

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 513

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO DOMESTIC VIOLENCE; ADDING DEFINITIONS OF
"SUFFOCATION" AND "STRANGULATION" TO THE FAMILY VIOLENCE
PROTECTION ACT, THE CRIMES AGAINST HOUSEHOLD MEMBERS ACT AND
THE ABUSE AND NEGLECT ACT; CLARIFYING THAT THE CRIME OF
AGGRAVATED BATTERY AGAINST A HOUSEHOLD MEMBER MAY BE COMMITTED
BY SUFFOCATION OR STRANGULATION.

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

SECTION 1. Section 30-3-11 NMSA 1978 (being Laws 1995,
Chapter 221, Section 2, as amended) is amended to read:

"30-3-11. DEFINITIONS.--As used in the Crimes Against
Household Members Act:

A. "household member" means a spouse, former
spouse, parent, present or former stepparent, present or former
parent in-law, grandparent, grandparent-in-law, a co-parent of

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1 a child or a person with whom a person has had a continuing
2 personal relationship. Cohabitation is not necessary to be
3 deemed a household member for the purposes of the Crimes
4 Against Household Members Act; [~~and~~]

5 B. "continuing personal relationship" means a
6 dating or intimate relationship;

7 C. "strangulation" means the unlawful touching or
8 application of force to another person's neck or throat with
9 intent to injure that person, the result of which impedes the
10 person's normal breathing or blood circulation; and

11 D. "suffocation" means the unlawful touching or
12 application of force that blocks the nose or mouth of another
13 person with intent to injure that person, the result of which
14 impedes the person's normal breathing or blood circulation."

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

17 "30-3-16. AGGRAVATED BATTERY AGAINST A HOUSEHOLD
18 MEMBER.--

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

23 B. Whoever commits aggravated battery against a
24 household member by inflicting an injury to that person that is
25 not likely to cause death or great bodily harm, but that does

1 cause painful temporary disfigurement or temporary loss or
2 impairment of the functions of any member or organ of the body,
3 is guilty of a misdemeanor.

4 C. Whoever commits aggravated battery against a
5 household member by inflicting strangulation or suffocation is
6 guilty of a fourth degree felony.

7 [~~C.~~] D. Whoever commits aggravated battery against
8 a household member by inflicting great bodily harm or doing so
9 with a deadly weapon or doing so in any manner whereby great
10 bodily harm or death can be inflicted is guilty of a third
11 degree felony.

12 [~~D.~~] E. Upon conviction pursuant to Subsection B of
13 this section, an offender shall be required to participate in
14 and complete a domestic violence offender treatment or
15 intervention program approved by the children, youth and
16 families department pursuant to rules promulgated by the
17 department that define the criteria for such programs.

18 [~~E.~~] F. Notwithstanding any provision of law to the
19 contrary, if a sentence imposed pursuant to the provisions of
20 Subsection B of this section is suspended or deferred in whole
21 or in part, the period of probation may extend beyond three
22 hundred sixty-four days but may not exceed two years. If an
23 offender violates a condition of probation, the court may
24 impose any sentence that the court could originally have
25 imposed and credit shall not be given for time served by the

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1 offender on probation; provided that the total period of
2 incarceration shall not exceed three hundred sixty-four days
3 and the combined period of incarceration and probation shall
4 not exceed two years."

5 SECTION 3. Section 32A-2-3 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 32, as amended) is amended to read:

7 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

8 A. "delinquent act" means an act committed by a
9 child that would be designated as a crime under the law if
10 committed by an adult, including the following offenses:

11 (1) any of the following offenses pursuant to
12 municipal traffic codes or the Motor Vehicle Code:

13 (a) driving while under the influence of
14 intoxicating liquor or drugs;

15 (b) failure to stop in the event of an
16 accident causing death, personal injury or damage to property;

17 (c) unlawful taking of a vehicle or
18 motor vehicle;

19 (d) receiving or transferring of a
20 stolen vehicle or motor vehicle;

21 (e) homicide by vehicle;

22 (f) injuring or tampering with a
23 vehicle;

24 (g) altering or changing of an engine
25 number or other vehicle identification numbers;

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1 (h) altering or forging of a driver's
2 license or permit or any making of a fictitious license or
3 permit;

4 (i) reckless driving;

5 (j) driving with a suspended or revoked
6 license; or

7 (k) an offense punishable as a felony;

