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SENATE BILL 61

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Daniel A. Ivey-Soto

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 is guilty of a misdemeanor if the aggravated  
25 battery against a household member is committed by inflicting

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1 an injury to that person that is not likely to cause death or  
2 great bodily harm, but that does cause painful temporary  
3 disfigurement or temporary loss or impairment of the functions  
4 of any member or organ of the body [~~is guilty of a~~  
5 ~~misdemeanor~~].

6 C. Whoever commits aggravated battery against a  
7 household member is guilty of a third degree felony if the  
8 aggravated battery against a household member is committed:

9 (1) by inflicting great bodily harm [~~or doing~~  
10 ~~so~~];

11 (2) with a deadly weapon [~~or doing so~~];

12 (3) by strangulation or suffocation; or

13 (4) in any manner whereby great bodily harm or  
14 death can be inflicted [~~is guilty of a third degree felony~~].

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

21 E. Notwithstanding any provision of law to the  
22 contrary, if a sentence imposed pursuant to the provisions of  
23 Subsection B of this section is suspended or deferred in whole  
24 or in part, the period of probation may extend beyond three  
25 hundred sixty-four days but may not exceed two years. If an

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1 offender violates a condition of probation, the court may  
2 impose any sentence that the court could originally have  
3 imposed and credit shall not be given for time served by the  
4 offender on probation; provided that the total period of  
5 incarceration shall not exceed three hundred sixty-four days  
6 and the combined period of incarceration and probation shall  
7 not exceed two years."

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

10 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect  
11 Act:

12 A. "abandonment" includes instances when the  
13 parent, without justifiable cause:

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

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

19 (a) three months if the child was under  
20 six years of age at the commencement of the three-month period;  
21 or

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

24 B. "abused child" means a child:

25 (1) who has suffered or who is at risk of

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1 suffering serious harm because of the action or inaction of the  
2 child's parent, guardian or custodian;

3 (2) who has suffered physical abuse, emotional  
4 abuse or psychological abuse inflicted or caused by the child's  
5 parent, guardian or custodian;

6 (3) who has suffered sexual abuse or sexual  
7 exploitation inflicted by the child's parent, guardian or  
8 custodian;

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

12 (5) whose parent, guardian or custodian has  
13 knowingly or intentionally tortured, cruelly confined or  
14 cruelly punished the child;

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

17 (1) attempted, conspired to cause or caused  
18 great bodily harm to the child or great bodily harm or death to  
19 the child's sibling;

20 (2) attempted, conspired to cause or caused  
21 great bodily harm or death to another parent, guardian or  
22 custodian of the child;

23 (3) attempted, conspired to subject or has  
24 subjected the child to torture, chronic abuse or sexual abuse;  
25 or

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1 (4) had parental rights over a sibling of the  
2 child terminated involuntarily;

3 D. "educational decision maker" means an  
4 individual appointed by the children's court to attend school  
5 meetings and to make decisions about the child's education that  
6 a parent could make under law, including decisions about the  
7 child's educational setting, and the development and  
8 implementation of an individual education plan for the child;

9 E. "fictive kin" means a person not related by  
10 birth, adoption or marriage with whom a child has an  
11 emotionally significant relationship;

12 F. "great bodily harm" means an injury to a person  
13 that creates a high probability of death, that causes serious  
14 disfigurement or that results in permanent or protracted loss  
15 or impairment of the function of a member or organ of the body;

16 G. "neglected child" means a child:

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

19 (2) who is without proper parental care and  
20 control or subsistence, education, medical or other care or  
21 control necessary for the child's well-being because of the  
22 faults or habits of the child's parent, guardian or custodian  
23 or the failure or refusal of the parent, guardian or custodian,  
24 when able to do so, to provide them;

25 (3) who has been physically or sexually

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1 abused, when the child's parent, guardian or custodian knew or  
2 should have known of the abuse and failed to take reasonable  
3 steps to protect the child from further harm;

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

8 (5) who has been placed for care or adoption  
9 in violation of the law; provided that nothing in the  
10 Children's Code shall be construed to imply that a child who is  
11 being provided with treatment by spiritual means alone through  
12 prayer, in accordance with the tenets and practices of a  
13 recognized church or religious denomination, by a duly  
14 accredited practitioner thereof is for that reason alone a  
15 neglected child within the meaning of the Children's Code; and  
16 further provided that no child shall be denied the protection  
17 afforded to all children under the Children's Code;

18 H. "physical abuse" includes any case in which the  
19 child suffers strangulation or suffocation and any case in  
20 which the child exhibits evidence of skin bruising, bleeding,  
21 malnutrition, failure to thrive, burns, fracture of any bone,  
22 subdural hematoma, soft tissue swelling or death and:

23 (1) there is not a justifiable explanation for  
24 the condition or death;

25 (2) the explanation given for the condition is

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1 at variance with the degree or nature of the condition;

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

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

6 I. "relative" means a person related to another  
7 person by birth, adoption or marriage within the fifth degree  
8 of consanguinity;

9 J. "sexual abuse" includes criminal sexual contact,  
10 incest or criminal sexual penetration, as those acts are  
11 defined by state law;

12 K. "sexual exploitation" includes:

13 (1) allowing, permitting or encouraging a  
14 child to engage in prostitution;

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

17 (3) filming or depicting a child for obscene  
18 or pornographic commercial purposes, as those acts are defined  
19 by state law;

20 L. "sibling" means a brother or sister having one  
21 or both parents in common by birth or adoption; ~~and~~

22 M. "strangulation" has the same meaning as set  
23 forth in Section 30-3-11 NMSA 1978;

24 N. "suffocation" has the same meaning as set forth  
25 in Section 30-3-11 NMSA 1978; and

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1           [M-] O. "transition plan" means an individualized  
2 written plan for a child, based on the unique needs of the  
3 child, that outlines all appropriate services to be provided to  
4 the child to increase independent living skills. The plan  
5 shall also include responsibilities of the child, and any other  
6 party as appropriate, to enable the child to be self-sufficient  
7 upon emancipation."

8           SECTION 4. Section 40-13-2 NMSA 1978 (being Laws 1987,  
9 Chapter 286, Section 2, as amended) is amended to read:

10           "40-13-2. DEFINITIONS.--As used in the Family Violence  
11 Protection Act:

12           A. "continuing personal relationship" means a  
13 dating or intimate relationship;

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

17           C. "court" means the district court of the judicial  
18 district where an alleged victim of domestic abuse resides or  
19 is found;

20           D. "domestic abuse":

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

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

25                         (a) physical harm;

- 1 (b) severe emotional distress;  
2 (c) bodily injury or assault;  
3 (d) a threat causing imminent fear of  
4 bodily injury by any household member;  
5 (e) criminal trespass;  
6 (f) criminal damage to property;  
7 (g) repeatedly driving by a residence or  
8 work place;  
9 (h) telephone harassment;  
10 (i) harassment; [~~or~~]  
11 (j) strangulation;  
12 (k) suffocation; or  
13 [~~(j)~~] (l) harm or threatened harm to  
14 children as set forth in this paragraph; and

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

17 E. "household member" means a spouse, former  
18 spouse, parent, present or former stepparent, present or former  
19 parent in-law, grandparent, grandparent-in-law, child,  
20 stepchild, grandchild, co-parent of a child or a person with  
21 whom the petitioner has had a continuing personal relationship.  
22 Cohabitation is not necessary to be deemed a household member  
23 for purposes of this section;

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

