

RESPONDING TO SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND STALKING:

A GUIDE FOR LAW ENFORCEMENT IN NEW MEXICO

Including:

- ▶ Protocol for investigating Sexual Assault, Domestic Violence; Strangulation and Stalking: Interviewing, Assessing Primary Aggressor, Evidence Collection, Search Warrants, Etc.
- ▶ Protocol and Federal Statutes on Full Faith and Credit, Immigrant Victims and Firearms Offenses
- ▶ New Mexico and Federal Statutes on Sexual Assault, Domestic Violence, Stalking, Adult Protective Services, Trafficking, Victim's Rights
- ▶ Resource Listing

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IMPORTANT

NEW STATEWIDE RESOURCE FOR INVESTIGATING SEXUAL VIOLENCE AND FELONY DOMESTIC VIOLENCE

NEW MEXICO STATE POLICE MOBILE CRIME SCENE UNIT

The proper investigation of sexual assault related crimes rely heavily upon the documentation and collection of physical evidence. The New Mexico State Police offers the service of their seven Mobile Crime Scene Units when assistance is needed with processing a crime scene. Technicians with the Crime Scene Unit are able to utilize the latest technology to include alternate light source examination.

This service is **free of charge** to your agency. It is available to all jurisdictions (tribal, military, city, county, campus, etc.). All evidence will be turned over to the investigating agency along with a detailed report documenting the findings. This is followed up with expert court testimony if needed.

Contact your local State Police Office 24 hours a day to request assistance from the Crime Scene Unit. You may also contact **District 5 (Albuquerque) at 505-841-9273** or **Sgt. Shane Arthur with the New Mexico State Police Crime Scene Team at 505-681-2847**.

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RESPONDING TO SEXUAL AND DOMESTIC VIOLENCE

OVERVIEW

Responding to sexual and domestic assault calls involves numerous complex and specialized procedures, all of which cannot be covered in detail in this material. Accordingly, the following material is not intended to provide complete information about conducting a sexual assault or domestic violence investigation and is not intended to replace training on conducting such investigations. This guide is intended to serve as a quick reference and to highlight aspects of sexual assault and domestic violence investigations, which differ from investigations of other crimes.

This guide will be useful for a wide range of officers, particularly first responding officers, officers who have not recently investigated a sexual assault or domestic violence case, and as a quick reference for experienced officers.

Officers should incorporate overall training, experience, and department protocols in all sexual assault and domestic violence investigations. If you have not had such training, consult your supervisor or your local or federal prosecutor. **DO NOT rely solely on this guide.**

SEXUAL ASSAULT INVESTIGATION

INTRODUCTION

In sexual assault investigations, there are three major sources of evidence and information about the crime: the victim, the suspect, and the crime scene (including other witnesses). Officers should attempt to thoroughly investigate all three of these sources, and any other available source of evidence or information. Officers should keep in mind, however, that cases can be successfully prosecuted even if the investigation reveals that evidence is not available from all three sources.

In responding to sexual assault complaints, every effort must be made to relieve victims' feelings of shame and/or self-blame. In order to enable victims to provide the clearest, most complete information about the crime, efforts must be made to ensure that all victims are treated professionally and with dignity.

Primary Responsibilities of First Responding Officers

- ❖ Attend to the victim.
- ❖ Secure and protect the crime scene.
- ❖ Gather vital information about the assault and collect evidence, or contact your departments' special investigating unit/officer.

GENERAL INVESTIGATIVE INFORMATION

WHEN THE OFFENDER IS A STRANGER

Sexual assault cases generally can be categorized by whether or not the victim knows the offender. In most cases, the key issues are the identity of the offender, the element of force, and the issue of consent.

In "stranger" sexual assault cases, a primary issue of the investigation is identifying the offender. The investigation should focus on obtaining as much information as possible in an effort to develop a suspect(s), including:

- ❖ Obtain a detailed physical description of the offender, including vehicle, clothing, tattoos, facial features, identifying marks, distinctive walk, odors, accent, speech patterns, etc.
- ❖ Obtain as much information as possible about the offender's method of operation and compare to other offenders who have previously been arrested for a similar crime to determine whether a pattern exists, including:
 - method of approach/entry
 - method of control
 - amount/type of force/restraint of victim
 - victim resistance
 - sexual dysfunction
 - type and sequence of acts
 - offender verbal activity
 - offender attitudinal change

- items taken
 - location of the assault (area of town, specific location)
- ❖ Attempt to locate the offender, begin an area of search, or issue a broadcast.
 - ❖ Encourage the victim to have physical evidence collected for future forensic consideration, in accordance with the Sexual Assault Evidence Kit.
 - ❖ Submit any potential DNA evidence obtained during the investigation to the criminalistics lab for analysis (e.g., from the victim's body or left at a crime scene). Compare results with information in the DNA data bank in an attempt to identify a suspect.

WHEN THE OFFENDER IS KNOWN

Consent and/or use of force may become a main issue in cases in which the offender is known to the victim. A victim who "knows" the offender may or may not be able to positively identify the offender by full name, address, etc. For example, the victim may only know the offender by first name or nick name. The victim may also fear retaliation if he/she provides identifying information.

Officers should identify and document the following information in order to determine if a photo line-up or other means of identification of the suspect is needed:

- ❖ The level and nature of the relationship between the victim and the offender, including:
 - How they know each other
 - How long they have known each other
 - Type of contact they have had
 - Depth of relationship, etc.

Officer should further identify and document:

- ❖ Evidence which demonstrates the lack of consent – use of force or the threat of force. Consider whether the victim simply cooperated with the alleged perpetrator in order to survive, rather than consented.
- ❖ The victim's efforts at resistance, if any, including any conversation that the victim used to dissuade the offender (keep in mind that New Mexico law does not require that the victim resist).
- ❖ Detailed information concerning the assault. See "Interviewing the Victim" on page 8 for more information.
- ❖ Without requesting a victim to disrobe document any physical injuries

Whether the offender is known or unknown, officers should contact a thorough investigation to ensure that all possible information and evidence is gathered in every case.

VICTIMS

Victims May Provide:

Information

- ❖ Identity/description of offender
- ❖ Location/scope of crime scene(s)
- ❖ Details of assault (including items of evidence that the officers should be looking for)
- ❖ Identity/description of other witnesses who may have seen or heard something

Forensic Evidence (ideally obtained by SANE or medical provider)

- ❖ Evidence of physical trauma
- ❖ Trace evidence (hairs, fibers, soil, etc.)
- ❖ Suspect's body fluids/tissues on victim's body (semen, blood, saliva, skin cells, hair, etc.)
- ❖ Reference standards (known specimens from victim to compare with other specimens from victim, suspect, and/or crime scene).

INITIAL RESPONSE TO THE VICTIM

In all situations, officers are encouraged to:

- ❖ As soon as practical, contact a Rape Crisis Advocate or a sexual assault coordinator from your local community mental health center. See page 140 for listings.
- ❖ Ask if there is anyone else the victim would like to contact and assist/facilitate the contact.
- ❖ Assess any special needs of victim, such as restoring mobility or the need for an interpreter.
- ❖ Determine the age of the victim and which medical facility will best serve this victim.
- ❖ Even if emergency medical attention is not needed, encourage all sexual assault victims to have evidence collected and get medical attention, including testing for pregnancy and treatment for sexually transmitted diseases. See page 147 for specialized SANE Units.
- ❖ Document the identity of anyone whom the victim may have told about the assault, or who may have seen or heard anything before, during, or after the assault.
- ❖ Explain to the victim that she/he may need to tell additional police officers or investigators about the assault.

- ❖ Explain to the victim what to expect during the investigation.
- ❖ Avoid making promises or predictions to the victim about the outcome of the case.

If the assault just occurred (within the last 120 hours or 5 days)

- ❖ Ensure that the victim is safe.
- ❖ Arrange emergency medical assistance for the victim, if needed.
- ❖ Explain to the victim the importance of forensic evidence collection and the need to collect it as soon as possible. Provide general information regarding the process.
- ❖ Gather initial information about the crime, such as the identity (if known) or description of the offender, including any vehicle involved, basic details of the assault, and the scope of the crime scene(s). Follow department procedures for further investigation.
- ❖ Document facts and observations, including the physical and emotional condition of the victim. Be specific, e.g., indicate that victim was tearful and trembling, rather than just “upset,” or that the victim’s shirt was torn and shoe was missing, rather than “disheveled.” Be careful not to make assumptions or draw conclusions.
- ❖ Determine if the victim had been drugged prior to or during the assault.
- ❖ Photograph the condition of the victim if this is part of your agency’s standard operating procedure. If you have a local SANE unit (Sexual Assault Nurse Examiners), the SANE nurses are trained to take photos.

If the report is delayed (occurred after 120 hours or 5 days)

- ❖ Contact the Rape Crisis or Community Mental Health Center in your area (see listing on page 140).
- ❖ Be aware that delayed reporting is common and should not deter a thorough investigation.
- ❖ Keep in mind that:
 - Delayed disclosure does not mean that the incident was not traumatic.
 - Something may have caused the victim to be reluctant to report sooner.
 - The victim may be hesitant to talk about the assault.
 - Document the reason for the delay, but be aware that questions about the delay may cause the victim to feel blamed in some way.
 - Even with delayed reports, there may still be valuable evidence at the crime scene(s) or on the victim’s clothing.
 - If the victim was drugged, the recollection of the assault events and times may be unclear and inconsistent.

FORENSIC EVIDENCE COLLECTION FROM THE VICTIM

Completion of a 'Sexual Assault Evidence Kit' (SEAK)

- ❖ Forensic evidence is collected from the victim at a health care facility, usually a hospital emergency department, medical clinic, or SANE Program using the Sexual Assault Evidence Kit for New Mexico. If your community has a SANE unit, the evidence will be taken there by trained experts.
- ❖ Ideally, forensic evidence from the victim's body should be collected within 120 hours of the assault. However, the time may be extended when there are other extenuating circumstances (coma, kidnapping, etc.)
- ❖ **Children 12 years and under:** the sexual assault evidence kit and documentation of physical injuries for children should be limited to 72 hours post assault.
- ❖ Physical trauma tends to heal quickly. A medical examination should be performed as soon as possible to document injuries as evidence.
- ❖ Depending on the nature of the assault advise the victim not to rinse mouth, bathe, douche, urinate, alter her/his physical self, or engage in any other activity that may contaminate or destroy valuable evidence such as semen, saliva, hairs, etc.
- ❖ Ensure that clothing worn during **and** immediately following the assault is collected for forensic examination, especially undergarments.
- ❖ If the victim is still wearing clothing worn during or immediately following the assault, advise the victim that the investigator will need to collect the clothing. Advise the victim to bring a change of clothes. SANE programs usually have new donated clothes to give to the victim.
- ❖ **Plastic bags should never be used in packaging/storing evidence.**
- ❖ Each article of clothing should be collected in a separate paper bag, if possible. Never package suspect and victim specimens together.
- ❖ Inform the victim that evidence will be held until the case is disposed and that clothing may have to be cut to perform the necessary evidentiary tests.
- ❖ Forensic evidence collection is a time-consuming process. Officers should expect a considerable wait (2-8 hours) before receiving the completed kit, completed documentation or having an opportunity to interview the victim further.

