

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 574

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

AN ACT

RELATING TO CRIMINAL LAW; INCREASING THE PENALTY FOR THE
CRIMINAL OFFENSE OF BATTERY AGAINST A HOUSEHOLD MEMBER;
PROVIDING FOR A TWENTY-FOUR HOUR HOLD ON OFFENDERS; CREATING A
FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING
AN APPROPRIATION.

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

1 member is guilty of a [petty] misdemeanor. "

2 Section 2. A new section of the Crimes Against Household
3 Members Act is enacted to read:

4 "[NEW MATERIAL] TWENTY-FOUR HOUR HOLD FOLLOWING ARREST. --
5 Following an arrest for an offense pursuant to the Crimes
6 Against Household Members Act, the offender may be held for a
7 period of not less than twenty-four hours following the
8 offender's arrest. The offender shall be given a bail
9 hearing, in accordance with the provisions of Article 2,
10 Section 13 of the constitution of New Mexico, and shall be
11 eligible for bail following the twenty-four hour hold period. "

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

14 "40-13-6. SERVICE OF ORDER-- DURATION-- PENALTY-- REMEDIES
15 NOT EXCLUSIVE. --

16 A. An order of protection granted under the Family
17 Violence Protection Act shall be filed with the clerk of the
18 court, and a copy shall be sent by the clerk to the local law
19 enforcement agency. The order shall be personally served upon
20 the respondent, unless he or his attorney was present at the
21 time the order was issued. The order shall be filed and
22 served without cost to the petitioner.

23 B. An order of protection granted by the court
24 involving custody or support shall be effective for a fixed
25 period of time not to exceed six months. The order may be

1 extended for good cause upon motion of the petitioner for an
2 additional period of time not to exceed six months.

3 Injunctive orders shall continue until modified or rescinded
4 upon motion by either party or until the court approves a
5 subsequent consent agreement entered into by the petitioner
6 and the respondent.

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

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

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

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

24 E. A person convicted of violating an order of
25 protection granted by a court under the Family Violence

1 Protection Act is guilty of a misdemeanor and shall be
2 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon
3 a second or subsequent conviction, an offender shall be
4 sentenced to a jail term of not less than seventy-two
5 consecutive hours that shall not be suspended, deferred or
6 taken under advisement. Following an arrest for violation of
7 an order of protection granted by a court pursuant to the
8 Family Violence Protection Act, the offender may be held for a
9 period of not less than twenty-four hours following the
10 offender's arrest. The offender shall be given a bail
11 hearing, in accordance with the provisions of Article 2,
12 Section 13 of the constitution of New Mexico, and shall be
13 eligible for bail following the twenty-four hour hold period.

14 F. In addition to any other punishment provided in
15 the Family Violence Protection Act, the court shall order a
16 person convicted to make full restitution to the party injured
17 by the violation of an order of protection and order the
18 person convicted to participate in and complete a program of
19 professional counseling, at his own expense, if possible.

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

24 H. The remedies provided in the Family Violence
25 Protection Act are in addition to any other civil or criminal

1 remedy available to the petitioner. "

2 Section 4. [NEW MATERIAL] FUND CREATED-- ADMINISTRATION--
3 PURPOSE. --

4 A. The "domestic violence education, victim
5 protection and offender treatment fund" is established in the
6 state treasury. The fund shall be administered by the first
7 judicial district attorney's office.

8 B. All balances in the domestic violence
9 education, victim protection and offender treatment fund are
10 appropriated to the first judicial district attorney's office
11 for the following purposes:

12 (1) to educate the public regarding the
13 dangers of domestic violence and the availability of resources
14 for victims of domestic violence;

15 (2) to provide resources for victims of
16 domestic violence and children who witness domestic violence,
17 including counseling services and shelter for victims of
18 domestic violence and children who witness domestic violence;
19 and

20 (3) to provide treatment for an offender who
21 is convicted of committing assault or battery against a
22 household member, as a condition of probation for the
23 offender.

24 C. The first judicial district court may contract
25 for the provision of domestic violence education programs,

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1 counseling and shelter services for victims of domestic
2 violence or children who witness domestic violence and
3 treatment for offenders convicted of committing assault or
4 battery against a household member.

5 D. Payments from the domestic violence education,
6 victim protection and offender treatment fund shall be made
7 upon warrants drawn by the secretary of finance and
8 administration pursuant to vouchers issued by the district
9 attorney for the first judicial district.

10 E. Any balance remaining in the domestic violence
11 education, victim protection and offender treatment fund at
12 the end of any fiscal year shall not revert to the general
13 fund.

14 Section 5. APPROPRIATION. -- One million dollars
15 (\$1,000,000) is appropriated from the general fund to the
16 domestic violence education, victim protection and offender
17 treatment fund for expenditure in fiscal year 2002 and
18 subsequent fiscal years to carry out the purposes of the
19 domestic violence education, victim protection and offender
20 treatment fund. Any unexpended or unencumbered balance
21 remaining at the end of a fiscal year shall not revert to the
22 general fund.

23 Section 6. EFFECTIVE DATE. -- The effective date of the
24 provisions of this act is July 1, 2001.