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HOUSE BILL 400

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO CRIMINAL LAW; AMENDING ELEMENTS OF THE CRIMES OF HARASSMENT AND STALKING; PROVIDING FOR HARASSMENT AND STALKING WITH AN ELECTRONIC COMMUNICATION DEVICE; REQUIRING SEX OFFENDER REGISTRATION FOR THE CRIME OF CRIMINAL SEXUAL COMMUNICATION WITH A CHILD; INCREASING PENALTIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2007.

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. A new section of the Harassment and Stalking Act is enacted to read:

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

3 A. "electronic communication device" means a
4 computer, internet device, portable media player, video
5 recorder, digital camera, fax machine, telephone, cellular
6 telephone, pager, audio equipment or any other device that can
7 produce an electronically generated image, message or signal;
8 and

9 B. "household member" means a spouse, former
10 spouse, family member, including a relative, parent, present or
11 former stepparent, present or former in-law, child or co-parent
12 of a child, or a person with whom the victim has had a
13 continuing personal relationship. Cohabitation is not
14 necessary to be deemed a household member for the purposes of
15 the Harassment and Stalking Act."

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

18 "30-3A-2. HARASSMENT--[PENALTIES] PENALTY.--

19 A. Harassment consists of a person knowingly
20 pursuing a pattern of conduct, by any means, including an
21 electronic communication device, that is intended to annoy,
22 seriously alarm or terrorize another person and that serves no
23 lawful purpose. The conduct must be such that it would cause a
24 reasonable person to suffer substantial emotional distress.

25 B. Whoever commits harassment is guilty of a

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1 misdemeanor."

2 Section 4. Section 30-3A-3 NMSA 1978 (being Laws 1997,
3 Chapter 10, Section 3) is amended to read:

4 "30-3A-3. STALKING--PENALTIES.--

5 A. Stalking consists of a person knowingly pursuing
6 a pattern of conduct that would cause a reasonable person to
7 feel frightened, intimidated or threatened. The alleged
8 stalker must intend to place another person in reasonable
9 apprehension of death, bodily harm, sexual assault, confinement
10 or restraint or the alleged stalker must intend to cause a
11 reasonable person to fear for ~~[his]~~ the person's safety or the
12 safety of a household member. In furtherance of the stalking,
13 the alleged stalker must commit one or more of the following
14 acts on more than one occasion:

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

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

22 (b) in a remote manner by means of an
23 electronic communication device;

24 (3) harassing another person; or

25 (4) communicating with another person, whether

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1 verbally, in writing or through the use of an electronic
2 communication device, without legitimate purpose and in a
3 manner that would cause a reasonable person to feel threatened
4 or intimidated or to fear for the person's safety or the safety
5 of a household member.

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

13 ~~G.]~~ B. Whoever commits stalking is guilty of a
14 ~~[misdemeanor]~~ fourth degree felony. Upon a second or
15 subsequent conviction, the offender is guilty of a ~~[fourth]~~
16 third degree felony.

17 ~~[D.]~~ C. In addition to any punishment provided
18 pursuant to the provisions of this section, the court shall
19 order a person convicted of stalking to participate in and
20 complete a program of professional counseling at ~~[his]~~ the
21 person's own expense.

22 D. In addition to any punishment provided in this
23 section, a court may order a person convicted of stalking to
24 stay away from the victim or a household member of the victim
25 and to avoid electronic communication with the victim or a

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1 household member of the victim for up to ten years from the
2 date of the order for an offender placed on probation, or up to
3 ten years from the date of release from incarceration.

4 E. It is a violation of this section for a person
5 to cause a third party to pursue a pattern of conduct in
6 violation of this section.

7 F. The incarceration of a person pursuing a pattern
8 of conduct in violation of this section is not a bar to
9 prosecution pursuant to this section.

10 G. In a prosecution pursuant to this section, it is
11 not necessary to prove that the person was able to carry out
12 any threats made or implied."

13 Section 5. Section 30-3A-3.1 NMSA 1978 (being Laws 1997,
14 Chapter 10, Section 4) is amended to read:

15 "30-3A-3.1. AGGRAVATED STALKING--PENALTIES.--

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

18 (1) who knowingly violates a permanent or
19 temporary order of protection issued by a court, except that
20 mutual violations of such orders may constitute a defense to
21 aggravated stalking;

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

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

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1 (4) when the victim is less than sixteen years
2 of age.