Other Evidence

- ❖ Photographs of any bruises, wounds or marks found on the victim may be taken by police or SANE. A ruler should be included in the photograph for size reference, and the photographer should take photos of injuries at a 90° angle. Genital injury documentation is encouraged when trained medical personnel are available. Medical personnel and SANEs can use a variety of special equipment and techniques to document injuries.
- ❖ Consider taking additional photographs at a later time after bruising patterns develop, usually 2-3 days later.
- ❖ Any bite marks located on the victim should be photographed according to the above instructions, ideally using a 1:1 camera. A forensic odontologist should be contacted for

more detailed examination. A swabbing of the area may be collected for possible specimens of the suspect's saliva.

- ❖ If there is any reason to believe that the victim was drugged, request that the hospital or SANE collect a urine sample which will need to be delivered to the State Lab Division. Urine can be collected up to 120 hours post assault.

Transferring Evidence from Hospital or SANE Unit to Police and to Laboratory

- ❖ The evidence should be transported to the appropriate criminalistics laboratory.
- ❖ Upon acceptance of the completed kit from the health care facility to police custody, the officer will need to follow agency policies for handling and storage of evidence.

Chain of Custody

- ❖ Officers should carefully follow department guidelines regarding the documentation of the chain of custody for each item of evidence.

Interim Storage of Evidence

- ❖ Completed kits, clothing bags, and other evidence should be stored in a secure area that is not exposed to heat.
- ❖ Urine samples should be stored in a secure refrigerator/freezer.

INTERVIEWING THE VICTIM

- ❖ Keep in mind that for the victim this has been a traumatic, degrading, life-changing event.
- ❖ Officers are encouraged to allow a Rape Crisis Advocate to remain with the victim during the interview. However, limit the number of other people who are involved in the interview process.
- ❖ The attitude and conduct of the interviewing officer is key to gaining the victim's trust and cooperation. The victim will assess the officer's demeanor and language for reaction. Approach the victim in a respectful, supportive manner. Remain objective and non-judgmental.
- ❖ Build rapport with the victim.
- ❖ Explain the process of the interview.
- ❖ The victim's ability to think clearly and to articulate what happened may be impeded by the trauma of the assault. Persons experiencing trauma often will recall and/or disclose information over a period of time. Officers may not get a full statement the first time, especially if aspects of the assault are unclear due to shock, embarrassment, and/or if alcohol or drugs were involved. If necessary, postpone the interview.
- ❖ Make every effort to minimize the number of interviews. Slight changes in statements with multiple interviews are often mistakenly misconstrued to suggest that a victim is not telling the truth.

- ❖ If a victim is unsure or unwilling to pursue a complaint, advise the victim of the right to make a formal statement at a later time and of the procedure for doing so.
- ❖ Begin the interview with "you" statements and questions. (How are you feeling? I'm sorry this happened to you. May I call you by your first name? Where would you like to do this? Where do you go to school?) Asking non-invasive questions at first and showing concern for the victim's well-being may help the victim to relax and may aid in enabling the investigator to build a rapport with the victim.
- ❖ Keep the victim informed with "we" statements. (We need to review some information together. We need to broadcast some information to try to find the offender.) Use of the word "we" provides the victim with the sense that this is a team effort, that she has a vital role to play, and that she has some sense of control.
- ❖ Tell the victim what you need with "I" statements. (I need you to remember as much of the details as possible. I have worked on other cases of sexual assault and will bring all of my experience and expertise to bear on this investigation, but I need your help to do it.) This reassures the victim that her complaint is being taken seriously.

Techniques for Interviewing Victims

- ❖ Be patient and make necessary accommodations to address the victim's needs, including:
 - Interview the victim in a private place where the victim will feel safe and comfortable. Avoid interviewing in the hospital examining room.
 - Avoid invading the victim's personal space or touching the victim without permission.
 - Allow the victim to temporarily skip questions that are too upsetting to answer at the moment, knowing that it can be discussed later.
 - Frequent breaks should be offered.
- ❖ The investigating officer should sit down, preferably at the same level as the victim, and, in a non-leading manner, ask the victim to describe what happened in her/his own words.
- ❖ Investigators should consider asking open-ended questions in an effort to elicit details which the victim may have forgotten.
- ❖ Let the victim know that it may be necessary to ask some questions in several different ways and that this does not mean you do not believe her/him.
 - Remind the victim that the goal is to make sure that the information being recorded is correct and complete.
 - Encourage the victim to interrupt to include a fact or correct a mistake.
- ❖ Be sensitive to the embarrassing nature of the information the victim is providing.
 - Once the victim describes sex acts or parts of the body, use the victim's own vocabulary to ask clarifying questions.
 - It may be helpful to repeat the same words back to the victim immediately so as to "give permission" to continue using those words in place of words that the victim

- may feel uncomfortable using (e.g., “So he stuck his ### in your ###. Then what did he do?”).
- Clarify terms as needed. Consider the educational and cultural background of the victim, as well as their level of maturity.
 - Victims often avoid eye contact due to shame or fear. Do not assume that this lessens the victims’ credibility.
 - Victims respond to sexual trauma in a variety of ways. No assumptions should be made if the victim does not fit a stereotypical ‘victim’ profile (e.g., not crying, not hysterical, is calm, is laughing, etc.).
- ❖ Make sure to elicit specific details of the assault necessary for the case, including:
- Details of the acts which establish the elements required by New Mexico statutes.
 - Any information about the crime scene(s).
 - Any information about the offender’s identity or description.
 - Any information about the point of entry, if the offender entered a dwelling, place of business, car, etc.
 - Whether the offender brought anything to the crime scene, such as a cigarette, or took anything from the scene, such as the victim’s purse.
 - Whether the victim brought anything to or took anything from the crime scene.
 - Whether the offender touched or moved anything.
 - Whether the victim touched or moved anything.
 - Whether the offender took any pictures or videos.
 - Whether the offender showed any videos, magazines, pictures, books, or photos to the victim.
 - Any **objects** used during the assault.
 - Any **threats** made by the offender.
 - Any dialogue by the offender to the victim, as well as by the victim to the offender.
 - Any **use of force** or **weapons**.
 - Coercive or manipulative behavior and/or words to determine cooperation in order to survive, versus consent.
 - Whether the victim told anyone about the assault and whom she/he told. Determine when and what she/he told them.
 - The past sexual history of the victim **is not** a part of the investigation.
 - Information about anyone who may have seen or heard anything before, during, or after the assault.

- See the checklist on page 28-30.

Special Consideration Victims

Following are special considerations to keep in mind when responding to sexual assault cases. It is an important and difficult task to keep these things in mind, yet respond to each victim as an individual, avoid making assumptions, and make modifications when necessary. Rather than assuming what an individual's needs, preferences, or limitations are, it is important to ask. While it may feel rude to ask, it is a sign of respect which will benefit both the victim and the officer.

Elderly Victims

- ❖ Elderly victims are one of the most vulnerable populations. As sexual assault victims, they may be severely traumatized, feel embarrassed or ashamed, and are often uncomfortable when discussing the crime with friends or family members, if they are able to discuss it at all. Sexual assaults of elderly persons are often accompanied by other crimes, such as robbery. When reporting other crimes, these elderly victims may choose to ignore or conceal the sexual assault.
- ❖ Elderly victims are more likely to sustain physical injuries during a sexual assault

Hearing Impaired or Deaf Victims

- ❖ Avoid making assumptions about how hearing impaired victims communicate. The victim should be asked how they would like to communicate: sign language, lip reading, writing, or verbally.
- ❖ If the victim wears a hearing aid or uses other communication tools, they may have been damaged or lost in the assault and the police officer should consider this. In order for an investigator to collect necessary information while helping the victim feel comfortable, non-traditional communication methods may be necessary. The victim's preferred communication mode should be restored as soon as possible.
- ❖ While investigating, do not assume that a hearing impaired or deaf person is devoid of all hearing. Even a profoundly deaf person is often able to sense vibrations and tonalities that may aid in gathering information related to the crime.
- ❖ It is **not** appropriate to ask family members to interpret for victims.
- ❖ Family members may have also been traumatized by the assault; a family member may even be the offender.
- ❖ The law requires the presence of interpreters in certain situations.
- ❖ Officers will have to take additional time and be patient during the interview process if a sign language interpreter is used. Officers should talk to the victim, not to the interpreter.
- ❖ If a statement or interview is written, be aware that the victim may have poor English skills. American Sign Language has a different syntax from spoken English. Use of drawings may be a helpful investigative tool.
- ❖ Police officers should be trained in the use of their TDD: where it is, how to use it, so that it can be used in future contacts with a victim or witness who is deaf.

Victims with Mental Retardation

- ❖ People with mental retardation may be prime targets for sexual assault because of their vulnerability. Reports should be handled seriously.
- ❖ Depending upon the severity of the disability, the victim may not realize that a sexual assault occurred or understand the consequences of the assault. Calls to the police may be made by a secondary party.
- ❖ A primary issue in responding to sexual assault victims with mental retardation is determining their levels of comprehension and communication.
- ❖ Police personnel should not assume that a person with mental retardation would not make a good witness.
- ❖ Victims with mental retardation may be unable to think in the abstract, may not understand terminology used during the interview process, or may answer questions in a way they believe the police want them to answer. The key to meeting the needs of this population is found in the mental maturity, not the chronological age of the victim.
- ❖ Whenever possible, officers should try to communicate directly with the victim. However, the Adult Protective Services advocates are available to assist with interviews and referrals.

Visually Impaired or Blind Victims

- ❖ A victim of sexual assault who is visually impaired or blind may not be able to visually identify their assailant; however they will probably be able to provide extensive information based on use of other senses.
- ❖ The officer should provide any special accommodations that are necessary for the victim. Of particular importance is making sure that the victim has access to any assistive devices, such as a guide dog, cane, or tools for magnification.
- ❖ Officers may need to read the statement aloud to a blind person before they can sign it.
- ❖ Copies of reports which are given to a blind or visually impaired person should be on tape, in large print or in Braille. Keep in mind that only about 5-10% of people who are blind read Braille.

