

1 SENATE BILL 513

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

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

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

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

21 "30-3-11. DEFINITIONS.--As used in the Crimes Against
22 Household Members Act:

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

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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 is guilty of a third degree felony if the
6 aggravated battery against a household member is committed:

7 (1) by inflicting great bodily harm [~~or doing~~
8 ~~so~~];

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

10 (3) by strangulation or suffocation; or

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

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

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

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1 imposed and credit shall not be given for time served by the
2 offender on probation; provided that the total period of
3 incarceration shall not exceed three hundred sixty-four days
4 and the combined period of incarceration and probation shall
5 not exceed two years."

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

8 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
9 Act:

10 A. "abandonment" includes instances when the
11 parent, without justifiable cause:

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

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

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

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

22 B. "abused child" means a child:

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

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

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

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

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

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

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

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

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

24 (4) had parental rights over a sibling of the
25 child terminated involuntarily;

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

5 E. "neglected child" means a child:

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

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

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

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

22 (5) who has been placed for care or adoption
23 in violation of the law; provided that nothing in the
24 Children's Code shall be construed to imply that a child who is
25 being provided with treatment by spiritual means alone through

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1 prayer, in accordance with the tenets and practices of a
2 recognized church or religious denomination, by a duly
3 accredited practitioner thereof is for that reason alone a
4 neglected child within the meaning of the Children's Code; and
5 further provided that no child shall be denied the protection
6 afforded to all children under the Children's Code;

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

13 (1) there is not a justifiable explanation for
14 the condition or death;

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

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

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

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

24 H. "sexual exploitation" includes but is not
25 limited to:

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

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

5 (3) filming or depicting a child for obscene
6 or pornographic commercial purposes, as those acts are defined
7 by state law; [~~and~~]

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

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

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

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

21 "40-13-2. DEFINITIONS.--As used in the Family Violence
22 Protection Act:

23 A. "continuing personal relationship" means a
24 dating or intimate relationship;

25 B. "co-parents" means persons who have a child in

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1 common, regardless of whether they have been married or have
2 lived together at any time;

3 C. "court" means the district court of the judicial
4 district where an alleged victim of domestic abuse resides or
5 is found;

6 D. "domestic abuse":

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

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

11 (a) physical harm;

12 (b) severe emotional distress;

13 (c) bodily injury or assault;

14 (d) a threat causing imminent fear of
15 bodily injury by any household member;

16 (e) criminal trespass;

17 (f) criminal damage to property;

18 (g) repeatedly driving by a residence or
19 work place;

20 (h) telephone harassment;

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

22 (j) strangulation;

23 (k) suffocation; or

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

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

3 E. "household member" means a spouse, former
4 spouse, parent, present or former stepparent, present or former
5 parent in-law, grandparent, grandparent-in-law, child,
6 stepchild, grandchild, co-parent of a child or a person with
7 whom the petitioner has had a continuing personal relationship.
8 Cohabitation is not necessary to be deemed a household member
9 for purposes of this section;

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

12 G. "order of protection" means an injunction or a
13 restraining or other court order granted for the protection of
14 a victim of domestic abuse;

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

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

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

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

23 SECTION 5. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2015.