271.

LEGISLATIVE INTENT

Legislature never made damage to community property which one owns an element of criminal damage to property in 30-15-1 NMSA 1978; it stretches the plain, unambiguous wording of 30-15-1 to include community property which a person owns within its parameters. State v. Powels, 2003-NMCA-090, 134 **N.M.** 118, 73 P.3d 256.

Family Violence Protection Act, **40-13-2C(6)** NMSA 1978, was never intended to be limited to incidents between spouses. State v. Powels, 2003-NMCA-090, 134 **N.M.** 118, 73 P.3d 256.

VERBAL ABUSE

Repeated incidents of verbal abuse of the wife against the son came within the terms of **40-13-2** NMSA 1978 where the language used by the wife symbolized an aggressiveness and threat of physical and emotional domination that came well within the provisions of **40-13-2C(2)**, (4) and (10) NMSA 1978. Lujan v. Casados-Lujan, 2004-NMCA-036, 135 **N.M.** 285, 87 P.3d 1067, cert. denied, 135 **N.M.** 319, 88 P.3d 261 (2004).

14 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

Copyright: 2007 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-3 (2007)

§ **40-13-3**. Petition for order of protection; contents; indigent petitioners; standard forms

A. A victim of domestic abuse may petition the court under the Family Violence Protection Act [**40-13-1** NMSA 1978] 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 [**40-13-1** NMSA 1978] 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. Any action brought under that act is independent of any proceeding for annulment, separation or divorce between the petitioner and the respondent.

F. Any remedies granted are in addition to other available civil or criminal remedies.

G. If the petition is accompanied by an affidavit showing that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as an indigent without payment of court costs. In determining the financial status of the petitioner for the purpose of this subsection, the income of the respondent shall not be considered.

H. Standard simplified petition forms with instructions for completion shall be available to petitioners not represented by counsel. Law enforcement agencies shall keep such forms and make them available upon request to victims of domestic violence.

HISTORY: Laws 1987, ch. 286, § 3; 1993, ch. 109, § 2.

JUDICIAL DECISIONS

FORMS

Legislature recognized that many people who were the victims of domestic violence were unable to obtain counsel and mandated that simplified forms be available for such people to use under **40-13-3** NMSA 1978; the supreme court agreed with the legislature and approved a whole set of simplified forms to be used for those purposes. Lujan v. Casados-Lujan, 2004-NMCA-036, 135 **N.M.** 285, 87 P.3d 1067, cert. denied, 135 **N.M.** 319, 88 P.3d 261 (2004).

22 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-3.1 (2007)

§ 40-13-3.1. Costs of criminal processes associated with domestic abuse offenses

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

- A. filing a criminal charge against an alleged abusing household member;
- B. the issuance or service of a warrant;
- C. the issuance or service of a witness subpoena; or
- D. the issuance or service of a protection order.

HISTORY: Laws 1995, ch. 176, § 1.

1 of 1 DOCUMENT

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-3.2 (2007)

§ **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 petitioner or the petitioner's child is in immediate danger of domestic abuse following an incident of domestic abuse by a household member. The written statement shall include the location and telephone number of the respondent, 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 or judicial officer'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 respondent and complete the appropriate affidavit of service;
- (3) immediately provide the petitioner 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 for protection upon a probable cause finding that domestic abuse has occurred:

- (1) enjoin the respondent from threatening to commit or committing acts of domestic abuse against the petitioner or any designated household members;
- (2) enjoin the respondent from any contact with the petitioner, including harassing, telephoning, contacting or otherwise communicating with the petitioner; and
- (3) grant temporary custody of any minor child in common with the petitioner and the respondent to the petitioner, 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 that are issued pursuant to the provisions of the Family Violence Protection Act [40-13-1 NMSA 1978].

HISTORY: Laws 1999, ch. 142, § 2.

23 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-4 (2007)

§ **40-13-4**. Temporary order of protection; hearing

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

- A. 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;
- B. cause the temporary order of protection together with notice of hearing to be served immediately on the alleged perpetrator of the domestic abuse; and
- C. within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or
- D. 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.

HISTORY: Laws 1987, ch. 286, § 4.

NOTES:
STATUTORY NOTES

CROSS REFERENCES. --Domestic violence special commissioners; duties, 1-053.1 NMRA.

RESEARCH REFERENCES

NEW MEXICO LAW REVIEW

Comment: District Court Review of Judicial Officers in New Mexico Domestic Violence and Domestic Relations Cases: Rethinking the Rules, Seth McMillan, 36 N.M.L. Rev. 487 (2006).

