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HOUSE BILL 211

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RAYMOND G. SANCHEZ

AN ACT

RELATING TO CRIMINAL LAW; CHANGING THE ELEMENTS OF THE CRIMINAL  
OFFENSE OF STALKING; CREATING THE CRIMINAL OFFENSE OF AGGRAVATED  
STALKING; PRESCRIBING PENALTIES; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Criminal Code is enacted  
to read:

"[NEW MATERIAL] SHORT TITLE. -- Sections 1 through 5 of this  
act may be cited as the "Stalking Act". "

Section 2. A new section of the Criminal Code is enacted  
to read:

"[NEW MATERIAL] STALKING-- PENALTIES. --

A. Stalking consists of a person knowingly engaging  
in two or more instances of conduct that include following

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1 another person, lying in wait for another person, making threats  
2 of great bodily harm or death to another person or making  
3 repeated, unwanted contact with another person, when the conduct  
4 serves no lawful purpose. The conduct must be such that it  
5 would cause a reasonable person to feel frightened, intimidated  
6 or threatened.

7 B. Whoever commits stalking is guilty of a  
8 misdemeanor. Upon a second or subsequent conviction, the  
9 offender is guilty of a fourth degree felony.

10 C. In addition to any punishment provided pursuant  
11 to the provisions of this section, the court shall order a  
12 person convicted of stalking to participate in and complete a  
13 program of professional counseling at his own expense. "

14 Section 3. A new section of the Criminal Code is enacted  
15 to read:

16 "[NEW MATERIAL] AGGRAVATED STALKING--PENALTIES. --

17 A. Aggravated stalking consists of stalking  
18 perpetrated by a person:

19 (1) in violation of a permanent or temporary  
20 order of protection issued by a court;

21 (2) in violation of a court order setting  
22 conditions of release and bond;

23 (3) when the person is in possession of a  
24 deadly weapon; or

25 (4) when the victim is less than sixteen years

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1 of age.

2 B. Whoever commits aggravated stalking is guilty of  
3 a fourth degree felony. Upon a second or subsequent conviction,  
4 the offender is guilty of a third degree felony.

5 C. In addition to any punishment provided pursuant  
6 to the provisions of this section, the court shall order a  
7 person convicted of aggravated stalking to participate in and  
8 complete a program of professional counseling at his own  
9 expense. "

10 Section 4. A new section of the Criminal Code is enacted  
11 to read:

12 "[NEW MATERIAL] ARREST WITHOUT WARRANT--LIABILITY--  
13 ASSISTANCE TO VICTIM --

14 A. A peace officer may arrest a person and take that  
15 person into custody without a warrant when the peace officer is  
16 investigating an allegation of stalking or aggravated stalking  
17 and has probable cause to believe that the person has committed  
18 stalking or aggravated stalking.

19 B. A peace officer shall not be held criminally or  
20 civilly liable for making an arrest pursuant to the provisions  
21 of this section, if the peace officer acts in good faith and  
22 without malice.

23 C. Whether or not an arrest is made pursuant to the  
24 provisions of this section, a peace officer may remain with the  
25 victim of the alleged stalking or aggravated stalking and assist

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1 the victim. The assistance may include getting the victim to a  
2 place of shelter or ensuring that the victim receives proper  
3 medical attention."

4 Section 5. A new section of the Criminal Code is enacted  
5 to read:

6 "[NEW MATERIAL] EXCEPTIONS. --The provisions of the  
7 Stalking Act do not apply to:

8 A. picketing or public demonstrations that are  
9 lawful or that arise out of a bona fide labor dispute; or

10 B. a peace officer in the performance of his  
11 duties."

12 Section 6. Section 31-26-3 NMSA 1978 (being Laws 1994,  
13 Chapter 144, Section 3) is amended to read:

14 "31-26-3. DEFINITIONS. --As used in the Victims of Crime  
15 Act:

16 A. "court" means magistrate court, metropolitan  
17 court, children's court, district court, the court of appeals or  
18 the supreme court;

19 B. "criminal offense" means:

20 (1) negligent arson resulting in death or  
21 bodily injury, as provided in Section 30-17-5 NMSA 1978;

22 (2) aggravated arson, as provided in Section  
23 30-17-6 NMSA 1978;

24 (3) aggravated assault, as provided in Section  
25 30-3-2 NMSA 1978;

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- 1 (4) aggravated battery, as provided in Section
- 2 30-3-5 NMSA 1978;
- 3 (5) dangerous use of explosives, as provided in
- 4 Section 30-7-5 NMSA 1978;
- 5 (6) negligent use of a deadly weapon, as
- 6 provided in Section 30-7-4 NMSA 1978;
- 7 (7) murder, as provided in Section 30-2-1 NMSA
- 8 1978;
- 9 (8) voluntary manslaughter, as provided in
- 10 Section 30-2-3 NMSA 1978;
- 11 (9) involuntary manslaughter, as provided in
- 12 Section 30-2-3 NMSA 1978;
- 13 (10) [~~kidnaping~~] kidnapping, as provided in
- 14 Section 30-4-1 NMSA 1978;
- 15 (11) criminal sexual penetration, as provided
- 16 in Section 30-9-11 NMSA 1978;
- 17 (12) criminal sexual contact of a minor, as
- 18 provided in Section 30-9-13 NMSA 1978;
- 19 (13) homicide by vehicle, as provided in
- 20 Section 66-8-101 NMSA 1978;
- 21 (14) great bodily injury by vehicle, as
- 22 provided in Section 66-8-101 NMSA 1978; [~~or~~]
- 23 (15) abandonment or abuse of a child, as
- 24 provided in Section 30-6-1 NMSA 1978; or
- 25 (16) stalking or aggravated stalking, as