Victims with Physical Disabilities

- ❖ When responding to a report of sexual assault against a person with physical disabilities, the officer should take into account mobility, access, and communication: Can the victim get around? Is the access to mobility restored after the attack? Is the access to communication tools restored? Ask the victim what assistance she needs.
- ❖ The severity of a physical disability does not necessarily imply mental impairment.
- ❖ A speech impairment does not necessarily imply mental impairment. It is important to find out the victim's mode of communication (e.g., word boards) and use that mode in communicating with the victim.
- ❖ A lack of mobility may increase a sense of vulnerability to future sexual assault.

- If the offender is the victim's caretaker, she may feel that no one can be trusted to provide appropriate care or access to care may be lost completely.

Homeless Victims

- ❖ Homeless persons present many complex challenges to the community and the police in that they are frequent and vulnerable targets of crimes of sexual assault.
- ❖ A report of sexual assault against a homeless person should be treated with the same respect and dignity that any other victim would receive.
- ❖ In an informal survey conducted by the Chicago Police Department, more than 88% of their homeless population stated they were victims of sexual assault.
- ❖ Follow-up will be a challenge. Homeless victims should be given specific times, places and phone numbers to follow up with the police on the assault investigation.

Gay and Lesbian Victims

- ❖ Gay and lesbian victims may be reluctant to report sexual assaults because they assume they will be met with insensitive comments or unfair treatment from criminal justice personnel.
- ❖ In addition, many gay and lesbian victims whose sexual orientation has been previously unrevealed are concerned that their assaults may generate publicity which would disclose their sexual orientation.
- ❖ They may fear that such disclosure would jeopardize their jobs, housing, or the custody of their children.
- ❖ Police must consider any non-consensual sex as a crime, regardless of the sexual orientation of the victim or the offender.

Domestic Violence Victims

- ❖ Sexual assault is common in relationships where there is other physical violence.
- ❖ Officers should be aware of this and include questions about sexual assault in all domestic violence investigations.
- ❖ Officers should be aware that the statutes which apply to domestic violence crimes apply in cases of sexual assault by a family or household member of the victim.

Victims of different Races and Ethnicities

- ❖ Officers should be aware that different cultures may respond in different ways to sexual assault.
- ❖ In some cultures it is prohibited to speak about sexuality and therefore victims may have extreme difficulty reporting details of the assault.
- ❖ In some cultures, it is a sign of respect not to look someone in the eyes. However, in the United States, this may be mistaken that the person is lying or being evasive.
- ❖ Departments should ensure that officers are culturally competent.

- ❖ Be aware that English may not be a victim's primary language. Contact appropriate language interpreters, as needed.

Concluding the Interview

- ❖ Inform the victim that the decision whether to arrest the suspect is a complex one that will be made by police, the prosecuting attorney, and the judge after more investigation. Avoid making promises or predictions.
- ❖ Inform the victim what to do if she/he is contacted directly or indirectly by the offender, or by the family and friends of the offender.
- ❖ Provide information about future safety in case the offender returns and in cases of family violence or stalking. (Rape crisis and victim advocates can help victims devise a safety plan or seek shelter at a local domestic violence program.)
- ❖ Ask the victim to keep the police department informed of any developments related to the investigation, including if she/he remembers anything else about the assault or if the offender tries to contact her/him. Provide the victim with information on how to contact the investigating officer.
- ❖ Keep the victim as informed as possible about the case.
- ❖ Ask the victim if she/he has any questions.

Special Considerations When Interviewing a Child Victim

- ❖ Use a forensic interviewer at a local safehouse if at all possible.
- ❖ Whenever possible, an officer trained in interviewing children should be used when speaking with a child victim.
- ❖ Use age appropriate language and define terms.
- ❖ Use open-ended questions.
- ❖ Minimize the use of leading questions.

There are potential problems created by in-depth and corroborative interviewing of young children (at or below the age of 10 years). These problems can best be addressed by adopting a policy of focused, rather than in-depth, interviewing of children at the time of first response to reported child abuse.

Methodological problems of in-depth and corroborative interviewing:

Knowledge of how to interview young children properly is not intrusive; principles of older child and adult history taking are not applicable to young children.

- ❖ Most professionals have not experienced intensive training in young child interviewing techniques.
- ❖ Interviews by those who have not received intensive training frequently include questions that are age inappropriate, unnecessary, leading or highly suggestive and an age appropriate foundation and structure for the interview is frequently not established.

Questioning by first responders intended to corroborate what the child has already disclosed does not increase the number or accuracy, or establish the veracity, of prior disclosures.

- ❖ The fact that a disclosure is repeated in another interview does not corroborate it.
- ❖ The fact that a disclosure occurred in one interview and not in others does not mean that the disclosure was not truthful.
- ❖ Repetitive (corroborative) interviews may lead to recantation of truthful disclosures.
- ❖ Corroborative interviews may lead to variation in details of the disclosure as time passes and as memory of the events changes. The more recent the event, the more accurate the memory of the event.
- ❖ Corroborative interviews have the potential for psychologically injuring children because:
 - Many repetitive interviews are performed by responders who lack training and experience, and their questions may be confusing, threatening or frightening to young children.
 - Repetitive interviews force children to repeatedly experience the details of their sexual or physical abuse.
 - Repetitive interviews force children to talk about their humiliating experiences with yet more strangers.
 - Young children may interpret repetition of questions by the same or other interviewers to mean that prior interviewers did not believe them, so they may change their recounting of events to try to please the authority figure(s).
 - Many children interpret repetition of questions to mean that their first answers were incorrect, so they may change their responses.

Logistical problems:

The circumstances when first responders see the child are often not appropriate for conducting an interview of a young child because:

- ❖ The child may be tired or hungry.
- ❖ The child may be emotionally ill prepared for an in-depth interview at that moment.
- ❖ The child may be frightened because:
 - Of the abuse
 - Of the highly emotional and/or threatening events that occurred to him or her, or to others and observed by him or her, because of his or her initial disclosure of abuse
 - Responders are authority figures whom they do not know
 - Law enforcement officers often wear uniforms and/or firearms, which may be threatening or frightening to children
 - The environment may not be child-friendly

- The perpetrator may be present or nearby, or may have access to the child when the child leaves.

Preparedness problems:

Children may not be ready or willing to disclose to the first responders, even though they have disclosed to others, because:

- ❖ They are not ready to disclose their abuse to the responders.
- ❖ Their initial disclosure was frightening and upsetting.
- ❖ The events of the abuse were highly emotionally laden and embarrassing, and they don't want to talk about their abuse to strangers.
- ❖ They may be concerned that the perpetrator will be able to punish or re-abuse them for having disclosed.
 - Many perpetrators tell children not to tell and threaten them with dire consequences if they do.
- ❖ A non-offending parent or other individual may be present at the time of the interview, whether in the room or not, who may have told the child that he or she does not believe the child.
- ❖ A non-offending parent or other individual may be present at the time of the interview, whether in the room or not, who may have told the child that he or she is not to tell anyone what happened.
- ❖ After the child has talked about the event to other family members, friends, teachers, and neighbors, a family member may have told the child not to talk about what happened, and the child interprets this admonition to include not talking to the responder.
- ❖ "I got it off my chest (in the initial disclosure to the non-offending parent), and I don't have to tell over and over again".
- ❖ The child has seen the adverse family impact of disclosure and would like to reverse it.

Minimal Facts Interviewing of Young Children*

*This concept has been adapted from the Joint Investigative Policy of the Sexual Assault & Trauma Resource Center, Providence, RI.

When a person has been victimized, additional trauma is inevitable in the aftermath, even during the appropriate first response. To minimize trauma relating to interviewing the child at

the first response, a limited, focused interview should be conducted. Extensive interviews are usually not needed for first responders to make decisions about the next appropriate action(s).

A child suspected of having been sexually or physically abused is interviewed by the first responders for the benefit, welfare and safety of the child. The first concern of the responder must be the safety and health of the child. The approach to the focused interview must be flexible and must permit the responder to use common sense and discretion.

If the child volunteers detailed information to the responder or other person during the first response, the child should be listened to without interruption, and the disclosure should be recorded in the child's words. The record should also reflect the circumstances under which the child made the disclosures.

If the child does not volunteer information, extensive questioning of the child should be avoided as much as possible. In-depth facts should, however, be developed from other sources present, like adults.

Some things must be avoided when interviewing abused children. Some are outward behaviors, and others are inner thoughts, feelings and attitudes that first responders might have. It is important to control even these internal reactions, since children are very perceptive and can "sense" them, probably from tone of voice and other nonverbal signals.

- ❖ Don't express frustration or resentment over your helplessness and lack of control.
- ❖ Don't be overzealous. Don't pressure children to obtain information.
- ❖ Don't minimize the seriousness of the situation.
- ❖ Don't compare one situation to another.
- ❖ Don't over-react to the victim's or family's misdirected anger. Their emotions and behaviors that appear hostile are really symptoms of pain, loss of control, and/or fear.
- ❖ Don't say negative or judgmental things about anyone, including the alleged perpetrator to the child or anyone else. Investigators must maintain a nonprejudicial attitude and demeanor.
- ❖ Don't expect victims to appreciate your efforts; they are usually too immersed in their reactions to the abuse and the situation to focus on someone else's efforts on their behalf.
- ❖ Don't become hardened, cynical, or mistrusting of those who don't conform to the "ideal victim" stereotype.
- ❖ Don't share "graveyard humor" with the child or family. It will almost surely have a negative impact on them.
- ❖ Don't assume the child is "OK" even if he or she looks or behaves that way. Abused children have experienced serious psychological and emotional trauma, and their reactions and demeanor may appear inconsistent with the trauma they have endured. Lack of behavior perceived by the observer to be consistent with severe trauma, or inappropriate behavior does not mean that the disclosures are untrue or inaccurate.
- ❖ Do nothing to allow a child to feel that you do not believe him or her, even if all the pieces don't fit together.

- ❖ Don't display surprise, shock, horror, or anger in response to things a child says or does. The child will perceive these expressions as signs of blame and disapproval.
- ❖ Don't touch the child, even gently, unless he or she agrees to it. Touching can trigger strong abuse-related reactions.

