

1 SENATE BILL 316

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIMINAL LAW; CREATING THE CRIME OF AGGRAVATED
12 HARASSMENT; DEFINING "PATTERN OF CONDUCT"; INCLUDING AGGRAVATED
13 HARASSMENT IN CONSIDERATIONS RELATING TO CHILD CUSTODY;
14 INCLUDING AGGRAVATED HARASSMENT IN CONSIDERATIONS RELATING TO
15 CRIME VICTIMS; PROVIDING PENALTIES.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Criminal Code is enacted
19 to read:

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

21 A. Aggravated harassment consists of harassment
22 perpetrated by a person:

23 (1) whose actions can be reasonably believed
24 to be motivated by any of the following, whether actual or
25 perceived, with respect to an individual or a person with whom

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1 an individual is associated:

- 2 (a) race;
- 3 (b) age;
- 4 (c) religion;
- 5 (d) color;
- 6 (e) national origin;
- 7 (f) ancestry;
- 8 (g) sex;
- 9 (h) gender;
- 10 (i) gender identity;
- 11 (j) sexual orientation;
- 12 (k) physical appearance;
- 13 (l) socioeconomic status;
- 14 (m) level of education;
- 15 (n) spousal affiliation;
- 16 (o) physical, mental, developmental or
- 17 sensory disability; or
- 18 (p) medical condition;
- 19 (2) when the person is in possession of a
- 20 deadly weapon; or
- 21 (3) when the victim is less than sixteen years
- 22 of age.

23 B. Whoever commits aggravated harassment is guilty
24 of a fourth degree felony. Upon a second or subsequent
25 conviction, the offender is guilty of a third degree felony.

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1 C. In addition to the penalties provided in this
2 section, the court shall order a person convicted of aggravated
3 harassment to participate in and complete a program of
4 professional counseling at the person's own expense."

5 SECTION 2. Section 30-1-15 NMSA 1978 (being Laws 2002,
6 Chapter 34, Section 1 and Laws 2002, Chapter 35, Section 1, as
7 amended) is amended to read:

8 "30-1-15. ALLEGED VICTIMS OF DOMESTIC ABUSE, STALKING OR
9 SEXUAL ASSAULT--FORBEARANCE OF COSTS.--

10 A. An alleged victim of an offense specified in
11 Subsection B of this section is not required to bear the cost
12 of:

13 (1) the prosecution of a misdemeanor or felony
14 domestic violence offense, including costs associated with
15 filing a criminal charge against an alleged perpetrator of the
16 offense;

17 (2) the filing, issuance or service of a
18 warrant;

19 (3) the filing, issuance or service of a
20 witness subpoena; or

21 (4) the filing, issuance, registration or
22 service of a protection order.

23 B. The provisions of Subsection A of this section
24 apply to:

25 (1) alleged victims of domestic abuse as

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1 defined in Section 40-13-2 NMSA 1978;

2 (2) sexual offenses described in Sections
3 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

4 (3) crimes against household members described
5 in Sections 30-3-12 through 30-3-16 NMSA 1978;

6 (4) harassment, stalking and aggravated
7 stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA
8 1978 and aggravated harassment described in Section 1 of this
9 2014 act; and

10 (5) the violation of an order of protection
11 that is issued pursuant to the Family Violence Protection Act
12 or entitled to full faith and credit."

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

15 "30-3A-2. HARASSMENT--~~[PENALTIES]~~ PENALTY.--

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

21 B. For the purpose of this section, "pattern of
22 conduct" means two or more acts committed on more than one
23 occasion, whether directly, indirectly or through third
24 parties.

25 ~~[B-]~~ C. Whoever commits harassment is guilty of a

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1 misdemeanor."

2 SECTION 4. Section 40-4-9.1 NMSA 1978 (being Laws 1986,
3 Chapter 41, Section 1, as amended) is amended to read:

4 "40-4-9.1. JOINT CUSTODY--STANDARDS FOR DETERMINATION--
5 PARENTING PLAN.--

6 A. There shall be a presumption that joint custody
7 is in the best interests of a child in an initial custody
8 determination. An award of joint custody does not imply an
9 equal division of financial responsibility for the child.
10 Joint custody shall not be awarded as a substitute for an
11 existing custody arrangement unless there has been a
12 substantial and material change in circumstances since the
13 entry of the prior custody order or decree, which change
14 affects the welfare of the child such that joint custody is
15 presently in the best interests of the child. With respect to
16 any proceeding in which it is proposed that joint custody be
17 terminated, the court shall not terminate joint custody unless
18 there has been a substantial and material change in
19 circumstances affecting the welfare of the child, since entry
20 of the joint custody order, such that joint custody is no
21 longer in the best interests of the child.

