

ADA ELLIOTT - DOMESTIC VIOLENCE

In 2002 the state legislature was confronted with an unusual problem. New Mexico had just lost four million dollars in federal money for DV programs because it was perceived that we were not showing adequate concern for victims of domestic violence. The state, for example, allowed courts to charge fees to victims who filed civil or criminal complaints. More disturbing, there was concern that state law permitted police officers to arrest both parties in a domestic dispute without determining who the primary aggressor was.

The legislature acted quickly to have state law comply with federal requirements. Courts will now waive fees for victims of domestic violence. More relevant to us is the new section of the Family Violence Protection Act regarding mutual arrests. It provides as follows:

... The state of New Mexico discourages dual arrests of persons involved in incidents of domestic abuse. A law enforcement officer, in making arrests for domestic abuse, shall seek to identify and shall consider whether one of the parties acted in self-defense.

Often situations arise where both parties strike one another. Is it possible that one party struck back in self-defense? Is there a primary aggressor? More is at stake here than four million dollars in federal money. It is legally difficult to go to court and represent someone first as a victim and then prosecute the same person later as an offender. Some cases will be difficult but every effort should be made to determine the primary aggressor in domestic violence cases.