Before interviewing the child, the first responder should ask himself or herself:

1. Is there another resource for the information, such as the accompanying adult? If so, ask the adult, not the child.
2. What must be known to make decisions about further action? If the information is not necessary for this purpose, don't ask the child.
3. What type of questions is the child developmentally competent to answer?
4. How do I phrase my questions so that they are developmentally appropriate, non-leading and non-suggestive?
 - ❖ Leading questions introduce ideas or concepts that have not yet been mentioned to the responder by the child, then ask the child to agree with the new idea or concept..
 - ❖ Suggestive questions introduce ideas or concepts that have not yet been mentioned to the responder by the child.

Conducting the focused child interview:

1. The child should be offered and provided refreshments, if hungry.
2. The responder must allocate sufficient undisturbed time for the interview (as much time as the child needs).
3. The interview should be conducted in a quiet, child-friendly environment.
4. Accompanying adults should not be present.
5. If available and if acceptable to the child, another person should be present. This person should be supportive and reassuring to the child, but should not participate in the interview. The supportive person may have the responsibility to write down every question, and the child's responses in his or her own words.
6. The most experienced interviewer should conduct the interview, no matter what agency that person represents.
7. There should be structure to the interview:
 - Assessing development
 - Building rapport
 - Practicing narrative responses to open-ended questions
 - Identifying names for parts of the body
 - Acquiring essential details
 - Dealing with the child's stress, including knowing when to quit

- Properly concluding the interview using techniques like reinforcing body safety
8. Types of information which may be important to know include (but are not limited to), as developmentally appropriate and asked in an age-appropriate manner:
- What happened?
 - Who did the touching and how old was/were the person(s)?
 - Can the child describe the person(s)?
 - Was force or any other form of coercion used?
 - Was there penetration, pain, bleeding, ejaculation...?
 - Is there presently pain, bleeding, discharge...?
 - Where did it happen [to determine jurisdiction(s) involved]?
 - First time, last time, how many times did it happen?
 - Did the person use inducements, like gifts or money?
 - Were drugs used?
 - Was anyone else there?
 - Was anyone else touched?
 - Was the child ever abused by any other person, at any other time?
9. All questions and responses must be accurately recorded, in the child's own words, in the record.

False Reporting

The tendency of women to lie about rape is vastly exaggerated in popular opinion. The FBI finds that eight percent of reported rapes are “unfounded,” but other researchers put the figure at only two to three percent – no different than that for other crimes. The category of “unfounded”, sometimes confused with the issue of false reporting, refers to a much broader group of cases which police and prosecutors have deemed or judged not prosecutable or unverifiable for a large number of reasons.

The reality is that the usual reaction of a woman to her rape is not to report it all. The 1992 National Victim Center study, *Rape in America*, reveals only 16 percent of rapes and sexual assaults are reported to the police. The U.S. Department of Justice reported that 26 percent of women did not report their rape to police because they considered it a private matter; 17 percent out of fear of reprisal by the offender, his family, or friends; and 16 percent because they had no faith in the criminal justice system.

The notion that women frequently invent rape charges is unfounded and psychologically implausible. It is not uncommon for rape victims to have to defend themselves against charges that they are covering up or excusing a pregnancy, out to get revenge against their assailant, acted negligently, therefore provoking the attack, or offered insufficient resistance. Anyone willing to risk the humiliation of these accusations for a lie is rare.

SUSPECTS

Suspects may provide:

Information

- ❖ Alibi facts/witnesses
- ❖ Excuse/justification for assault
- ❖ Admission/confession
- ❖ Additional suspects
- ❖ Video, audio, or computer documentation of the crime.

Forensic Evidence

- ❖ Trace evidence (hairs, fibers, soil, etc.)
- ❖ Victim's body fluids/tissues on the suspect's body (vaginal fluids, blood, saliva, skin cells, hair, etc.)
- ❖ Reference standards (known specimens from suspect to compare with other specimens from suspects, victim, and/or crime scene)

INITIAL RESPONSE TO THE SUSPECTS

- ❖ Determine as soon as possible the suspect's identity, description, and location.
- ❖ If located, avoid allowing a suspect to engage in any activity which may destroy perishable evidence on the body or clothing.
- ❖ As soon as possible, photograph the suspect for purposes of identification at a later time.
- ❖ Determine whether clothing and/or other forensic evidence should be collected.

FORENSIC EVIDENCE COLLECTION FROM THE SUSPECT

Evidence seized from sexual assault suspects is a very important yet a frequently overlooked area of investigation.

The suspect's body is considered a crime scene and evidence on it should be protected and collected.

Clothing and Evidence from Suspect's Body

- ❖ Clothing should be collected using a separate paper bag for each item.
- ❖ **Never** package suspect and victim specimens together.
- ❖ **Plastic bags should never be used to package/store evidence.**
- ❖ Be careful to note and collect debris evidence on the clothing before it can be lost.

- ❖ Evidence from the suspect's body may be collected using the Suspected Offender Sexual Assault Evidence Kit.
- ❖ Evidence on the body and standards from the suspect should be collected according to your department's policy.

Types of Evidence from Suspect

Suspect's Clothing

- ❖ Debris on clothing
- ❖ Clothing worn at the time of assault (may be clothing other than what he/she is wearing at the time of arrest)

Transitory Specimens

Evidence that may be lost over time:

- ❖ Dried secretions on the suspect's body (i.e., penile area, fingers, hands, etc.) may have transferred from the victim.
- ❖ Debris collection of any trace evidence (i.e., grass, twigs, hair, fibers, etc.)
- ❖ Pubic hair combings for the presence of foreign hairs or body fluids.

Reference Standards

Evidence that can be compared to any other evidence found on the victim's body or at the crime scene(s):

- ❖ Known blood sample (see Instructions inside the Suspect Evidence Kit for more information)
- ❖ Known head hair – pulled
- ❖ Known pubic hair-pulled
- ❖ Other known standards (e.g., facial hair, arm hair, etc.)

Warrant Requirements for Collection of Clothing or Other Evidence from Suspect's Body

- ❖ If a suspect has been arrested and probable cause exists for the seizure of the suspect's clothing, the clothing may be seized either as part of a search incident to arrest or due to exigent circumstances (e.g., evidence may be destroyed or lost if the item(s) is not immediately seized).
- ❖ If a suspect has not yet been arrested, a search warrant should be obtained prior to the collection of the clothing or evidence from the suspect's body. Consult your prosecuting attorney's office prior to application for a search warrant to determine proper format.
- ❖ If a suspect has not yet been arrested, but gives consent for collection of the clothing, the clothing should be taken.
- ❖ If a suspect gives consent to the collection of evidence from his body, a written consent should be obtained and the evidence seized.

- ❖ Officers should list the specific types of evidence sought on the search warrant application.
- ❖ Follow departmental procedures for review of search warrant application(s).

Chain of Custody

- ❖ Officers should carefully follow department guidelines regarding the documentation of the chain of custody for each item of evidence.

OVERVIEW OF SUSPECT INTERROGATION

- ❖ Be aware that sexual assault of an adult victim frequently includes the issue of consent. Therefore:
 - Eliciting a statement from the suspect that the sexual act occurred may not be enough.
 - Officers must also ask questions that will elicit information pertaining to the “consent,” “use of force” or “threatened force” elements.
 - Officers should be aware of and elicit information regarding compliance as opposed to consent.
- ❖ Elicit as much detail as possible from a suspect. Ask the suspect about his activities for 24 hours prior to and several hours following the sexual assault. Seemingly unimportant details may provide necessary links to other pieces of evidence or information or can be used to uncover inconsistencies in previous or subsequent statements.
- ❖ Do not challenge lies offered by the suspect. Let him develop them and add details to them. Often, the details can be used later to dismantle the lies and may increase the likelihood of an admission. Further, a well-documented lie can be very powerful evidence for the prosecution.
- ❖ Document excuses or justifications offered by the suspect. Going along with this conversation may result in an admission.
- ❖ As soon as possible, confirm or discount any alibi statements made by the suspect.
- ❖ Officers should be aware of the statute regarding suspect interrogations.
- ❖ If, possible, record the interview or have the suspect sign a written statement.

See Statute 29-1-16. Electronic recordings of custodial interrogations pg. 111.

CRIME SCENE(S)

Crime Scene(s) May Provide:

Information

- ❖ Witnesses (saw/heard assault, saw/heard anything, lead to other witnesses)

- ❖ Descriptive photos and sketches

Forensic Evidence

- ❖ Trace Evidence (hairs, fibers, soil, etc.)
- ❖ Victim's/suspect's body fluids/tissues (semen, blood, vaginal fluids, vomit, hair, etc.)
- ❖ Latent fingerprints
- ❖ Items used in the assault (condom, lubricants, burglary tools, etc.)
- ❖ Other items related to the assault (clothing, bedding, bindings, lubricants, facial/toilet tissues, items left by the suspect and/or victim to include, for example, beer bottles or cigarette butts, as DNA samples may be present).

INITIAL RESPONSE AT THE CRIME SCENE

- ❖ **Upon arrival, secure and protect the crime scene(s).**
- ❖ Photograph the scene on approach.
- ❖ Keep in mind that in sexual assault cases, there may be more than one crime scene (e.g., house and car).
- ❖ Determine if computers, disks, or videos reveal elements of this assault or related crimes.
- ❖ Be aware of surroundings while approaching the crime scene(s).

Warrant Requirements for Crime Scene Processing

- ❖ If a crime scene is located in a public place (where there is no reasonable expectation of privacy), no search warrant is required.
- ❖ If exigent circumstances exist (e.g., officers believe it is necessary to enter a private residence in order to protect against the loss of evidence, harm to a person, or escape):
 - Officers are allowed to enter a premise and secure the scene until a warrant is obtained.
 - If the exigent circumstance ceases to exist, officers must stop their search until a search warrant or consent can be obtained. Officers may remain on site and maintain control of the scene until the warrant or consent is obtained.
- ❖ Officers may search any person leaving a crime scene to protect against the loss or destruction of evidence.
- ❖ Although there are other circumstances under which warrantless searches may be conducted, in circumstances other than those listed above (including consent), it is recommended that officers obtain a search warrant prior to searching any premises.
- ❖ Discuss warrant issues with your District Attorney's Office.