22 B. In determining whether a joint custody order is
23 in the best interests of the child, in addition to the factors
24 provided in Section 40-4-9 NMSA 1978, the court shall consider
25 the following factors:

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1 (1) whether the child has established a close
2 relationship with each parent;

3 (2) whether each parent is capable of
4 providing adequate care for the child throughout each period of
5 responsibility, including arranging for the child's care by
6 others as needed;

7 (3) whether each parent is willing to accept
8 all responsibilities of parenting, including a willingness to
9 accept care of the child at specified times and to relinquish
10 care to the other parent at specified times;

11 (4) whether the child can best maintain and
12 strengthen a relationship with both parents through
13 predictable, frequent contact and whether the child's
14 development will profit from such involvement and influence
15 from both parents;

16 (5) whether each parent is able to allow the
17 other to provide care without intrusion, that is, to respect
18 the other's parental rights and responsibilities and right to
19 privacy;

20 (6) the suitability of a parenting plan for
21 the implementation of joint custody, preferably, although not
22 necessarily, one arrived at through parental agreement;

23 (7) geographic distance between the parents'
24 residences;

25 (8) willingness or ability of the parents to

1 communicate, cooperate or agree on issues regarding the child's
2 needs; and

3 (9) whether a judicial adjudication has been
4 made in a prior or the present proceeding that either parent or
5 other person seeking custody has engaged in one or more acts of
6 domestic abuse against the child, a parent of the child or
7 other household member. If a determination is made that
8 domestic abuse has occurred, the court shall set forth findings
9 that the custody or visitation ordered by the court adequately
10 protects the child, the abused parent or other household
11 member.

12 C. In any proceeding in which the custody of a
13 child is at issue, the court shall not prefer one parent as a
14 custodian solely because of gender.

15 D. In any case in which the parents agree to a form
16 of custody, the court should award custody consistent with the
17 agreement unless the court determines that such agreement is
18 not in the best interests of the child.

19 E. In making an order of joint custody, the court
20 may specify the circumstances, if any, under which the consent
21 of both legal custodians is required to be obtained in order to
22 exercise legal control of the child and the consequences of the
23 failure to obtain mutual consent.

24 F. When joint custody is awarded, the court shall
25 approve a parenting plan for the implementation of the

1 prospective custody arrangement prior to the award of joint
2 custody. The parenting plan shall include a division of a
3 child's time and care into periods of responsibility for each
4 parent. It may also include:

5 (1) statements regarding the child's religion,
6 education, child care, recreational activities and medical and
7 dental care;

8 (2) designation of specific decision-making
9 responsibilities;

10 (3) methods of communicating information about
11 the child, transporting the child, exchanging care for the
12 child and maintaining telephone and mail contact between parent
13 and child;

14 (4) procedures for future decision-making,
15 including procedures for dispute resolution; and

16 (5) other statements regarding the welfare of
17 the child or designed to clarify and facilitate parenting under
18 joint custody arrangements.

19 In a case where joint custody is not agreed to or
20 necessary aspects of the parenting plan are contested, the
21 parties shall each submit parenting plans. The court may
22 accept the plan proposed by either party or it may combine or
23 revise these plans as it deems necessary in the child's best
24 interests. The time of filing of parenting plans shall be set
25 by local rule. A plan adopted by the court shall be entered as

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1 an order of the court.

2 G. Where custody is contested, the court shall
3 refer that issue to mediation if feasible. The court may also
4 use auxiliary services such as professional evaluation by
5 application of Rule 706 of the New Mexico Rules of Evidence or
6 Rule 53 of the Rules of Civil Procedure for the District
7 Courts.

8 H. Notwithstanding any other provisions of law,
9 access to records and information pertaining to a minor child,
10 including medical, dental and school records, shall not be
11 denied to a parent because that parent is not the child's
12 physical custodial parent or because that parent is not a joint
13 custodial parent.

14 I. Whenever a request for joint custody is granted
15 or denied, the court shall state in its decision its basis for
16 granting or denying the request for joint custody. A statement
17 that joint custody is or is not in the best interests of the
18 child is not sufficient to meet the requirements of this
19 subsection.

