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SENATE BILL 521

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

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; PROVIDING FOR A FORTY-EIGHT-HOUR HOLD ON OFFENDERS WHO COMMIT AN OFFENSE PURSUANT TO THE CRIMES AGAINST HOUSEHOLD MEMBERS ACT; AMENDING AND ENACTING 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, as amended) 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.

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

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

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

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

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

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1 is ~~[guilty of a misdemeanor]~~:

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

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

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

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

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

23 (2) upon a second conviction, guilty of a
24 third degree felony and shall be sentenced to a term of
25 incarceration of not less than two years that shall not be

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

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

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

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

17 B. An order of protection granted by the court
18 involving custody or support shall be effective for a fixed
19 period of time not to exceed six months. The order may be
20 extended for good cause upon motion of the petitioner for an
21 additional period of time not to exceed six months. Injunctive
22 orders shall continue until modified or rescinded upon motion
23 by either party or until the court approves a subsequent
24 consent agreement entered into by the petitioner and the
25 respondent.

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

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

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

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

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

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

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

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

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

20 Section 4. A new section of the Crimes Against Household
21 Members Act is enacted to read:

22 "[NEW MATERIAL] FORTY-EIGHT-HOUR HOLD FOLLOWING ARREST. --
23 Following an arrest for an offense pursuant to the Crimes
24 Against Household Members Act, the offender may be held for a
25 period of not less than forty-eight hours following the

1 offender's arrest. The offender shall be given a bail hearing,
2 in accordance with the provisions of Article 2, Section 13 of
3 the constitution of New Mexico, and shall be eligible for bail
4 following the forty-eight-hour hold period. "

5 Section 5. EFFECTIVE DATE. --The effective date of the
6 provisions of this act is July 1, 2003.

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