FORENSIC EVIDENCE COLLECTION FROM THE SCENE(S)

Types of Crime Scene Evidence

- ❖ Conduct a detailed search for evidence based on an evaluation of the possible types of physical evidence which may be present.
- ❖ There are certain categories of forensic evidence which are likely to be present in a sexual assault investigation (see below). However, it is extremely important to remember that anything can turn out to be important evidence in any given crime, even seemingly unrelated evidence or information.
- ❖ Likely categories of evidence in sexual assault investigations include, but are not limited to:
 - Semen
 - Tampons or sanitary pads
 - Vaginal fluids
 - Facial or toilet tissue
 - Blood
 - Lubricants or packages
 - Saliva
 - Ropes, twine, cordage
 - Hairs
 - Fibers
 - Body tissues and/or body parts
 - Clothing
 - Condoms or wrappers
 - Bedding
 - Pornography (check computers, disks, videos, video cameras, VCR's, and DVD players)
 - Alcohol
 - Drugs (illegal and/or prescription) and packaging
 - Vomit
 - Plant /soil debris

INTERVIEWING WITNESSES AND CANVASSING OF AREA

- ❖ Although it is uncommon to have eye witnesses to the actual sexual assault, other witnesses may have:
 - Seen the suspect entering or fleeing the scene
 - Observed other facets of the crime (e.g., found a weapon, etc.)

- Knowledge that is pertinent to the crime (e.g., observed indicators of psychological trauma to the victim)
- Overheard the crime or something related to the crime
- Heard the suspect make statements concerning the crime
- Been told about the crime by the victim (constancy of victim's statement over time)
- ❖ Witnesses can be very important because they can:
 - Give specific information about the crime, the victim, or the suspect(s)
 - Corroborate or disprove information gained from other sources
 - Give sworn statements and appear in court to testify if necessary
 - Give information that may discredit other witnesses (e.g., refute alibi defense)
- ❖ All witnesses should be asked whether they can identify anyone else who may have seen or overheard anything related to the crime.
- ❖ Whenever possible, attempt to get a taped (ideal), or written statement from all witnesses.

WRITING REPORTS AND WARRANT APPLICATIONS

Case/Incident Reports

- ❖ As in all other criminal investigations, the officer must draft a report which carefully documents all information about the sexual assault incident.
- ❖ Officers should detail all available information about the incident in the initial report (see checklist on pg. 28-29).
- ❖ All actions taken by officers throughout the investigation should be detailed in the report.
- ❖ All evidence should be identified and any laboratory reports included.
- ❖ Complete any other necessary reports such as mandated reports for domestic violence incidents, bias crimes, or child abuse. Make departmental and non-departmental notifications as required.

CHECKLIST

- Location of the crime scene(s) (apartment number, street name, cross street, etc.)
- Description/identity of offender
- Secure and protect crime scene(s)

- Medical attention (note any offered, accepted or rejected)
- Location where complaint was made (e.g., if the incident was reported from a location other than where the incident occurred)
- Time of incident and complaint
- First disclosure information (name of first person to whom victim disclosed)
- Name, address, DOB, phone numbers of all relevant persons (e.g., victim, person who reported, witnesses, suspect(s), and anyone else interviewed at the scene, hospital or other location). Document information about anyone with whom officers spoke regarding the crime.
- Detailed information about the assault, including elements of the crime
- Rape Crisis Program/Victim Advocate contacted (first name of advocate)
- Detailed description of victim's clothing/appearance and emotional state (whether clothing is torn, soiled, missing / whether the victim is in shock, crying, angry, trembling, cooperative)
- Description and location of injuries (swelling, bruises, redness, scratches, etc.)
- Photographs, if any, of injuries
- Hospital/doctor/nurse/social worker (note names and contact information)
- Signed release of medical records to law enforcement
- Forensic evidence collected from victim
- Evidence transported to the lab
- Bite mark impressions taken, if appropriate
- Photo line-up/composite drawing
- Relationship of victim and offender (boyfriend, neighbor, stranger, etc.)
- Description of use of force/weapon (physical force, intimidation, threats, knife, gun, simulation of weapon, restraints, etc.)
- Description of offender's method of operation (including stalking behavior, language used, etc.)
- Description of any vehicles(s) involved in the incident
- Description of crime scene(s) (location of evidence, condition of room, etc.)
- Names of any other personnel who were contacted or involved in the investigation (detectives major crime squad, laboratory personnel)
- Details about any evidence seized (document and fully describe)

- Forensic evidence collected from suspect
- Details about any identifications made
- Whether broadcasts were made (type of broadcast, any responses, etc.)
- Information about how to contact the victim, including address, phone number, and any alternate locations she/he might stay
- Necessary mandated reports made
- Secure 911 tape

DOMESTIC VIOLENCE INVESTIGATIONS

By Sgt. Detective Randy Glover, Law Enforcement Trainer, Bernalillo, NM

OVERVIEW

Responding to domestic violence calls involves general and specialized procedures, all of which cannot be covered in detail in this manual. Accordingly, the following material is not intended to replace training in conducting domestic violence response and investigation. This guide is intended to serve as a quick reference and to highlight aspects of investigating domestic violence investigations.

This guide will be useful for a wide range of officers, particularly first responding officers, officers who have little experience in investigating domestic violence and as a quick reference for more experienced officers.

Officers should incorporate overall training, experience, and department protocols and policy in all domestic violence investigations. If you have not had such training, consult your supervisor or your local or federal prosecutor. **DO NOT rely solely on this guide.**

INTRODUCTION

In domestic violence investigations, there are three major sources of evidence and information about the crime: the victim, the abuser/suspect, and the crime scene/location of the abuse. There are also collateral sources: children, neighbors, etc. Officers should attempt to thoroughly investigate all three of these sources, and any other available source of evidence or information. Officers should keep in mind, however, that cases could be successfully prosecuted even if the investigation is unable to obtain evidence from all three sources.

Throughout this guide, charts are provided that highlight information which may be obtained from the victim, the abuser, and the crime scene.

In responding to domestic violence investigations, the police officer should view his role as a rescuer rather than simply an intervener. **DO NOT** blame the victim or make her/him feel as if the situation is her/his fault. In order to obtain the most complete information about the abuse, a victim must feel free to tell her/his story. Every effort must be made to ensure that all victims of domestic violence are treated professionally and with dignity.

Primary Responsibilities of First Responding Officers

- ❖ Attend to the victim.
- ❖ Stop any abuse.
- ❖ Secure and protect the crime scene
- ❖ Gather vital information about the abuse and collect evidence

GENERAL CONSIDERATIONS FOR CONDUCTING DOMESTIC VIOLENCE INVESTIGATIONS

In New Mexico, pursuant to the Family Violence Protection Act (see the statutes on Domestic Violence), domestic abuse can only be committed by a household member. Thus, a domestic violence investigation requires that the officer determines the abuser's status, and whether or not the abuser's actions constitute domestic abuse.

WHAT CONSTITUTES DOMESTIC ABUSE:

- ❖ Physical harm
- ❖ Severe Emotional Distress
- ❖ Bodily Injury or Assault
- ❖ Threat causing Imminent Fear of Injury

- ❖ Criminal Trespass
- ❖ Criminal Damage
- ❖ Repeatedly Driving by Residence
- ❖ Telephone Harassment
- ❖ Stalking
- ❖ Harassment
- ❖ Harm or Threatened Harm to Children

If domestic abuse has occurred, the next inquiry is whether the abuser has the status of a household member.

WHAT CONSTITUTES A HOUSEHOLD MEMBER:

- ❖ Spouse
- ❖ Former Spouse
- ❖ Family Member
- ❖ Relative
- ❖ Parent
- ❖ Present or Former Stepparent
- ❖ Present or Former In-law
- ❖ Co-parent of a Child
- ❖ Continuing Personal Relationship

Remember that cohabitation is **not** required.

ORDERS OF PROTECTION

In addition to making the correct determination as to abuse and household member, the officer should also determine whether or not there exists a valid order of protection. The validity of the order depends on the following:

- ❖ A valid DR# (Domestic Relations Number)
- ❖ Expiration Date
- ❖ Conditions contained in the Order
- ❖ Verifiable (The order can be verified through the proper record maintenance agency, i.e., in New Mexico the county sheriff)

Additional considerations involving Orders of Protection/TRO:

- ❖ In New Mexico, the violation of an order of protection is a misdemeanor
- ❖ In addition to charging the person with violation of the order, the peace officer SHALL file all other possible charges arising from an incident of domestic abuse when probable cause exists
- ❖ An out of state order of protection or temporary restraining order, and one issued by a tribal court, which is otherwise valid, is entitled to the same degree of protection and enforcement as would be given to a New Mexico order
- ❖ Also, any order of protection issued in any judicial district in New Mexico is valid everywhere in the state

- ❖ Officers/agencies must keep Order of Protection forms and make them available upon request to victims of domestic violence

ARREST CONSIDERATIONS:

Pursuant to the Family Violence Protection Act, the peace officer:

- ❖ Shall arrest the abusing household member.
- ❖ Can make a warrantless misdemeanor arrest under the Act if probable cause exists.
- ❖ The officer must act in good faith and without malice.

The problem with dual arrests:

It is the extremely rare case where the parties have been equally abusive to each other. In virtually every situation, the officer can determine by a thorough investigation which person is the predominant aggressor. This statement is not intended to discourage the officer from making a dual arrest in situations where it is truly indicated; however, by virtually any measure a dual arrest is not appropriate in the great majority of domestic situations. In making a dual arrest, the officer should consider the following:

- ❖ A thorough investigation will almost always indicate who is the primary aggressor
- ❖ Arresting both parties creates a situation where the real victim will not divulge all necessary information relevant to the abuse
- ❖ It creates a situation where the real victim may not, in the future, request police assistance for fear of being arrested
- ❖ Wounds/injuries on both parties do not necessarily indicate mutual violence; every effort should be made to distinguish defensive injuries and injuries inflicted in self-defense from intentional abusive injuries

Fresh pursuit in arrest cases:

In felony cases, the officer may make an arrest at some later time provided certain conditions are met. These are:

- ❖ The pursuit must be conducted without unreasonable delay
- ❖ The officer is not required to have witnessed the felony
- ❖ The officer must be engaged in actively pursuing the felony. Reasonable exceptions are allowed, but the officer's primary activity must be pursuit to effect the arrest
- ❖ The police team rule allowing information to be given to fellow officers in order to apprehend the subject is allowable in fresh pursuit

Charging the Abuser with a Crime

The peace officer has available to him a wide variety of possible charges. He should carefully evaluate and decide which crimes can be successfully charged. Often, other crimes are overlooked and the abuser is only charged with the most obvious one (assault, battery, etc.) The officer should determine whether any of the following charges might be applicable:

- ❖ Assault Against a Household Member
- ❖ Aggravated Assault Against a Household Member

- ❖ Assault Against a Household Member with Intent to Commit a Violent Felony
- ❖ Battery Against a Household Member
- ❖ Aggravated Battery Against a Household Member
- ❖ False Imprisonment
- ❖ Abandonment of Abuse of a Child
- ❖ Harassment
- ❖ Stalking
- ❖ Criminal Sexual Penetration
- ❖ Criminal Sexual Contact
- ❖ Criminal Trespass
- ❖ Criminal Damage to Property
- ❖ Larceny
- ❖ Burglary
- ❖ Resisting, Evading or Obstructing an Officer
- ❖ Escape from Custody of a Peace Officer
- ❖ Assault/Battery upon a Peace Officer
- ❖ Use of Telephone to Terrify, Intimidate, Threaten, Harass, Annoy, or Offend
- ❖ Interference with Communication
- ❖ Bribery or Intimidation of a Witness; Retaliation Against a Witness

Requirements of Each Officer Responding To Domestic Violence

- ❖ SHALL take steps to protect the victim
- ❖ Advise the victim of appropriate remedies
- ❖ Arrange for transportation
- ❖ Place victim in a residence
- ❖ Arrest the abusing Household Member
- ❖ Indicate on report and complaint “Domestic Violence”
- ❖ Advise Victim of Abuser’s Release from Jail

FOCUSING THE INVESTIGATION

What to look for:

- ❖ Evidence from the Victim
- ❖ Evidence from the Suspect
- ❖ Evidence from the Crime Scene (In certain instances, from locations before and after the incident)
- ❖ Observations/Statements from all who may know of Incident (Neighbors, Bystanders, Friends, Relatives, Outcry Witnesses, etc.)

