

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 144

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Sanchez

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR A TWELVE-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. A new section of the Crimes Against Household
Members Act is enacted to read:

"~~[NEW MATERIAL]~~ TWELVE-HOUR HOLD FOLLOWING ARREST. --

Following an arrest for an offense pursuant to the Crimes
Against Household Members Act, the offender may be held for a
period of not less than twelve hours following the offender's
arrest. The offender shall be given a bail hearing, in
accordance with the provisions of Article 2, Section 13 of the
constitution of New Mexico, and shall be eligible for bail
following the twelve-hour hold period."

underscored material = new
~~[bracketed material]~~ = delete

underscored material = new
[bracketed material] = delete

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

3 "[NEW MATERIAL] FUND CREATED-- ADMINISTRATION-- PURPOSE. --

4 A. The "domestic violence education, victim
5 protection and offender treatment fund" is created 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 offenders who
21 are 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,

underscored material = new
[bracketed material] = delete

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

16 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
17 NOT EXCLUSIVE.--

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

25 B. An order of protection granted by the court

underscored material = new
~~[bracketed material]~~ = delete

1 involving custody or support shall be effective for a fixed
2 period of time not to exceed six months. The order may be
3 extended for good cause upon motion of the petitioner for an
4 additional period of time not to exceed six months.

5 Injunctive orders shall continue until modified or rescinded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

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

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

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

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

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E. A person 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. Following an arrest for violation of an order of protection granted by a court pursuant to the Family Violence Protection Act, the offender may be held for a period of not less than twelve hours following the offender's arrest. The offender shall be given a bail hearing in accordance with the provisions of Article 2, Section 12 of the constitution of New Mexico and shall be eligible for bail following the twelve-hour hold period.

F. 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 order the person convicted to participate in and complete a program of professional counseling, at his own expense, if possible.

G. 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.