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1 provided in the Stalking Act;

2 C. "court proceeding" means a hearing, argument or  
3 other action scheduled by and held before a court;

4 D. "family member" means a spouse, child, sibling,  
5 parent or grandparent;

6 E. "formally charged" means the filing of an  
7 indictment, the filing of a criminal information pursuant to a  
8 bind-over order or the setting of a preliminary hearing;

9 F. "victim" means an individual against whom a  
10 criminal offense is committed. "Victim" also means a family  
11 member or a victim's representative when the individual against  
12 whom a criminal offense was committed is a minor, is incompetent  
13 or is a homicide victim; and

14 G. "victim's representative" means an individual  
15 designated by a victim or appointed by the court to act in the  
16 best interests of the victim "

17 Section 7. REPEAL. -- Sections 30-3A-1 through 30-3A-4 NMSA  
18 1978 (being Laws 1993, Chapter 86, Sections 1 through 4, as  
19 amended) are repealed.

20 Section 8. EFFECTIVE DATE. -- The effective date of the  
21 provisions of this act is July 1, 1997.

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

February 14, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 211

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 1, strike lines 24 and 25 in their entirety, and  
on page 2, strike lines 1 through 6 in their entirety and insert  
in lieu thereof the following new subsections:

"A. Stalking consists of a person knowingly pursuing a  
pattern of conduct that would cause a reasonable person to feel  
frightened, intimidated or threatened. The alleged stalker must  
knowingly and intentionally commit the acts that place another  
person in reasonable apprehension of death, bodily harm, sexual  
assault, confinement or restraint or the alleged stalker must  
intend to cause a reasonable person to fear for his safety or the  
safety of a household member. In furtherance of the stalking, the

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 211

Page 8

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2 alleged stalker must commit one or more of the following acts on  
3 more than one occasion:

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

6  
7 (2) placing another person under surveillance by  
8 being present outside that person's residence, school, workplace  
9 or motor vehicle or any other place frequented by that person,  
10 other than the residence of the alleged stalker; or

11 (3) harassing another person.

12  
13 B. As used in this section, "household member" means a  
14 spouse, former spouse, family member, including a relative,  
15 parent, present or former step-parent, present or former in-law,  
16 child or co-parent of a child, or a person with whom the victim  
17 has had a continuing personal relationship. Cohabitation is not  
18 necessary to be deemed a household member for the purposes of this  
19 section. "

20 2. Reletter the succeeding subsections accordingly.

21  
22 3. On page 3, strike lines 10 through 25 in their entirety,  
23 and on page 4, strike lines 1 through 3 in their entirety.

24 4. Renumber the succeeding sections accordingly. ,  
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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 211

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and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Alwin, Rios, Sanchez

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION

February 19, 1997

HOUSE FLOOR AMENDMENT number 1 to HOUSE BILL 211, as amended

Amendment sponsored by Representative R. David Pederson

1. Strike all House Judiciary Committee amendments.

2. On page 1, line 20, before "Stalking" insert "Harassment and".

3. On page 1, between lines 20 and 21, insert the following new section:

"Section 2. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] HARASSMENT--PENALTIES.--

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

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

FORTY-THIRD LEGISLATURE  
FIRST SESSION

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HF/HB 211, aa

Page 11

4. Renumber the succeeding sections accordingly.

5. On page 1, strike lines 24 and 25 in their entirety, and on page 2, strike lines 1 through 6 in their entirety and insert in lieu thereof the following new subsections:

"A. Stalking consists of a person knowingly pursuing a pattern of conduct that would cause a reasonable person to feel frightened, intimidated or threatened. The alleged stalker must intend to place another person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint or the alleged stalker must intend to cause a reasonable person to fear for his safety or the safety of a household member. In furtherance of the stalking, the alleged stalker must commit one or more of the following acts on more than one occasion:

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

(2) placing another person under surveillance by being present outside that person's residence, school, workplace or motor vehicle or any other place frequented by that person, other than the residence of the alleged stalker; or

(3) harassing another person.

FORTY-THIRD LEGISLATURE  
FIRST SESSION

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HF/HB 211, aa

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

6. Reletter the succeeding subsections accordingly.

7. On page 3, strike lines 10 through 25 in their entirety, and on page 4, strike lines 1 through 3 in their entirety.

8. Renumber the succeeding sections accordingly.

\_\_\_\_\_  
R. David Pederson

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

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[bracketed material] = delete

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HB 211/a

March 5, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 211, as amended

has had it under consideration and reports same with recommendation that  
it DO PASS, amended as follows:

1. On page 2, line 19, strike "in violation of" and insert in lieu  
thereof "who knowingly violates".

2. On page 2, line 20, after "court" insert ", except that mutual  
violations of such orders may constitute a defense to aggravated  
stalking".

Respectfully submitted,

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Fernando R. Macias, Chairman

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**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Sanchez

Absent: None

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2 FORTY-THIRD LEGISLATURE  
3 FIRST SESSION  
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5 March 8, 1997  
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8 SENATE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 211, as amended

9 Amendment sponsored by Senator  
10

11  
12 1. On page 4, line 21, after "in" insert "Subsection B of".  
13

14 2. On page 5, between lines 18 and 19, insert the following new  
15 paragraph:

16 "(13) armed robbery, as provided in Section 30-16-2 NMSA  
17 1978;".  
18

19 3. Renumber the succeeding paragraphs accordingly.  
20

21 4. On page 6, line 8, after "order" insert ", the filing of a  
22 petition".  
23

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FORTY-THIRD LEGISLATURE  
FIRST SESSION

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2 HB 211

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8 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
9 (Chief Clerk) (Chief Clerk)

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11 Date \_\_\_\_\_  
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