Crime Scene Considerations

- ❖ Preserve and Protect (Freeze the crime scene in time and place)
- ❖ Locate path of crime scene(s) (including path of violence, flight path, etc.)
- ❖ Check to see if any electronic devices contain evidence of abuse (Videotapes, computers, etc.)
- ❖ Check for Forensic Evidence
 - Trace Evidence (Hair, Fibers, etc.)

- Body Fluids (Blood, Semen, Saliva, Vomit, etc.)
- Items used in the assault
- When appropriate, items that might contain DNA
- Latent Fingerprints (when appropriate)
- ❖ Photograph/Video the Crime Scene (evidence of violence, overturned plants, spills, etc.)
- ❖ If appropriate, diagram scene
- ❖ Secure and/or photograph all relevant evidence. Take “full body” photographs of the suspect
 - Damaged Property
 - Blood spatters
 - Wads of Hair
 - Phone ripped out of wall
 - Signs of alcohol or drug involvement
 - Ripped clothing
 - Overturned Furniture
 - Items in toilet
 - Items in trash
 - Items in laundry (washer, dryer, hamper)
 - Items removed to vehicles
 - Items tossed in yard or away from location of attack
- ❖ Photograph the victim’s injuries. Utilize a ruler as needed for visual reference
- ❖ Photograph the suspect’s injuries
- ❖ Take photographs of children present at scene. This puts a face to a 911 voice, and brings the trauma of domestic violence to the children into the courtroom
- ❖ Take into evidence all weapons/objects used (knives, blunt objects, ligatures, etc.)
- ❖ Seize damaged items that have evidentiary value (phone cord ripped from wall, etc.)
- ❖ Don’t overlook outside area where weapons could be thrown or evidence discarded
- ❖ Don’t overlook garbage containers, toilets, vehicles, etc.

INTERVIEWING THE VICTIM

- ❖ Be patient and understanding. Build rapport with the victim
- ❖ Never indicate that you don’t believe her story or version of the events
- ❖ Conduct the interview in a place that is safe and comfortable
- ❖ Never touch the victim or overwhelm her personal space
- ❖ Allow her to skip over unsettling or painful questions. The officer can always ask these later
- ❖ Determine what was happening between the parties prior to the attack
- ❖ Where was the victim prior to the incident? Where was the victim located when the police arrived
- ❖ What was the victim doing prior to the incident? Who called the police (ALWAYS obtain the 911 tape for future evidence)

- ❖ Has the victim or suspect consumed alcohol/substance in the last 24 hours? If so, how much
- ❖ Is the suspect on probation or parole
- ❖ Was the victim struck or injured by the suspect
 - Can the direction of force be determined
 - Is there a pattern injury
 - Does the injury match the story
 - If strangulation, what was used? Hands, ligature Always ask each victim whether or not they were strangled
 - If there is a claim of strangulation, call EMS immediately
- ❖ Have victim briefly describe exactly how the suspect touched/struck/injured or caused physical pain
- ❖ Was this incident an accident
- ❖ How many attacks were there
- ❖ Was Fear Present
- ❖ Has the suspect made any threats or statements
- ❖ Is the victim afraid of the suspect
- ❖ Has the suspect injured the victim in the past
- ❖ Is there a prior history of Domestic Violence
- ❖ Noted any Orders of Protection or Temporary Restraining Orders
- ❖ Will the victim give information and assist with the prosecution of the suspect
- ❖ What was the Victim's Emotional Condition:
 - Angry
 - Apologetic
 - Crying
 - Fearful
 - Hysterical
 - Calm
 - Afraid
 - Irrational
 - Nervous
 - Threatening
 - Other
- ❖ What was the Victim's Physical Condition:
 - Complaining of Pain
 - Bruises
 - Abrasions
 - Minor Cuts
 - Lacerations
 - Fractures
 - Concussions
 - Complaint of being Strangled
- ❖ How did the Victim protect Herself (Describe in detail)
- ❖ Were there other Witnesses present during the domestic violence
- ❖ Has she told anyone else about the attack
- ❖ Determine the relationship between the victim and the suspect

- ❖ Has the victim ever sought assistance, counseling or shelter with regard to being in an abusive situation
- ❖ Has the victim ever sought medical attention with regard to an abusive situation
- ❖ Is an interpreter needed for the investigation
- ❖ Victim was given required written information on legal remedies, advocacy and victim support, etc.
- ❖ Recorded temporary address and telephone number of victims
- ❖ Recorded alternative phone numbers where victim can always be reached (parents, siblings, close friends, etc.)
- ❖ Insured that victim signed medical release
- ❖ Take follow-up photographs of the victim's injuries 2-21 days after the incident. Tell her you will be following up with her to do this
- ❖ If available, request a victim advocate or counselor to come to the scene

Helpful Hints

Many prosecutors want police officers to get all the necessary statements in writing. Audio recordings are also extremely beneficial. You should also have the victim sign a medical release form, which allows you to obtain emergency room information, information given to EMT personnel, etc. Also, using a bodily injury chart/map to locate the areas where the person was struck or injured is very helpful.

Five Really Helpful Things to Say to the Victim:

- ❖ I am afraid for your safety
- ❖ I am afraid for the safety of your children
- ❖ It will only get worse
- ❖ I am here for you when you are ready to leave
- ❖ You don't deserve to be abused

INTERVIEWING THE SUSPECT:

- ❖ Be aware of statute 29-1-16 Suspect Interrogation (refer to pages 111).
- ❖ What was happening prior to the Incident
- ❖ Where was the suspect during the incident? Where was the suspect when the police arrived
- ❖ What was said before the incident? What was said during the incident
- ❖ Was there any "touching"
- ❖ How does the suspect think the victim felt
- ❖ How did the suspect feel
- ❖ Describe and record the suspect's emotional condition
- ❖ Describe and record the suspect's physical conditions
- ❖ Describe and record the suspect's injuries
- ❖ Can the direction of force be determined
- ❖ Is there a pattern injury
- ❖ Does the injury match the story
- ❖ Document all relevant suspect evidence by photograph
- ❖ Document evidence of substance/alcohol abuse
- ❖ Is there a history of domestic violence

- ❖ Were other persons present
- ❖ Has the suspect talked to anyone about this incident
- ❖ Does he have an excuse/justification for the attack
- ❖ Does he admit to the attack? Batterers make statements to officers, children, victims, jail personnel, 911 operators, friends, co-workers, etc.
- ❖ Is he claiming self-defense
- ❖ Is there a claim of “rough play” or “rough sex”
- ❖ Trace evidence on the suspect
- ❖ Body fluids on the suspect
- ❖ Torn clothing, scratch marks, etc.
- ❖ Interview the suspect to:
 - ❖ Get as much detail as possible
 - ❖ The amount of force used by him and used by the victim
 - ❖ Let the suspect tell his story. The officer can always compare the suspect’s version to the victim’s version and the forensic evidence.
 - ❖ Let the suspect lie. This is powerful evidence when it obviously conflicts with the physical evidence and statements from witnesses, etc.
 - ❖ Let the suspect give any excuses or justification
 - ❖ Tape record the interview or have the suspect sign a written statement

WITNESSES:

- ❖ Where were they during the incident
- ❖ What did they see
- ❖ What did they hear
- ❖ Can they place the offender at the crime scene or nearby
- ❖ Inadvertent witnesses – found the weapon, saw the suspect run past, etc.
- ❖ Do they have knowledge of prior domestic violence
- ❖ Did they overhear the crime or related information
- ❖ Do they have knowledge that is valuable – trauma to the victim in the past, etc?
- ❖ If they are children, try to avoid leading questions
- ❖ May have overheard the suspect or victim make statement(s) before, during, or after the incident
- ❖ May have knowledge gained from previous interaction with the victim or suspect or people the victim or suspect know
- ❖ Witnesses can be anywhere
- ❖ Get pertinent witness information and alternative contact numbers in the event they move, leave town, etc.
- ❖ Get a written statement from each witness

CHECK LIST FOR SUCCESSFUL PROSECUTION:

- Written or Tape-recorded Statement from the Victim
- Signed Statement that Victim will Prosecute
- Completed Domestic Violence Case Summary

- Signed Medical Release
- Written Statements from all Witnesses
- Accurate Statements from Children Present
- Complete and Accurate Police Report(s) and Supplemental Reports
- Bodily Injury Map of Victim
- 911 Tape
- Photographs of injuries (w/follow-up photographs of victim)
- Photographs of Scene
- Photographs of Suspect
- Weapons/objects/items Used in Crime
- Broken or Damaged Property
- Diagram of Scene
- Incriminating documents from Suspect (letters, etc.)
- Jail Visitation Records
- Victim's Employment Records (Missed work)
- Interview of Suspect, including admissions, etc.
- Evidence of Prior Felony Convictions of Suspect
- Interview of Defense Witnesses
- Evidence of Prior Incidents
 - Incident #1
 - Incident #2
 - Incident #3
- Prior Restraining Orders
- Past Police Reports
- Current Restraining Orders

FULL FAITH AND CREDIT AND ORDERS OF PROTECTION

By **Rosemary Cosgrove-Aguilar**, J.D., Special Commissioner for Domestic Violence, Second Judicial District, Albuquerque, NM, **Sharon Pino**, J.D., NM Domestic Violence Czar, Office of the Governor, NM, and **Gabe Campos**, J.D., MBA, Director, Family Protection Program, NM Legal Aid, Albuquerque, NM.

