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HOUSE BILL 439

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO CRIMINAL LAW; AMENDING ELEMENTS OF THE CRIMES OF HARASSMENT AND STALKING; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE HARASSMENT AND STALKING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-3A-1 NMSA 1978 (being Laws 1997, Chapter 10, Section 1) is amended to read:

"30-3A-1. SHORT TITLE.--~~[Sections 1 through 5 of this act]~~ Chapter 30, Article 3A NMSA 1978 may be cited as the "Harassment and Stalking Act"."

Section 2. Section 30-3A-2 NMSA 1978 (being Laws 1997, Chapter 10, Section 2) is amended to read:

"30-3A-2. HARASSMENT--~~[PENALTIES]~~ PENALTY.--

A. Harassment consists of a person knowingly pursuing a pattern of conduct:

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1 (1) that is intended to annoy, seriously alarm
2 or terrorize another person and that serves no lawful purpose.
3 The conduct must be such that it would cause a reasonable
4 person to suffer substantial emotional distress; or

5 (2) with an electronic communication device
6 that is intended to annoy, seriously alarm or terrorize another
7 person and that serves no lawful purpose. The conduct must be
8 such that it would cause a reasonable person to suffer
9 substantial emotional distress.

10 B. Whoever commits harassment is guilty of a
11 misdemeanor."

12 Section 3. Section 30-3A-3 NMSA 1978 (being Laws 1997,
13 Chapter 10, Section 3) is amended to read:

14 "30-3A-3. STALKING--PENALTIES.--

15 A. Stalking consists of a person knowingly pursuing
16 a pattern of conduct that would cause a reasonable person to
17 feel frightened, intimidated or threatened. The alleged
18 stalker must ~~[intend to place another]~~ intentionally act in a
19 way that would place a reasonable person in reasonable
20 apprehension of death, bodily harm, sexual assault, confinement
21 or restraint or the alleged stalker must ~~[intend to]~~
22 intentionally act in a way that would cause a reasonable person
23 to fear for ~~[his]~~ the person's safety or the safety of a
24 household member. In furtherance of the stalking, the alleged
25 stalker must commit one or more of the following acts on more

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1 than one occasion:

2 (1) following another person, in a place other
3 than the residence of the alleged stalker;

4 (2) placing another person under surveillance:

5 (a) by being present outside that
6 person's residence, school, workplace or motor vehicle or any
7 other place frequented by that person, other than the residence
8 of the alleged stalker; or

9 (b) in a remote manner by means of an
10 electronic communication device;

11 (3) harassing another person; or

12 (4) using any combination of written
13 communication, verbal communication or an electronic
14 communication device to publish, display or distribute
15 information in a manner that would substantially increase the
16 risk of harm or violence to the victim of stalking by a third
17 party.

18 ~~[B. As used in this section, "household member"~~
19 ~~means a spouse, former spouse, family member, including a~~
20 ~~relative, parent, present or former step-parent, present or~~
21 ~~former in-law, child or co-parent of a child, or a person with~~
22 ~~whom the victim has had a continuing personal relationship.~~
23 ~~Cohabitation is not necessary to be deemed a household member~~
24 ~~for the purposes of this section.~~

25 G.] B. Whoever commits stalking is guilty of a

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1 misdemeanor. Upon a second or subsequent conviction, the
2 offender is guilty of a fourth degree felony.

3 ~~[D-]~~ C. In addition to any punishment provided
4 pursuant to the provisions of this section, the court shall
5 order a person convicted of stalking to participate in and
6 complete a program of professional counseling at ~~[his]~~ the
7 person's own expense."

8 Section 4. A new section of the Harassment and Stalking
9 Act is enacted to read:

10 "[NEW MATERIAL] DEFINITIONS.--As used in the Harassment
11 and Stalking Act:

12 A. "electronic communication device" includes a
13 computer, video recorder, digital camera, fax machine,
14 telephone, pager, audio equipment or any device that can
15 produce an electronically generated image, message or signal;
16 and

17 B. "household member" means a spouse, former
18 spouse, family member, including a relative, parent, present or
19 former stepparent, present or former in-law, child or co-parent
20 of a child, or a person with whom the victim has had a
21 continuing personal relationship. Cohabitation is not
22 necessary to be deemed a household member for the purposes of
23 the Harassment and Stalking Act."

24 Section 5. A new section of the Harassment and Stalking
25 Act is enacted to read:

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"[NEW MATERIAL] LOCATION OF AN OFFENSE.--When a person commits harassment or stalking by using an electronic communication device, the offense may be deemed to have been committed either at the place where the electronic communication was originated or at the place where the electronic communication was received."

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.