

March 31, 2011

Felony Domestic Violence: Aggravated Assault Against a Household Member

A charge of domestic violence in New Mexico is always very serious. There are numerous and severe consequences for a domestic violence conviction. A charge of for felony domestic violence steps up the seriousness and the possible consequences.

Most domestic violence is charged as a misdemeanor. As a misdemeanor, the maximum possible jail time is one year. Once a case is charged as felony domestic violence, the penalties are greatly enhanced beginning at 18 months possible prison time on a 4th degree felony, 3 years on a 3rd degree felony, 9 years on a 2nd and 18 years on a 1st degree felony.

As a felony, the prosecutors are typically much more aggressive in prosecution as well. For instance, in minor misdemeanor domestic violence where there are no injuries or weapons, the prosecutor will not pursue the alleged victim's cooperation quite as aggressively as in a felony. In a felony domestic violence where there are injuries, weapons or other felonies involved, the prosecutor or district attorney will often be significantly more persistent in tracking down the alleged victim and getting the alleged victim to court for trial.

There are a number of ways to charge felony domestic violence. Perhaps the most common is aggravated assault against a household member which is classified as a fourth degree felony. This charge requires, "(1) unlawfully assaulting or striking at a household member with a deadly weapon; or (2) willfully and intentionally assaulting a household member with intent to commit any felony."

The weapons portion seems straightforward enough. However, this language can be broadly construed by the prosecutor. The mere presence of some deadly weapons such as a knives or guns even in the absence of a threat may trigger this charge. In addition, the term deadly weapon itself may be stretched to include otherwise innocuous items depending on the circumstances and the alleged intent of the defendant. And then of course the construction of "intent" is always a slippery matter.

DISCLAIMER

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>

The second part of the definition of the offense can be even more perplexing and frustrating to defendants. The "intent to commit any felony" covers a lot of ground. It is not uncommon to see the alleged facts stretched to logical extreme in order to meet the requirements of this element. Though there are countless ways this charge might arise, the most frequent are kidnapping and false imprisonment. These are topics unto themselves but suffice it to say that the commonly held definition of these terms is frequently only remotely related to the facts of a particular case.

In short, there are countless ways to arrive at felony domestic violence charges. The basis for a felony domestic violence charge is most often clear from the alleged facts. On other occasions, the charge can be quite a stretch from the facts. Unfortunately, however one gets there, the charges are very serious and the possible consequences quite severe.

DISCLAIMER

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>