The US Constitution, Federal Violence Against Women Act (VAWA) and New Mexico Family Violence Protection Act

Full Faith and Credit is provided by the United States Constitution in Article IV, section 1 and reinforced by VAWA and the Family Violence Protection Act (40-13-1)

Under Full Faith and Credit:

- Orders of Protection issued in one state are valid and enforceable in all states. This includes tribes and territorial Orders.
- Enforcement of Orders of Protection is mandatory.

Conditions for Enforcement of Orders

A “foreign” Order of Protection is valid and shall be enforced by law enforcement if:

- The Order of Protection is between “intimate partners.” An intimate partner includes spouses, former spouses, persons with children together and current or former dating partners. (In NM, Orders can be obtained for domestic violence, stalking and sexual assault victims)

AND

- The Order of Protection specifically prohibits at least one of the following:
 - violent acts, threatening acts, or harassment
 - contact or communication by the restrained party with the protected party
 - physical proximity to the protected party

Validity of the Order of Protection

To enforce a foreign Order of Protection, law enforcement must determine whether the Order of Protection is valid. The “facial validity” test should be used to determine enforceability.

The Facial Validity Test

- Is the name of the state, tribal or territorial court that issued the Order present on the face of the Order?
- Are the names of the parties identified?
- Does the Order state that the court had jurisdiction over the subject matter and the parties?

- Does the Order have the signature of a judge or judicial officer?
- If the Order has an expiration date, it has not passed.

If an Order of Protection contains these indicators, then law enforcement must enforce, arrest, and charge the restrained party for the alleged violation of the Order of Protection. An officer may be held liable for failure to enforce a valid Order of Protection.

Law enforcement may also arrest for additional crimes. Law enforcement shall not arrest the protected party for violation of an order against the restrained party

Registration of Orders of Protection (NCIC)

Although entry in NCIC is not necessary for the order to be enforceable, all Orders of Protection issued in New Mexico shall be entered into NCIC. Registration of an out-of-state Order of Protection in New Mexico is not required for enforcement.

Types of Orders of Protection in New Mexico

There are four kinds of Orders of Protection issued by New Mexico Courts.

- A Temporary Order is an Order issued by a court prior to a hearing. The Temporary Order is only good until the hearing date.
- An Emergency Order is issued through law enforcement after contact with and approval by a District Court judge. This type of Order is enforceable for up to three days or until the next available date when the court is open.
- An extended Order of Protection is an Order issued after an evidentiary hearing.
- A Stipulated Order of Protection is issued after agreement of the parties.

All four types of Orders of Protection are valid and enforceable in New Mexico

The Gun Control Act and Orders of Protection

Federal law restricts the right of some restrained parties to own or possess firearms or ammunition. The Gun Control Act (*18 USC 922 (g) (8) and (9)*). states:

- A restrained party may not obtain, possess or transport a firearm or ammunition for as long as the Order of Protection is in effect;

- It may be a crime to sell or otherwise dispose of a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.

The portion of the Gun Control Act addressing Orders of Protection does not apply to official use weapons possessed by military or law enforcement personnel while on duty except when:

- The officer is convicted of a misdemeanor domestic violence crime that was a violation of federal or state law; and,
- There was an element of use or attempted use of physical force; or,
- An element of use or attempted use of a deadly weapon; and
- Where the officer was represented by counsel or knowingly waived rights to counsel and trial by jury; and
- The crime was committed against an intimate partner as defined by federal law.
- Under this situation the officer may not ever own or possess a firearm or ammunition.

The Gun Control Act has no official-use exemption for law enforcement or military personnel. If an officer has a misdemeanor conviction for domestic violence, the officer may not possess a firearm.

Misdemeanor domestic violence includes all misdemeanors that involve the use or attempted use of physical force (*e.g.*, simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the state statute or local ordinance specifically defines the offense as a domestic violence misdemeanor.

RESPONDING TO STALKING

First edition written by Officer Randall Glover, Law Enforcement Trainer and Consultant, Albuquerque, NM, with revisions and updates compiled by Sandy Bromley.¹

OVERVIEW

3.4 million people are stalked every year in the United States² and, in New Mexico, approximately 1 in 4 women (25%) and 1 in 14 men (7%) will be stalked in their lifetime.³ Increased awareness about the crime of stalking prompted the New Mexico legislature to pass a stalking statute in 1997 and refine the statute again in 2009. Despite the legislative advancements and staggering prevalence rates, only one-third of stalking victims report their victimization to law enforcement and only 1 in 17 file criminal charges.

Since 87% of those stalking victims also report being a victim of domestic violence, or another physical attack or sexual assault, early identification and effective disposition of stalking cases can prevent future criminal behavior and keep our communities safer. It is important, therefore, that law enforcement professionals receive training and guidance on the identification and investigation of stalking cases. This guide will provide the law enforcement professional with a basic understanding of stalking and guidelines for conducting effective stalking investigations.

UNDERSTANDING STALKING

Stalking is generally defined as a pattern of behavior directed at a person that would cause a reasonable person to experience fear. Stalking is a unique crime for two reasons. First, unlike many other crimes, stalking is, by its definition, an ongoing crime. It is comprised of a pattern of behavior, or course of conduct, in which stalkers engage to cause fear in their victims. Second, stalking can encompass a variety of behaviors (see chart below), many of which are non-criminal when taken out of context.

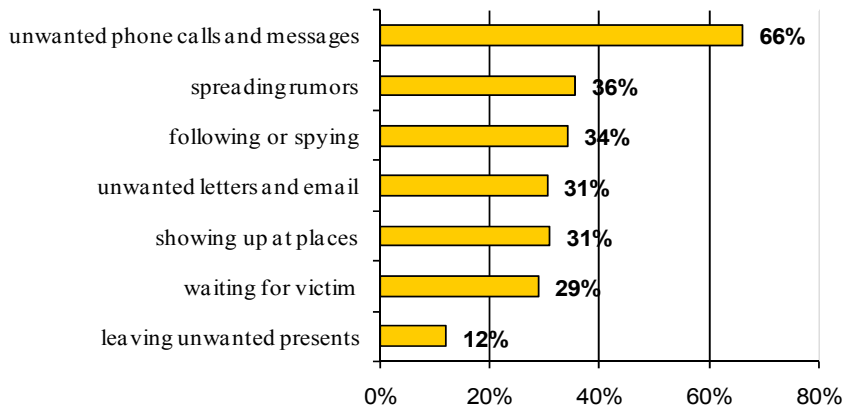
For example, a stalker may telephone the victim repeatedly or leave a gift on her front porch. Both behaviors may seem benign on their own. If, however, during the investigation of those acts, the victim reports that the stalker had previously connected a death threat to that particular gift, that benign gift takes on a completely different meaning. It is important, then, in stalking investigations to record each behavior the stalker is employing against their victim as well as the **context** in which it is being employed. Understanding why that particular behavior is causing the victim to experience fear is the key to understanding the stalking case.

¹ Ms. Bromley compiled information from *Creating an Effective Stalking Protocol* ((2002) Community Oriented Policing Services, US Department of Justice. Located at: <http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=32560>) and resource materials from the National Center for Victims of Crime's Stalking Resource Center (www.ncvc.org/src).

² All national statistics referenced in this guide can be found in: *Stalking Victimization in the United States*. (2009) Bureau of Justice Statistics, US Department of Justice.

³ All New Mexico statistics referenced in this guide can be found in: *Incidence and Nature of Domestic Violence In New Mexico VIII: An Analysis of 2007 Data From The New Mexico Interpersonal Violence Data Central Repository*. (July 2008) Caponera PhD, Betty. New Mexico Coalition of Sexual Assault Programs.

1 Common Stalking Behaviors (*Stalking Victimization in the United States, BJS (2009)*)



While stalking victims can be male or female, the majority of stalking victims are female (73% nationally). Additionally, stalking offenders can be male or female, although the majority of stalkers are male (67% of stalkers with female victims are male). Being stalked by a stranger is rare—only about 10% of all stalking cases involve a stranger stalker.

The most common type of relationship between the victim and the offender is one where the stalker is a current or former intimate partner. It follows, then, that there is a significant connection between stalking and intimate partner violence (both domestic and sexual violence). As referenced above, a majority of New Mexico stalking victims report having also been a victim of domestic violence, sexual assault or another physical attack. Thus, early identification of stalking crimes can prevent future physical violence and, in some cases, homicide. In fact, of the 2005 intimate partner violence-related homicides in New Mexico, 57% of the homicide victims were stalked prior to their murder.⁴ Timely and effective stalking investigations can support law enforcement agencies' overall crime control and prevention efforts in their communities.

NEW MEXICO STATUTES

As stated above, New Mexico first enacted their stalking statute in 1997. In 2009, the legislature amended the definition of pattern of conduct in the statute to reflect the variety of behaviors stalkers were employing in cases across the state, including the use of technology. Like many states across the country, New Mexico has a first-offense misdemeanor stalking statute as well as an aggravated stalking statute that can be utilized in certain circumstances, such as after a violation of an order of protection. Since stalking involves many different behaviors, it is often possible to charge many different crimes in addition to the stalking charge. Law enforcement should be familiar with these statutes and the variety of related charges they may be able to utilize.

⁴ *Domestic and Sexual Violence Related Homicides in New Mexico: The 2008 Annual Report of the New Mexico Domestic Violence Homicide Review Team and a Review of 2005 Homicides.* (December 2008) University of New Mexico Health Sciences Center and the Crime Victims Reparation Commission.

N.M. Stat. Ann. § 30-3A-3 (2010): Stalking (emphasis added)

A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in **reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.**

B. As used in this section:

(1) "lawful authority" means within the scope of lawful employment or constitutionally protected activity; and

(2) "**pattern of conduct**" means **two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.**

C. Whoever commits stalking is guilty of a **misdemeanor**. Upon a **second or subsequent conviction, the offender is guilty of a fourth degree felony.**

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program.

N.M. Stat. Ann. § 30-3A-3.1 (2010): Aggravated stalking (emphasis added)

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

- (1) who knowingly **violates a permanent or temporary order of protection⁵** issued by a court,
except that mutual violations of such orders may constitute a defense to aggravated stalking;
- (2) in **violation of a court order** setting conditions of release and bond;
- (3) when the person is in possession of a **deadly weapon**; or
- (4) when the **victim is less than sixteen years of age.**

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

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

N.M. Stat. Ann. § 30-3A-2 (2010): Harassment (emphasis added)

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**.

