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SENATE BILL 574

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Ramsay L. Gorham

AN ACT

RELATING TO DOMESTIC VIOLENCE; INCREASING PENALTIES FOR
BATTERY AGAINST A HOUSEHOLD MEMBER, AGGRAVATED BATTERY AGAINST
A HOUSEHOLD MEMBER AND VIOLATION OF AN ORDER OF PROTECTION;
AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 30-3-15 NMSA 1978 (being Laws 1995,
Chapter 221, Section 6) is amended to read:

"30-3-15. BATTERY AGAINST A HOUSEHOLD MEMBER. --

A. Battery against a household member consists of
the unlawful, intentional touching or application of force to
the person of a household member, when done in a rude,
insolent or angry manner.

B. Whoever commits battery against a household
member is, upon a first conviction, guilty of a petty

underscored material = new
[bracketed material] = delete

1 misdemeanor and the offender shall be sentenced to a jail term
2 of not less than seventy-two consecutive hours that shall not
3 be suspended, deferred or taken under advisement. Upon a
4 second conviction, the offender is guilty of a misdemeanor and
5 shall be sentenced to a jail term of not less than thirty
6 consecutive days that shall not be suspended, deferred or
7 taken under advisement. Upon a third or subsequent
8 conviction, the offender is guilty of a fourth degree felony
9 and shall be sentenced to a term of incarceration of not less
10 than six months that shall not be suspended, deferred or taken
11 under advisement. "

12 Section 2. Section 30-3-16 NMSA 1978 (being Laws 1995,
13 Chapter 221, Section 7) is amended to read:

14 "30-3-16. AGGRAVATED BATTERY AGAINST A HOUSEHOLD
15 MEMBER. --

16 A. Aggravated battery against a household member
17 consists of the unlawful touching or application of force to
18 the person of a household member with intent to injure that
19 person or another.

20 B. Whoever commits aggravated battery against a
21 household member by inflicting an injury to that person that
22 is not likely to cause death or great bodily harm, but that
23 does cause painful temporary disfigurement or temporary loss
24 or impairment of the functions of any member or organ of the
25 body is [~~guilty of a misdemeanor~~]:

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underscored material = new
[bracketed material] = delete

1 (1) upon a first conviction, guilty of a
2 misdemeanor and the offender shall be sentenced to a jail term
3 of not less than ninety consecutive days that shall not be
4 suspended, deferred or taken under advisement;

5 (2) upon a second conviction, guilty of a
6 fourth degree felony and shall be sentenced to a term of
7 incarceration of not less than one year that shall not be
8 suspended, deferred or taken under advisement; and

9 (3) upon a third or subsequent conviction,
10 guilty of a fourth degree felony and shall be sentenced to a
11 term of incarceration of not less than eighteen months that
12 shall not be suspended, deferred or taken under advisement.

13 C. Whoever commits aggravated battery against a
14 household member by inflicting great bodily harm or doing so
15 with a deadly weapon or doing so in any manner whereby great
16 bodily harm or death can be inflicted is ~~[guilty of a third~~
17 ~~degree felony]:~~

18 (1) upon a first conviction, guilty of a
19 third degree felony and the offender shall be sentenced to a
20 term of incarceration of not less than eighteen months that
21 shall not be suspended, deferred or taken under advisement;

22 (2) upon a second conviction, guilty of a
23 third degree felony and shall be sentenced to a term of
24 incarceration of not less than two years that shall not be
25 suspended, deferred or taken under advisement; and

1 (3) upon a third or subsequent conviction,
2 guilty of a third degree felony and shall be sentenced to a
3 term of incarceration of not less than three years that shall
4 not be suspended, deferred or taken under advisement."

5 Section 3. Section 40-13-6 NMSA 1978 (being Laws 1987,
6 Chapter 286, Section 6, as amended) is amended to read:

7 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
8 NOT EXCLUSIVE.--

9 A. An order of protection granted under the Family
10 Violence Protection Act shall be filed with the clerk of the
11 court, and a copy shall be sent by the clerk to the local law
12 enforcement agency. The order shall be personally served upon
13 the respondent, unless he or his attorney was present at the
14 time the order was issued. The order shall be filed and
15 served without cost to the petitioner.

16 B. An order of protection granted by the court
17 involving custody or support shall be effective for a fixed
18 period of time not to exceed six months. The order may be
19 extended for good cause upon motion of the petitioner for an
20 additional period of time not to exceed six months.

21 Injunctive orders shall continue until modified or rescinded
22 upon motion by either party or until the court approves a
23 subsequent consent agreement entered into by the petitioner
24 and the respondent.

25 C. A peace officer shall arrest without a warrant

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[bracketed material] = delete

1 and take into custody a person whom the peace officer has
2 probable cause to believe has violated an order pursuant to
3 this section.

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

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

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

17 E. A person convicted of violating an order of
18 protection granted by a court under the Family Violence
19 Protection Act is guilty of a misdemeanor and shall be
20 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon
21 a ~~[second or subsequent]~~ first conviction, ~~[an]~~ the offender
22 shall be sentenced to a jail term of not less than seventy-two
23 consecutive hours that shall not be suspended, deferred or
24 taken under advisement. Upon a second conviction, the
25 offender shall be sentenced to a jail term of not less than

1 thirty consecutive days that shall not be suspended, deferred
2 or taken under advisement. Upon a third or subsequent
3 conviction, the offender shall be sentenced to a jail term of
4 not less than sixty consecutive days that shall not be
5 suspended, deferred or taken under advisement.

6 F. In addition to any other punishment provided in
7 the Family Violence Protection Act, the court shall order a
8 person convicted to make full restitution to the party injured
9 by the violation of an order of protection and order the
10 person convicted to participate in and complete a program of
11 professional counseling, at his own expense, if possible.

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

16 H. The remedies provided in the Family Violence
17 Protection Act are in addition to any other civil or criminal
18 remedy available to the petitioner. "

19 Section 4. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2001.