8 (2) buying, attempting to buy, receiving,
9 possessing or being served any alcoholic liquor or being
10 present in a licensed liquor establishment, other than a
11 restaurant or a licensed retail liquor establishment, except in
12 the presence of the child's parent, guardian, custodian or
13 adult spouse. As used in this paragraph, "restaurant" means an
14 establishment where meals are prepared and served primarily for
15 on-premises consumption and that has a dining room, a kitchen
16 and the employees necessary for preparing, cooking and serving
17 meals. "Restaurant" does not include an establishment, as
18 defined in regulations promulgated by the director of the
19 special investigations division of the department of public
20 safety, that serves only hamburgers, sandwiches, salads and
21 other fast foods;

22 (3) a violation of Section 30-29-2 NMSA 1978,
23 regarding the illegal use of a glue, aerosol spray product or
24 other chemical substance;

25 (4) a violation of the Controlled Substances

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1 Act;

2 (5) escape from the custody of a law
3 enforcement officer or a juvenile probation or parole officer
4 or from any placement made by the department by a child who has
5 been adjudicated a delinquent child;

6 (6) a violation of Section 30-15-1.1 NMSA 1978
7 regarding unauthorized graffiti on personal or real property;
8 or

9 (7) a violation of an order of protection
10 issued pursuant to the provisions of the Family Violence
11 Protection Act;

12 B. "delinquent child" means a child who has
13 committed a delinquent act;

14 C. "delinquent offender" means a delinquent child
15 who is subject to juvenile sanctions only and who is not a
16 youthful offender or a serious youthful offender;

17 D. "detention facility" means a place where a child
18 may be detained under the Children's Code pending court hearing
19 and does not include a facility for the care and rehabilitation
20 of an adjudicated delinquent child;

21 E. "felony" means an act that would be a felony if
22 committed by an adult;

23 F. "misdemeanor" means an act that would be a
24 misdemeanor or petty misdemeanor if committed by an adult;

25 G. "restitution" means financial reimbursement by

1 the child to the victim or community service imposed by the
2 court and is limited to easily ascertainable damages for injury
3 to or loss of property, actual expenses incurred for medical,
4 psychiatric and psychological treatment for injury to a person
5 and lost wages resulting from physical injury, which are a
6 direct and proximate result of a delinquent act. "Restitution"
7 does not include reimbursement for damages for mental anguish,
8 pain and suffering or other intangible losses. As used in this
9 subsection, "victim" means a person who is injured or suffers
10 damage of any kind by an act that is the subject of a complaint
11 or referral to law enforcement officers or juvenile probation
12 authorities. Nothing contained in this definition limits or
13 replaces the provisions of Subsections A and B of Section
14 32A-2-27 NMSA 1978;

15 H. "serious youthful offender" means an individual
16 fifteen to eighteen years of age who is charged with and
17 indicted or bound over for trial for first degree murder. A
18 "serious youthful offender" is not a delinquent child as
19 defined pursuant to the provisions of this section;

20 I. "supervised release" means the release of a
21 juvenile, whose term of commitment has not expired, from a
22 facility for the care and rehabilitation of adjudicated
23 delinquent children, with specified conditions to protect
24 public safety and promote successful transition and
25 reintegration into the community. A juvenile on supervised

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1 release is subject to monitoring by the department until the
2 term of commitment has expired and may be returned to custody
3 for violating conditions of release; and

4 J. "youthful offender" means a delinquent child
5 subject to adult or juvenile sanctions who is:

6 (1) fourteen to eighteen years of age at the
7 time of the offense and who is adjudicated for at least one of
8 the following offenses:

9 (a) second degree murder, as provided in
10 Section 30-2-1 NMSA 1978;

11 (b) assault with intent to commit a
12 violent felony, as provided in Section 30-3-3 NMSA 1978;

13 (c) kidnapping, as provided in Section
14 30-4-1 NMSA 1978;

15 (d) aggravated battery, as provided in
16 Subsection C of Section 30-3-5 NMSA 1978;

17 (e) aggravated battery against a
18 household member, as provided in Subsection [G] D of Section
19 30-3-16 NMSA 1978;

20 (f) aggravated battery upon a peace
21 officer, as provided in Subsection C of Section 30-22-25 NMSA
22 1978;