20 J. An award of joint custody means that:

21 (1) each parent shall have significant, well-
22 defined periods of responsibility for the child;

23 (2) each parent shall have, and be allowed and
24 expected to carry out, responsibility for the child's
25 financial, physical, emotional and developmental needs during

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1 that parent's periods of responsibility;

2 (3) the parents shall consult with each other
3 on major decisions involving the child before implementing
4 those decisions; that is, neither parent shall make a decision
5 or take an action [~~which~~] that results in a major change in a
6 child's life until the matter has been discussed with the other
7 parent and the parents agree. If the parents, after
8 discussion, cannot agree and if one parent wishes to effect a
9 major change while the other does not wish the major change to
10 occur, then no change shall occur until the issue has been
11 resolved as provided in this subsection;

12 (4) the following guidelines apply to major
13 changes in a child's life:

14 (a) if either parent plans to change
15 [~~his~~] the parent's home city or state of residence, [~~he~~] that
16 parent shall provide to the other parent thirty days' notice in
17 writing stating the date and destination of move;

18 (b) the religious denomination and
19 religious activities, or lack thereof, [~~which~~] that were being
20 practiced during the marriage should not be changed unless the
21 parties agree or it has been otherwise resolved as provided in
22 this subsection;

23 (c) both parents shall have access to
24 school records, teachers and activities. The type of
25 education, public or private, [~~which~~] that was in place during

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1 the marriage should continue, whenever possible, and school
2 districts should not be changed unless the parties agree or it
3 has been otherwise resolved as provided in this subsection;

4 (d) both parents shall have access to
5 medical and dental treatment providers and records. Each
6 parent has authority to make emergency medical decisions.
7 Neither parent may contract for major elective medical or
8 dental treatment unless both parents agree or it has been
9 otherwise resolved as provided in this subsection; and

10 (e) both parents may attend the child's
11 public activities and both parents should know the necessary
12 schedules. Whatever recreational activities the child
13 participated in during the marriage should continue with the
14 child's agreement, regardless of which of the parents has
15 physical custody. Also, neither parent may enroll the child in
16 a new recreational activity unless the parties agree or it has
17 been otherwise resolved as provided in this subsection; and

18 (5) decisions regarding major changes in a
19 child's life may be decided by:

20 (a) agreement between the joint
21 custodial parents;

22 (b) requiring that the parents seek
23 family counseling, conciliation or mediation service to assist
24 in resolving their differences;

25 (c) agreement by the parents to submit

1 the dispute to binding arbitration;

2 (d) allocating ultimate responsibility
3 for a particular major decision area to one legal custodian;

4 (e) terminating joint custody and
5 awarding sole custody to one person;

6 (f) reference to a master pursuant to
7 Rule 53 of the Rules of Civil Procedure for the District
8 Courts; or

9 (g) the district court.

10 K. When ~~[any]~~ a person other than a natural or
11 adoptive parent seeks custody of a child, no such person shall
12 be awarded custody absent a showing of unfitness of the natural
13 or adoptive parent.

14 L. As used in this section:

15 (1) "child" means a person under the age of
16 eighteen;

17 (2) "custody" means the authority and
18 responsibility to make major decisions in a child's best
19 interests in the areas of residence, medical and dental
20 treatment, education or child care, religion and recreation;

21 (3) "domestic abuse" means any incident by a
22 household member against another household member resulting in:

23 (a) physical harm;

24 (b) severe emotional distress;

25 (c) a threat causing imminent fear of

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1 physical harm by any household member;

2 (d) criminal trespass;

3 (e) criminal damage to property;

4 (f) stalking or aggravated stalking, as
5 provided in Sections 30-3A-3 and 30-3A-3.1 NMSA 1978; or

6 (g) harassment, as provided in Section
7 30-3A-2 NMSA 1978 or aggravated harassment, as provided in
8 Section 1 of this 2014 act;

9 (4) "joint custody" means an order of the
10 court awarding custody of a child to two parents. Joint
11 custody does not imply an equal division of the child's time
12 between the parents or an equal division of financial
13 responsibility for the child;

14 (5) "parent" means a natural parent, adoptive
15 parent or person who is acting as a parent who has or shares
16 legal custody of a child or who claims a right to have or share
17 legal custody;

18 (6) "parenting plan" means a document
19 submitted for approval of the court setting forth the
20 responsibilities of each parent individually and the parents
21 jointly in a joint custody arrangement;

22 (7) "period of responsibility" means a
23 specified period of time during which a parent is responsible
24 for providing for a child's physical, developmental and
25 emotional needs, including the decision-making required in

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1 daily living. Specified periods of responsibility shall not be
2 changed in an instance or more permanently except by the
3 methods of decision-making described under Subsection [E] J of
4 this section;

5 (8) "sole custody" means an order of the court
6 awarding custody of a child to one parent; and

7 (9) "visitation" means a period of time
8 available to a noncustodial parent, under a sole custody
9 arrangement, during which a child resides with or is under the
10 care and control of the noncustodial parent."

11 SECTION 5. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2014.