

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

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

12 "30-3-11. DEFINITIONS.--As used in the Crimes Against  
13 Household Members Act:

14 A. "household member" means a spouse, former  
15 spouse, parent, present or former stepparent, present or  
16 former parent in-law, grandparent, grandparent-in-law, a  
17 co-parent of a child or a person with whom a person has had a  
18 continuing personal relationship. Cohabitation is not  
19 necessary to be deemed a household member for the purposes of  
20 the Crimes Against Household Members Act;

21 B. "continuing personal relationship" means a  
22 dating or intimate relationship;

23 C. "strangulation" means the unlawful touching or  
24 application of force to another person's neck or throat with  
25 intent to injure that person and in a manner whereby great

1 bodily harm or death can be inflicted, the result of which  
2 impedes the person's normal breathing or blood circulation;  
3 and

4 D. "suffocation" means the unlawful touching or  
5 application of force that blocks the nose or mouth of another  
6 person with intent to injure that person and in a manner  
7 whereby great bodily harm or death can be inflicted, the  
8 result of which impedes the person's normal breathing or  
9 blood circulation."

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

12 "30-3-16. AGGRAVATED BATTERY AGAINST A HOUSEHOLD  
13 MEMBER.--

14 A. Aggravated battery against a household member  
15 consists of the unlawful touching or application of force to  
16 the person of a household member with intent to injure that  
17 person or another.

18 B. Whoever commits aggravated battery against a  
19 household member is guilty of a misdemeanor if the aggravated  
20 battery against a household member is committed by inflicting  
21 an injury to that person that is not likely to cause death or  
22 great bodily harm, but that does cause painful temporary  
23 disfigurement or temporary loss or impairment of the  
24 functions of any member or organ of the body.

25 C. Whoever commits aggravated battery against a

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

- 3 (1) by inflicting great bodily harm;
- 4 (2) with a deadly weapon;
- 5 (3) by strangulation or suffocation; or
- 6 (4) in any manner whereby great bodily harm  
7 or death can be inflicted.

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

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

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

3 "32A-4-2. DEFINITIONS.--As used in the Abuse and  
4 Neglect Act:

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

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

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

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

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

17 B. "abused child" means a child:

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

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

24 (3) who has suffered sexual abuse or sexual  
25 exploitation inflicted by the child's parent, guardian or

1     custodian;

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

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

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

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

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

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

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

21                    D. "educational decision maker" means an  
22 individual appointed by the children's court to attend school  
23 meetings and to make decisions about the child's education  
24 that a parent could make under law, including decisions about  
25 the child's educational setting, and the development and

1 implementation of an individual education plan for the child;

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

5 F. "great bodily harm" means an injury to a person  
6 that creates a high probability of death, that causes serious  
7 disfigurement or that results in permanent or protracted loss  
8 or impairment of the function of a member or organ of the  
9 body;

10 G. "neglected child" means a child:

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

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

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

23 (4) whose parent, guardian or custodian is  
24 unable to discharge that person's responsibilities to and for  
25 the child because of incarceration, hospitalization or

1 physical or mental disorder or incapacity; or

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

13 H. "physical abuse" includes any case in which the  
14 child suffers strangulation or suffocation and any case in  
15 which the child exhibits evidence of skin bruising, bleeding,  
16 malnutrition, failure to thrive, burns, fracture of any bone,  
17 subdural hematoma, soft tissue swelling or death and:

18 (1) there is not a justifiable explanation  
19 for the condition or death;

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

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

24 (4) circumstances indicate that the  
25 condition or death may not be the product of an accidental

1 occurrence;

2 I. "relative" means a person related to another  
3 person by birth, adoption or marriage within the fifth degree  
4 of consanguinity;

5 J. "sexual abuse" includes criminal sexual  
6 contact, incest or criminal sexual penetration, as those acts  
7 are defined by state law;

8 K. "sexual exploitation" includes:

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

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

13 (3) filming or depicting a child for obscene  
14 or pornographic commercial purposes, as those acts are  
15 defined by state law;

16 L. "sibling" means a brother or sister having one  
17 or both parents in common by birth or adoption;

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

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

22 O. "transition plan" means an individualized  
23 written plan for a child, based on the unique needs of the  
24 child, that outlines all appropriate services to be provided  
25 to the child to increase independent living skills. The plan

1 shall also include responsibilities of the child, and any  
2 other party as appropriate, to enable the child to be  
3 self-sufficient upon emancipation."

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

6 "40-13-2. DEFINITIONS.--As used in the Family Violence  
7 Protection Act:

8 A. "continuing personal relationship" means a  
9 dating or intimate relationship;

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

13 C. "court" means the district court of the  
14 judicial district where an alleged victim of domestic abuse  
15 resides or is found;

16 D. "domestic abuse":

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

19 (2) means an incident by a household member  
20 against another household member consisting of or resulting  
21 in:

22 (a) physical harm;

23 (b) severe emotional distress;

24 (c) bodily injury or assault;

25 (d) a threat causing imminent fear of

1     bodily injury by any household member;

2                     (e) criminal trespass;

3                     (f) criminal damage to property;

4                     (g) repeatedly driving by a residence  
5     or work place;

6                     (h) telephone harassment;

7                     (i) harassment;

8                     (j) strangulation;

9                     (k) suffocation; or

10                    (l) harm or threatened harm to children  
11     as set forth in this paragraph; and

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

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

21                    F. "mutual order of protection" means an order of  
22     protection that includes provisions that protect both  
23     parties;

24                    G. "order of protection" means an injunction or a  
25     restraining or other court order granted for the protection

1 of a victim of domestic abuse;

2 H. "protected party" means a person protected by  
3 an order of protection;

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

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

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

10 SECTION 5. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2018. \_\_\_\_\_

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