23 (g) shooting at a dwelling or occupied
24 building or shooting at or from a motor vehicle, as provided in
25 Section 30-3-8 NMSA 1978;

1 (h) dangerous use of explosives, as
2 provided in Section 30-7-5 NMSA 1978;

3 (i) criminal sexual penetration, as
4 provided in Section 30-9-11 NMSA 1978;

5 (j) robbery, as provided in Section
6 30-16-2 NMSA 1978;

7 (k) aggravated burglary, as provided in
8 Section 30-16-4 NMSA 1978;

9 (l) aggravated arson, as provided in
10 Section 30-17-6 NMSA 1978; or

11 (m) abuse of a child that results in
12 great bodily harm or death to the child, as provided in Section
13 30-6-1 NMSA 1978;

14 (2) fourteen to eighteen years of age at the
15 time of the offense, who is adjudicated for any felony offense
16 and who has had three prior, separate felony adjudications
17 within a three-year time period immediately preceding the
18 instant offense. The felony adjudications relied upon as prior
19 adjudications shall not have arisen out of the same transaction
20 or occurrence or series of events related in time and location.
21 Successful completion of consent decrees [~~are~~] is not
22 considered a prior adjudication for the purposes of this
23 paragraph; or

24 (3) fourteen years of age and who is
25 adjudicated for first degree murder, as provided in Section

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1 30-2-1 NMSA 1978."

2 SECTION 4. Section 32A-4-2 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 96, as amended) is amended to read:

4 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
5 Act:

6 A. "abandonment" includes instances when the
7 parent, without justifiable cause:

8 (1) left the child without provision for the
9 child's identification for a period of fourteen days; or

10 (2) left the child with others, including the
11 other parent or an agency, without provision for support and
12 without communication for a period of:

13 (a) three months if the child was under
14 six years of age at the commencement of the three-month period;
15 or

16 (b) six months if the child was over six
17 years of age at the commencement of the six-month period;

18 B. "abused child" means a child:

19 (1) who has suffered or who is at risk of
20 suffering serious harm because of the action or inaction of the
21 child's parent, guardian or custodian;

22 (2) who has suffered physical abuse, emotional
23 abuse or psychological abuse inflicted or caused by the child's
24 parent, guardian or custodian;

25 (3) who has suffered sexual abuse or sexual

1 exploitation inflicted by the child's parent, guardian or
2 custodian;

3 (4) whose parent, guardian or custodian has
4 knowingly, intentionally or negligently placed the child in a
5 situation that may endanger the child's life or health; or

6 (5) whose parent, guardian or custodian has
7 knowingly or intentionally tortured, cruelly confined or
8 cruelly punished the child;

9 C. "aggravated circumstances" includes those
10 circumstances in which the parent, guardian or custodian has:

11 (1) attempted, conspired to cause or caused
12 great bodily harm to the child or great bodily harm or death to
13 the child's sibling;

14 (2) attempted, conspired to cause or caused
15 great bodily harm or death to another parent, guardian or
16 custodian of the child;

17 (3) attempted, conspired to subject or has
18 subjected the child to torture, chronic abuse or sexual abuse;
19 or

20 (4) had parental rights over a sibling of the
21 child terminated involuntarily;

22 D. "great bodily harm" means an injury to a person
23 that creates a high probability of death, that causes serious
24 disfigurement or that results in permanent or protracted loss
25 or impairment of the function of a member or organ of the body;

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1 E. "neglected child" means a child:

2 (1) who has been abandoned by the child's
3 parent, guardian or custodian;

4 (2) who is without proper parental care and
5 control or subsistence, education, medical or other care or
6 control necessary for the child's well-being because of the
7 faults or habits of the child's parent, guardian or custodian
8 or the failure or refusal of the parent, guardian or custodian,
9 when able to do so, to provide them;

10 (3) who has been physically or sexually
11 abused, when the child's parent, guardian or custodian knew or
12 should have known of the abuse and failed to take reasonable
13 steps to protect the child from further harm;

14 (4) whose parent, guardian or custodian is
15 unable to discharge that person's responsibilities to and for
16 the child because of incarceration, hospitalization or physical
17 or mental disorder or incapacity; or

18 (5) who has been placed for care or adoption
19 in violation of the law; provided that nothing in the
20 Children's Code shall be construed to imply that a child who is
21 being provided with treatment by spiritual means alone through
22 prayer, in accordance with the tenets and practices of a
23 recognized church or religious denomination, by a duly
24 accredited practitioner thereof is for that reason alone a
25 neglected child within the meaning of the Children's Code; and

