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SENATE BILL 408

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Lisa A. Torraco

AN ACT

RELATING TO DOMESTIC VIOLENCE; REQUIRING LAW ENFORCEMENT OFFICERS TO DETERMINE WHO THE PREDOMINANT AGGRESSOR IS WHEN RESPONDING TO A DOMESTIC ABUSE INCIDENT.

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

SECTION 1. Section 29-7-4.1 NMSA 1978 (being Laws 2002, Chapter 34, Section 3 and Laws 2002, Chapter 35, Section 3) is amended to read:

"29-7-4.1. DOMESTIC ABUSE INCIDENT TRAINING.--Domestic abuse incident training shall be included in the curriculum of each basic law enforcement training class, including training on identifying the predominant aggressor when reporting to the scene of a domestic abuse incident. Domestic abuse incident training shall be included as a component of in-service training each year for certified police officers."

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1 SECTION 2. Section 31-1-7 NMSA 1978 (being Laws 1979,  
2 Chapter 178, Section 1, as amended) is amended to read:

3 "31-1-7. ARREST WITHOUT WARRANT--LIABILITY.--

4 A. Notwithstanding the provisions of any other law  
5 to the contrary, a peace officer may arrest a person and take  
6 that person into custody without a warrant when the officer is  
7 at the scene of a domestic [~~disturbance~~] abuse incident and has  
8 probable cause to believe that the person has committed an  
9 assault or a battery upon a household member. [~~As used in this~~  
10 ~~section: "household member" means a spouse; former spouse;~~  
11 ~~family member, including a relative, parent, present or former~~  
12 ~~stepparent, present or former in-law, child or co-parent of a~~  
13 ~~child; or a person with whom the victim has had a continuing~~  
14 ~~personal relationship. Cohabitation is not necessary to be~~  
15 ~~deemed a household member for purposes of this section.]~~

16 B. If a peace officer receives a complaint of  
17 domestic violence from two or more opposing persons, the  
18 officer shall evaluate each complaint separately to determine  
19 who the predominant aggressor was. If the officer determines  
20 that one person was the predominant aggressor, the officer need  
21 not arrest the other person alleged to have committed an  
22 assault or battery upon a household member. In determining who  
23 the predominant aggressor was, the officer shall consider:

24 (1) any prior complaints of domestic violence;

25 (2) the relative severity of injuries

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1 inflicted on each person;

2 (3) the seriousness of any threats creating  
3 fear of serious injury to another household member or another  
4 person;

5 (4) the likelihood of future injury to each of  
6 the parties; and

7 (5) whether one of the parties acted in self-  
8 defense.

9 ~~[B-]~~ C. No peace officer shall be held criminally  
10 or civilly liable for making an arrest pursuant to this  
11 section, provided ~~[he]~~ that the officer acts in good faith and  
12 without malice.

13 ~~[G-]~~ D. Whether or not an arrest is made pursuant  
14 to this section, a peace officer may remain with the victim and  
15 assist the victim in getting to a shelter or receiving proper  
16 medical attention.

17 E. As used in this section:

18 (1) "household member" means a spouse; former  
19 spouse; family member, including a relative, parent, present or  
20 former stepparent, present or former in-law, child or co-parent  
21 of a child of the victim; or a person with whom the victim has  
22 had a continuing personal relationship. Cohabitation is not  
23 necessary to be deemed a household member for purposes of this  
24 section; and

25 (2) "predominant aggressor" has the same

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1 meaning as set forth in the Family Violence Protection Act."

2 SECTION 3. Section 40-13-1.1 NMSA 1978 (being Laws 2002,  
3 Chapter 34, Section 2 and Laws 2002, Chapter 35, Section 2) is  
4 amended to read:

5 "40-13-1.1. LEGISLATIVE FINDINGS--STATE POLICY--DUAL  
6 ARRESTS.--The legislature finds that domestic abuse incidents  
7 are complex and require special training on the part of law  
8 enforcement officers to respond appropriately to domestic abuse  
9 incidents. The state [~~of New Mexico~~] discourages dual arrests  
10 of persons involved in incidents of domestic abuse and  
11 encourages law enforcement officers to analyze each domestic  
12 abuse incident to determine whether a particular party is the  
13 predominant aggressor. A law enforcement officer, in making  
14 arrests for domestic abuse, shall seek to identify and shall  
15 consider whether one of the parties acted in [~~self-defense~~]  
16 self-defense."

17 SECTION 4. Section 40-13-2 NMSA 1978 (being Laws 1987,  
18 Chapter 286, Section 2, as amended) is amended to read:

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

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

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

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1           C. "court" means the district court of the judicial  
2 district where an alleged victim of domestic abuse resides or  
3 is found;

4           D. "domestic abuse":

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

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

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

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

24           E. "household member" means a spouse, former  
25 spouse, parent, present or former stepparent, present or former

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1 parent in-law, grandparent, grandparent-in-law, child,  
2 stepchild, grandchild, co-parent of a child or a person with  
3 whom the petitioner has had a continuing personal relationship.  
4 Cohabitation is not necessary to be deemed a household member  
5 for purposes of this section;

6 F. "mutual order of protection" means an order of  
7 protection that includes provisions that protect both parties;

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

11 H. "predominant aggressor" means the most  
12 significant, rather than the first, aggressor at the scene of  
13 competing claims of domestic violence;

14 [~~H.~~] I. "protected party" means a person protected  
15 by an order of protection; and

16 [~~F.~~] J. "restrained party" means a person who is  
17 restrained by an order of protection."

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

20 "40-13-7. LAW ENFORCEMENT OFFICERS--EMERGENCY  
21 ASSISTANCE--LIMITED LIABILITY--PROVIDING NOTIFICATION TO  
22 VICTIMS WHEN AN ALLEGED PERPETRATOR IS RELEASED FROM  
23 DETENTION--STATEMENT IN JUDGMENT AND SENTENCE DOCUMENT.--

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

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1 enforcement agency.

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

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

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

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

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

23 (5) following the procedures to determine the  
24 predominant aggressor pursuant to Section 31-1-7 NMSA 1978;

25 [~~5~~] (6) arresting the alleged perpetrator

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

8                   [~~(6)~~] (7) advising the victim when appropriate  
9 of the procedure for initiating proceedings under the Family  
10 Violence Protection Act or criminal proceedings and of the  
11 importance of preserving evidence.

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

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

25                   E. A statement shall be included in a judgment and

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1 sentence document to indicate when a conviction results from  
2 the commission of domestic abuse."

3 SECTION 6. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2015.