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

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

12 Section 6. A new section of the Harassment and Stalking
13 Act is enacted to read:

14 "[NEW MATERIAL] LOCATION OF AN OFFENSE.--When a person
15 commits harassment, stalking or aggravated stalking by using an
16 electronic communication device, the offense shall be deemed to
17 have been committed in New Mexico if the electronic
18 communication was originated or received in New Mexico."

19 Section 7. Section 29-11A-3 NMSA 1978 (being Laws 1995,
20 Chapter 106, Section 3, as amended by Laws 2007, Chapter 68,
21 Section 1 and by Laws 2007, Chapter 69, Section 5) is amended
22 to read:

23 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
24 Registration and Notification Act:

25 A. "conviction" means a conviction in any court of

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1 competent jurisdiction and includes a deferred sentence, but
2 does not include a conditional discharge;

3 B. "institution of higher education" means a:

4 (1) private or public post-secondary
5 educational institution;

6 (2) trade school; or

7 (3) professional school;

8 C. "registration requirement" means any requirement
9 set forth in Section 29-11A-4 NMSA 1978 that requires a sex
10 offender to register, provide information, including a DNA
11 sample, renew, revise or change registration information or
12 provide written notice or disclosure regarding the sex
13 offender's status as a sex offender;

14 D. "sex offender" means a person who:

15 (1) is a resident of New Mexico who is
16 convicted of a sex offense pursuant to state, federal, tribal
17 or military law;

18 (2) changes residence to New Mexico, when that
19 person has been convicted of a sex offense pursuant to state,
20 federal, tribal or military law;

21 (3) does not have an established residence in
22 New Mexico, but lives in a shelter, halfway house or
23 transitional living facility or stays in multiple locations in
24 New Mexico and who has been convicted of a sex offense pursuant
25 to state, federal, tribal or military law; or

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1 (4) is a resident of another state and who has
2 been convicted of a sex offense pursuant to state, federal,
3 tribal or military law, but who is:

4 (a) employed full time or part time in
5 New Mexico for a period of time exceeding fourteen days or for
6 an aggregate period of time exceeding thirty days during any
7 calendar year, including any employment or vocation, whether
8 financially compensated, volunteered or for the purpose of
9 government or educational benefit; or

10 (b) enrolled on a full-time or
11 part-time basis in a private or public school or an institution
12 of higher education in New Mexico; and

13 E. "sex offense" means any of the following
14 offenses or their equivalents in any other jurisdiction:

15 (1) aggravated criminal sexual penetration or
16 criminal sexual penetration in the first, second, third or
17 fourth degree, as provided in Section 30-9-11 NMSA 1978;

18 (2) criminal sexual contact in the fourth
19 degree, as provided in Section 30-9-12 NMSA 1978;

20 (3) criminal sexual contact of a minor in the
21 second, third or fourth degree, as provided in Section
22 30-9-13 NMSA 1978;

23 (4) sexual exploitation of children, as
24 provided in Section 30-6A-3 NMSA 1978;

25 (5) sexual exploitation of children by

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1 prostitution, as provided in Section 30-6A-4 NMSA 1978;

2 (6) kidnapping, as provided in Section
3 30-4-1 NMSA 1978, when the victim is less than eighteen years
4 of age and the offender is not a parent of the victim;

5 (7) false imprisonment, as provided in Section
6 30-4-3 NMSA 1978, when the victim is less than eighteen years
7 of age and the offender is not a parent of the victim;

8 (8) aggravated indecent exposure, as provided
9 in Section 30-9-14.3 NMSA 1978;

10 (9) enticement of child, as provided in
11 Section 30-9-1 NMSA 1978;

12 (10) incest, as provided in Section 30-10-3
13 NMSA 1978, when the victim is less than eighteen years of age;

14 (11) criminal sexual communication with a
15 child, as provided in Section 30-37-3.3 NMSA 1978;

16 [~~(11)~~] (12) child solicitation by electronic
17 communication device, as provided in Section 30-37-3.2 NMSA
18 1978;

19 [~~(12)~~] (13) solicitation to commit criminal
20 sexual contact of a minor in the second, third or fourth
21 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;
22 or

23 [~~(13)~~] (14) attempt to commit any of the sex
24 offenses set forth in Paragraphs (1) through [~~(10)~~] (11) of
25 this subsection, as provided in Section 30-28-1 NMSA 1978."

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1 Section 8. Section 29-11A-5 NMSA 1978 (being Laws 1995,
2 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,
3 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended
4 to read:

5 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
6 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
7 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

8 A. A county sheriff shall maintain a local registry
9 of sex offenders in the sheriff's jurisdiction required to
10 register pursuant to the provisions of the Sex Offender
11 Registration and Notification Act.