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1 further provided that no child shall be denied the protection
2 afforded to all children under the Children's Code;

3 F. "physical abuse" includes but is not limited to
4 any case in which the child suffers strangulation or
5 suffocation, and any case in which the child exhibits evidence
6 of skin bruising, bleeding, malnutrition, failure to thrive,
7 burns, fracture of any bone, subdural hematoma, soft tissue
8 swelling or death and:

9 (1) there is not a justifiable explanation for
10 the condition or death;

11 (2) the explanation given for the condition is
12 at variance with the degree or nature of the condition;

13 (3) the explanation given for the death is at
14 variance with the nature of the death; or

15 (4) circumstances indicate that the condition
16 or death may not be the product of an accidental occurrence;

17 G. "sexual abuse" includes but is not limited to
18 criminal sexual contact, incest or criminal sexual penetration,
19 as those acts are defined by state law;

20 H. "sexual exploitation" includes but is not
21 limited to:

22 (1) allowing, permitting or encouraging a
23 child to engage in prostitution;

24 (2) allowing, permitting, encouraging or
25 engaging a child in obscene or pornographic photographing; or

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1 (3) filming or depicting a child for obscene
2 or pornographic commercial purposes, as those acts are defined
3 by state law; ~~and~~

4 I. "strangulation" has the same meaning as set
5 forth in Section 30-3-11 NMSA 1978;

6 J. "suffocation" has the same meaning as set forth
7 in Section 30-3-11 NMSA 1978; and

8 ~~[F.]~~ K. "transition plan" means an individualized
9 written plan for a child, based on the unique needs of the
10 child, that outlines all appropriate services to be provided to
11 the child to increase independent living skills. The plan
12 shall also include responsibilities of the child, and any other
13 party as appropriate, to enable the child to be self-sufficient
14 upon emancipation."

15 SECTION 5. Section 40-13-2 NMSA 1978 (being Laws 1987,
16 Chapter 286, Section 2, as amended) is amended to read:

17 "40-13-2. DEFINITIONS.--As used in the Family Violence
18 Protection Act:

19 A. "continuing personal relationship" means a
20 dating or intimate relationship;

21 B. "co-parents" means persons who have a child in
22 common, regardless of whether they have been married or have
23 lived together at any time;

24 C. "court" means the district court of the judicial
25 district where an alleged victim of domestic abuse resides or

1 is found;

2 D. "domestic abuse":

3 (1) means an incident of stalking or sexual
4 assault whether committed by a household member or not;

5 (2) means an incident by a household member
6 against another household member consisting of or resulting in:

- 7 (a) physical harm;
- 8 (b) severe emotional distress;
- 9 (c) bodily injury or assault;
- 10 (d) a threat causing imminent fear of
11 bodily injury by any household member;
- 12 (e) criminal trespass;
- 13 (f) criminal damage to property;
- 14 (g) repeatedly driving by a residence or
15 work place;

16 (h) telephone harassment;

17 (i) harassment; [~~or~~]

18 (j) strangulation;

19 (k) suffocation; or

20 [~~(j)~~] (l) harm or threatened harm to
21 children as set forth in this paragraph; and

22 (3) does not mean the use of force in self-
23 defense or the defense of another;

24 E. "household member" means a spouse, former
25 spouse, parent, present or former stepparent, present or former

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1 parent in-law, grandparent, grandparent-in-law, child,
2 stepchild, grandchild, co-parent of a child or a person with
3 whom the petitioner has had a continuing personal relationship.
4 Cohabitation is not necessary to be deemed a household member
5 for purposes of this section;

6 F. "mutual order of protection" means an order of
7 protection that includes provisions that protect both parties;

8 G. "order of protection" means an injunction or a
9 restraining or other court order granted for the protection of
10 a victim of domestic abuse;

11 H. "protected party" means a person protected by an
12 order of protection; ~~and~~

13 I. "restrained party" means a person who is
14 restrained by an order of protection;

15 J. "strangulation" has the same meaning as set
16 forth in Section 30-3-11 NMSA 1978; and

17 K. "suffocation" has the same meaning as set forth
18 in Section 30-3-11 NMSA 1978."

19 SECTION 6. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2015.