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

Copyright: 2007 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-5 (2007)

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

A. Upon finding that domestic abuse has occurred, the court shall enter an order of protection ordering the respondent to refrain from abusing the petitioner or any other household member. The court shall specifically describe the acts the court has ordered the respondent 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 petitioner during the period the order of protection is effective or order the respondent to provide temporary suitable alternative housing for the petitioner and any children to whom the respondent 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 petitioner on a basis that gives primary consideration to the safety of the victim and the children;

(3) order that the respondent shall not initiate contact with the petitioner;

(4) restrain the parties from transferring, concealing, encumbering or otherwise disposing of the petitioner'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 party restrained in court;

(5) order the respondent to reimburse the petitioner 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 respondent to participate in, at the respondent'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 the petitioner, including orders to law enforcement agencies as provided by this section.

B. The order 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 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. No order issued under the Family Violence Protection Act [40-13-1 NMSA 1978] shall affect title to any property or allow the petitioner to transfer, conceal, encumber or otherwise dispose of the respondent's property or the joint property of the parties.

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

HISTORY: Laws 1987, ch. 286, § 5; 1993, ch. 109, § 3; 2001, ch. 15, § 1.

JUDICIAL DECISIONS

ANALYSIS

GENERALLY

ADOPTION

DOUBLE JEOPARDY

SCOPE OF PROTECTION

GENERALLY

The Family Violence Protection Act, 40-13-1 NMSA 1978, is to be used only in emergency situations, at least as far as child custody matters are concerned, and as a temporary remedy that is limited in scope. *Lucero v. Pino*, 1997-NMCA-089, 124 N.M. 28, 946 P.2d 232, cert. denied, 123 N.M. 626, 944 P.2d 274 (1997).

ADOPTION

The award of custody of a child to her grandmother under a Protection Act order has no bearing on hearings held after expiration of the order on petition by grandmother to adopt the child, although issue preclusion prevents re-litigation of any issues actually and necessarily decided in the prior case. *Lucero v. Pino*, 1997-NMCA-089, 124 N.M. 28, 946 P.2d 232, cert. denied, 123 N.M. 626, 944 P.2d 274 (1997).

DOUBLE JEOPARDY

A defendant who was held in contempt of court for violating an Order Prohibiting Domestic Violence cannot subsequently be tried for a criminal offense where the elements of the offense would be proved by the same evidence as that used for the finding of contempt. *State v. Powers*, 1998-NMCA-133, 126 N.M. 114, 967 P.2d 454, quashed, 127 N.M. 392, 981 P.2d 1210 (1999).

A defendant held in contempt of court for violating a Protection Act Order may later be prosecuted for stalking and harassment where the elements proved as part of the holding of contempt were not identical to those necessary to prove the later criminal charges -- "same conduct" of the defendant is not the proper test for evaluating double jeopardy claims. *State v. Gonzales*, 1997-NMCA-039, 123 N.M. 337, 940 P.2d 185.

SCOPE OF PROTECTION

The Family Violence Protection Act, 40-13-1 NMSA 1978, does not create any offenses but provides means to protect victims of domestic violence, such as orders of protection. *State v. Stein*, 1999-NMCA-065, 127 N.M. 362, 981 P.2d 295.

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-6 (2007)

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

A. An order of protection granted under the Family Violence Protection Act [40-13-1 NMSA 1978] 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 respondent, unless the respondent or the respondent's attorney was present at the time the order was issued. The order shall be filed and served without cost to the petitioner.

B. The local law enforcement agency receiving an order of protection from the clerk of the court that was issued under the Family Violence Protection Act [40-13-1 NMSA 1978] 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 under 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 petitioner 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 petitioner and the respondent.

D. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order pursuant to this section.

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 person convicted of violating an order of protection granted by a court under the Family Violence Protection Act [40-13-1 NMSA 1978] 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 [40-13-1 NMSA 1978], the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and 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 [40-13-1 NMSA 1978] are in addition to any other civil or criminal remedy available to the petitioner.

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.

NOTES:

STATUTORY NOTES

CROSS REFERENCES. --Alleged victims of domestic abuse, stalking or sexual assault; forbearance of costs, 30-1-15 NMSA 1978.

THE 2007 AMENDMENT, effective June 15, 2007, added Subsection B and redesignated subsections accordingly.

JUDICIAL DECISIONS

ANALYSIS

AUTHORITY OF OFFICER

ELEMENTS

MULTIPLE VIOLATIONS

REMEDIES

TIME LIMITATIONS

AUTHORITY OF OFFICER

In addition to charging a person with violating an order of protection 40-13-6G NMSA 1978 requires a peace officer to file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists. *State v. Gonzales*, 1997-NMCA-039, 123 N.M. 337, 940 P.2d 185.

ELEMENTS

Defendant could both be convicted of contempt under 40-13-6E NMSA 1978 for violating a protective order and charged with stalking and harassment in violation of 30-3A-2 NMSA 1978 because each offense contained one element the other did not. The protective order required defendant not to abuse his wife; the statute required a pattern of conduct. *State v. Gonzales*, 1997-NMCA-039, 123 N.M. 337, 940 P.2d 185.