12 B. The county sheriff shall forward:

13 (1) registration information obtained from sex
14 offenders to the department of public safety. The initial
15 registration information and any new registration information
16 subsequently obtained from a sex offender shall be forwarded by
17 the county sheriff no later than ten working days after the
18 information is obtained from a sex offender. If the department
19 of public safety receives information regarding a sex offender
20 from a governmental entity other than a county sheriff, the
21 department shall send that information to the sheriff for the
22 county in which the sex offender resides; and

23 (2) samples of DNA obtained from sex offenders
24 to the administrative center for the sex offender DNA
25 identification system pursuant to the provisions of the DNA

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1 Identification Act.

2 C. The department of public safety shall maintain a
3 central registry of sex offenders required to register pursuant
4 to the provisions of the Sex Offender Registration and
5 Notification Act. The department shall participate in the
6 national sex offender registry administered by the United
7 States department of justice. The department shall send
8 conviction information and fingerprints for all sex offenders
9 registered in New Mexico to the national sex offender registry
10 administered by the United States department of justice and to
11 the federal bureau of investigation.

12 D. The department of public safety shall retain
13 registration information regarding a sex offender convicted for
14 any of the following sex offenses for the entirety of the sex
15 offender's natural life:

16 (1) aggravated criminal sexual penetration or
17 criminal sexual penetration in the first, second or third
18 degree, as provided in Section 30-9-11 NMSA 1978;

19 (2) criminal sexual contact of a minor in the
20 second, third or fourth degree, as provided in Section
21 30-9-13 NMSA 1978;

22 (3) sexual exploitation of children, as
23 provided in Section 30-6A-3 NMSA 1978;

24 (4) kidnapping, as provided in Section
25 30-4-1 NMSA 1978, when the victim is less than eighteen years

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1 of age and the offender is not a parent of the victim;

2 (5) criminal sexual contact in the fourth
3 degree, as provided in Section 30-9-12 NMSA 1978; or

4 (6) attempt to commit any of the sex offenses
5 set forth in Paragraphs (1) through (5) of this subsection, as
6 provided in Section 30-28-1 NMSA 1978.

7 E. The department of public safety shall retain
8 registration information regarding a sex offender convicted for
9 the following offenses for a period of ten years following the
10 sex offender's conviction, release from prison or release from
11 probation or parole, whichever occurs later:

12 (1) criminal sexual penetration in the fourth
13 degree, as provided in Section 30-9-11 NMSA 1978;

14 (2) sexual exploitation of children by
15 prostitution, as provided in Section 30-6A-4 NMSA 1978;

16 (3) false imprisonment, as provided in Section
17 30-4-3 NMSA 1978, when the victim is less than eighteen years
18 of age and the offender is not a parent of the victim;

19 (4) aggravated indecent exposure, as provided
20 in Section 30-9-14.3 NMSA 1978;

21 (5) enticement of child, as provided in
22 Section 30-9-1 NMSA 1978;

23 (6) incest, as provided in Section 30-10-3
24 NMSA 1978, when the victim is less than eighteen years of age;

25 (7) criminal sexual communication with a

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1 child, as provided in Section 30-37-3.3 NMSA 1978;

2 [~~(7)~~] (8) solicitation to commit criminal
3 sexual contact of a minor in the second, third or fourth
4 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

5 [~~(8)~~] (9) child solicitation by electronic
6 communication device, as provided in Section 30-37-3.2 NMSA
7 1978; or

8 [~~(9)~~] (10) attempt to commit any of the sex
9 offenses set forth in Paragraphs (1) through [~~(6)~~] (7) of this
10 subsection, as provided in Section 30-28-1 NMSA 1978.

11 F. Notwithstanding the provisions of Subsection E
12 of this section, if a sex offender is convicted a second or
13 subsequent time for a sex offense set forth in that subsection,
14 the department of public safety shall retain information
15 regarding the sex offender for the entirety of the sex
16 offender's natural life.

17 G. The department of public safety shall adopt
18 rules necessary to carry out the provisions of the Sex Offender
19 Registration and Notification Act. Rules necessary for the
20 collection of DNA samples and the administration and operation
21 of the sex offender DNA identification system shall be adopted
22 by the DNA identification system oversight committee pursuant
23 to the provisions of the DNA Identification Act."

24 Section 9. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2009.

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