MULTIPLE VIOLATIONS

Trial court did not err in sentencing defendant to six consecutive sentences for multiple order of protection violations; defendant argued that in calling the victim from jail in consecutive telephone calls, he was engaged in a single course of conduct in two instances. The Family Violence Protection Act, 40-13-1 NMSA 1978, clearly reflected the intent that each violation be subject to a separate prosecution and punishment. *State v. McGee*, 2004-NMCA-014, 135 N.M. 73, 84 P.3d 690, cert. denied, 135 N.M. 160, 85 P.3d 802 (2004).

REMEDIES

The 40-13-6H NMSA 1978 specifies that the remedies provided by the family violence protection act [40-13-1 NMSA 1978], are in addition to any other civil or criminal remedy available to a petitioner. *State v. Gonzales*, 1997-NMCA-039, 123 N.M. 337, 940 P.2d 185.

TIME LIMITATIONS

Issue of whether a Family Violence Protection Act [40-13-1 NMSA 1978] order was valid was rendered moot by the mother's failure to appeal the order within six months, as the order expressly expired six months after it was entered pursuant to 40-13-6B NMSA 1978. *Lucero v. Pino*, 1997-NMCA-089, 124 N.M. 28, 946 P.2d 232, cert. denied, 123 N.M. 626, 944 P.2d 274 (1997).

RESEARCH REFERENCES

NEW MEXICO LAW REVIEW

Symposium article: Enforcing the Judgments of Tribal Courts: A Different Kind of Symmetry, Kevin K. Washburn, 34 N.M.L. Rev. 263 (2004).

16 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-7 (2007)

§ 40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an abusing household member 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 [40-13-1 NMSA 1978], the right to file a written statement or request for an arrest warrant and the availability of domestic violence shelters, medical care, counseling and other services;

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

(3) upon the request of the petitioner, accompanying the victim to the victim's residence to remove 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 petitioner, assist in placing the petitioner in possession of the dwelling or premises or otherwise assist in execution or service of the order of protection;

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

(6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act [40-13-1 NMSA 1978] 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 abusing household member is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the abusing household member is released from custody.

D. Any law enforcement officer responding to the request for assistance under the Family Violence Protection Act [40-13-1 NMSA 1978] 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 abusing household member 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.

JUDICIAL DECISIONS

ANALYSIS
JUDICIAL STATEMENT
SEARCH AND SEIZURE

JUDICIAL STATEMENT

In prosecution for trespassing and harassment, Metropolitan Court's failure to include in the judgement a statement that the conviction resulted from domestic abuse implicitly reflected the court's determination that the case did not involve domestic abuse, and thus defendant was entitled to de novo review in district court. State v. Wilson, 2006-NMSC-037, 140 **N.M.** 218, 141 P.3d 1271.

SEARCH AND SEIZURE

Defendant's arrest was not authorized under **40-13-7B** NMSA 1978 because there was no threat of further harm to defendant's girlfriend and the arrest of defendant was a mere pretext to search for drugs; therefore, the search was not incident to a valid arrest and suppression of the seized money and drugs was affirmed. State v. Miller, 1997-NMCA-060, 123 **N.M.** 507, 943 P.2d 541.

24 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-7.1 (2007)

§ 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 [of 1996 (HIPAA)] [42 USCS § 300gg et seq.].

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.

NOTES:
STATUTORY NOTES

EFFECTIVE DATES. --Laws 2005, ch. 281, § 2 makes the act effective July 1, 2005.

25 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-8 (2007)

§ **40-13-8**. Domestic violence pilot program created; purpose; domestic violence commissioner; duties. (Repealed.)

Repealed by Laws 2005, ch. 30, § 3, effective July 1, 2005.

HISTORY: Laws 1992, ch. 107, § 1.

1 of 1 DOCUMENT

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

Copyright: 2007 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-9 (2007)

§ **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.

NOTES:

STATUTORY NOTES

EFFECTIVE DATES. --Laws 2005, ch. 30, § 4 makes the act effective on July 1, 2005.

19 of 31 DOCUMENTS

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
Copyright: 2007 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-10 (2007)

§ 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 [40-13-1 NMSA 1978]:

- (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.

NOTES:
STATUTORY NOTES

EFFECTIVE DATES. --Laws 2005, ch. 30, § 4 makes the act effective on July 1, 2005.

1 of 1 DOCUMENT

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO

Copyright: 2007 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group.

All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE FIRST SPECIAL SESSION OF THE FORTY-EIGHTH LEGISLATURE

*** ANNOTATIONS CURRENT THROUGH 2007-NMCA-110 AND 2007-NMSC-046 ***

CHAPTER 40. DOMESTIC AFFAIRS
ARTICLE 13. FAMILY VIOLENCE PROTECTION

Go to the New Mexico Code Archive Directory

N.M. Stat. Ann. § 40-13-11 (2007)

§ **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.

NOTES:
STATUTORY NOTES

EFFECTIVE DATES. --Laws 2007, ch. 131, § 2 makes the act effective July 1, 2007.