⁵ In *State v. Smile* (2009-NMCA-64, 146 N.M. 525), the New Mexico Court of Appeals held that the aggravated stalking statute requires only one act in furtherance of a pattern of stalking when there is an order of protection in place. Therefore, the stalker need only commit one additional behavior following the issuance of an order of protection against him to be charged with aggravated stalking. Explaining the importance of offender intervention and accountability in aggravated stalking cases, the Court states "*the Legislature imposed a harsher penalty when a stalker violates a TRO or a court order because a stalker who ignores such an order ostensibly poses a more serious threat to his or her victim. Having already been warned that his or her conduct is prohibited, an individual who continues to stalk disregards the rule of law and poses a significant threat to the safety of his or her victim.*"

Related statutes

- Assault against a household member with intent to commit a violent felony (30-3-14)
- Battery on a Household Member (30-3-15)
- Aggravated battery against a household member (30-3-16)
- Criminal damage to property of household member (30-3-18)
- Interference with Communications (30-12-1)
- Use of Telephone to Terrify, Intimidate, Threaten, Harass, Annoy or Offend (30-20-12)
- False Imprisonment (30-4-3)
- Criminal Sexual Penetration (30-9-11)
- Violation of Order of Protection (40-13-6)
- Assault (30-3-1) and Battery (30-3-4)
- Larceny (30-16-1)
- Identity Theft (30-16-24.1)
- Bribery or Intimidation of a Witness (30-24-3)
- Kidnapping (30-4-1)
- Murder (30-2-1)

INVESTIGATING STALKING

As stalking is an ongoing crime that encompasses a variety of behaviors, law enforcement must employ established community policing techniques in order to adequately identify and intervene in stalking cases. These techniques include early intervention, preventative action and proactive problem-solving. Each of these techniques will be explored in this guide, including considerations for dispatch, patrol officers and investigators or detectives.

Departmental Policy or Protocol

In addition to utilizing this guide, law enforcement departments should enact a policy or protocol on stalking for their agency.⁶ This policy or protocol should reflect the leadership's commitment to taking stalking cases seriously and proactively intervening in all stalking cases. The policy should also provide law enforcement with clear guidance on conducting effective stalking investigations in their communities. Enacting written policies or protocols on stalking also informs the community—victims and victim service providers alike—that the department will treat stalking seriously in order to keep victims safe and hold stalkers accountable.

The departmental policy or protocol should also include information about working with neighboring jurisdictions. In many stalking cases, the various behaviors that the stalker employs may occur in different jurisdictions. For example, a stalking victim may live in one jurisdiction but work in the neighboring jurisdiction and the stalker may be calling or following the victim in both jurisdictions. In these cases, it's helpful if law enforcement agencies have a predetermined protocol in place regarding how to investigate cross-jurisdictional stalking cases. Often times, agencies enter into memorandums of understanding (MOUs) or other cooperative agreements in order to share evidence collection or other investigation information. Case law around the country indicates that courts are likely to accept behaviors from a different jurisdiction as evidence of the ongoing course of conduct as long as at least one of the behaviors occurred in the court's jurisdiction.

⁶ Sample protocols are available online at the Stalking Resource Center website (www.nevc.org/src).

Dispatch considerations

Dispatch personnel are often the first responders to many stalking victims. It is crucial that any stalking policy or protocol, or training conducted for law enforcement, should also include information for dispatch personnel regarding their responsibilities in stalking cases. Dispatch personnel should be aware of the wide variety of crimes reported through 911 that can constitute stalking behavior. They should also be well trained on identification of stalking cases, including the importance of determining the context of the behaviors reported by stalking victims.

In addition to the typical first response questions from dispatch (location, identity of caller, nature of call, medical assistance required), where a stalking incident is suspected, dispatch should question the caller further to determine the risk for the caller and for law enforcement responding to the scene. These questions can include:

- Is it safe to speak?
- Is suspect present? If not, obtain a description of the suspect, his/her expected whereabouts, a description of any vehicle involved, and direction of travel.
- Does the suspect have or have access to a weapon?
- Are weapons involved or present?
- Who is in immediate danger?
- Have you been threatened or assaulted?
- Nature of threat or assault?
 - Likelihood of carrying out threat?
- Is anyone under the influence of alcohol or drugs?
- Are children present? If so, where are they and are they OK?
- Have there been any prior incidents?
 - Have they been reported?
- Does anyone have a current protection from abuse order?
- Is suspect suicidal? If so, get specifics.

Additionally, as time allows, dispatch personnel should utilize available local and national databases to research prior calls to the same residence, prior law enforcement reports, prior orders of protection, whether the suspect has a concealed weapons permit, and any other information that may be relevant to responding officers. It is important for dispatch to communicate to responding law enforcement that this is a suspected stalking incident and provide the information to all responding personnel.

Dispatch personnel can provide quality evidence for a stalking investigation. It is important, then, that dispatch maintains all recordings concerning stalking cases and that they document the calls thoroughly, including any statements made by witnesses or the victim during the call.

Patrol Officer Considerations

Any time a victim reports any type of harassing behavior, law enforcement should consider the possibility of stalking, determine whether this is an isolated incident, and take the victim's fear seriously. Patrol officers are primarily responsible for (1) placing the suspect's behavior in context, (2) assessing the threat to the victim and creating appropriate safety plans, and (3) beginning the evidence collection process.

Placing the suspect's behavior in context

Law enforcement must determine what the suspect's behavior means to the people involved. In order to prove that the stalker's behavior is creating fear in the victim, law enforcement will need to understand, through the victim's eyes, how the suspect's behavior is causing the victim to be afraid. This step often relies on building rapport and effectively communicating

with the stalking victim. A clear understanding of the context of the stalking case allows law enforcement, and later prosecutors and judges, to better assess the threat level that the stalker poses as well as the evidence necessary to hold the offender accountable for their criminal behavior.

Threat Assessment & Safety Planning

Patrol officers are also responsible for conducting on-scene threat assessment and safety planning for stalking victims. To do this, officers must thoroughly question the victim about the case, including prior threats made, actual pursuit of the victim, the history of domestic or sexual violence against the victim, prior orders of protection, and any other unsolicited contact from the stalker. It's often helpful for law enforcement to develop a timeline of stalking behaviors toward the victim to determine if there has been an escalation in the stalking behaviors. Any escalation should be factored in to the officer's threat assessment. This timeline also assists investigators in identifying the types of evidence to collect.

Threat assessment and safety planning are both ongoing tasks for law enforcement, the victim, the victim advocate and other people involved in the stalking case. The threat of future violence and stalking behaviors will vary by day, and sometimes by hour. Therefore, a plan to keep the victim safe will also vary. It's important to advise victims of the dynamic nature of threat assessment and safety planning and refer them to a victim advocate for ongoing support and advocacy services.

Threat Assessment

Patrol officers, and later investigators, can conduct threat assessment using a variety of methods. Many agencies utilize threat assessment software programs or other assessment forms to conduct their threat assessment. The New Mexico Uniform Domestic Violence Report form contains a small threat assessment checklist for patrol officers to utilize when on scene of a domestic violence or stalking case. The following are a basic set of questions officers can ask victims and witnesses in order to gather information needed to properly assess future risk or threat:

- Is there a history of abuse or threats? If so, did they include murder/suicide, or a threat to kill or injure any children?
- Is the victim aware of other people or animals abused by the suspect?
- Is there a history of suspect violence towards others?
- Has the suspect engaged in other stalking behavior (following, pursuit, criminal damage, vandalism) that law enforcement does not know about?
- Does the suspect abuse alcohol or other substances?
- Does the suspect possess, or have a fascination with, with weapons?
- Does the suspect live with any mental illness or treatment? Has the suspect presented any emotional instability or anger management problems?
- Is there a history of orders of protection (even with previous victims)?
- Is there a history of harassment and stalking behavior with others?
- Does the suspect have an arrest record? Felony or misdemeanor? Types of crime and arrest outcome? Criminal Convictions? Sentence and/or treatment/program imposed?
- Has the suspect made any threats, contact, or physical actions directed towards anyone connected to the victim? Or to past intimate partners?
- Has there been a change in the frequency of the stalking behavior?
- Has there been a change in the intensity of the stalking behavior?
- Is the victim in fear for her safety or that of a household member?

The threat assessment must also include any information about the suspect, their behavior, and their state of mind. The victim's belief in the threat, a "who cares" attitude on the part of the suspect, detailed and specific threats to the victim and others, rehearsals, the type of threat and the means to carry it out are all important considerations in threat determination.

Safety planning

Patrol officers should advise stalking victims of immediate safety measures (changing locks or temporarily relocating), refer them to appropriate services, such as available medical, shelter and victim advocacy services, and provide them with the procedures on obtaining orders of protection. Victims should also be encouraged to follow up with victim advocates or investigators to create a detailed and individualized safety plan. This safety plan should identify specific strategies and interventions that may increase the victim's safety. An ideal safety plan not only responds to the stalking and meets the victim's basic human needs, but is also adaptable to the victim's broader life plan. Some basic elements of a stalking victim's safety plan include:

- Maintaining a log of all incidents, behaviors and contacts in the stalking case. The log should reflect the date, time and contact information for any people who witnessed the stalking behavior.
- Obtaining a safer cell phone to use in emergencies or only with trusted contacts; have the cell phone available and charged at all times
- Attaching the original telephone (landline or cell) to a recording device or install a phone trap or call trace program
- Saving and preserving all evidence of stalking-related incidents (emails, pictures, gifts, text messages, notes, etc.). Talk to the investigator about how to preserve technological evidence in a timely manner.
- Considering a change to work hours and other predictable patterns and routes
- Considering all legal remedies, including obtaining orders of protection
- If safe, alerting coworkers, employer, neighbors, security guards, etc. about the stalking situation. Provide them with a photo or description of the stalker and, if there is an order of protection in place, provide them with a copy of the order and ask them to contact police if they see the stalker.
- Considering moving to a new location and putting all residential information in someone else's name or utilizing the state's Confidential Address Program (<http://www.sos.state.nm.us/sos-CAP.html>).

Beginning Evidence Collection

Evidence collection in stalking cases begins on scene when a patrol officer observes stalking behaviors (either directly or observes the result of the behaviors, e.g. slashed car tires) and conducts victim and/or suspect interviews. Patrol officers must clearly document everything they observe as well as all statements from the victim, the suspect (if present), and any witnesses. This documentation is crucial for investigators and prosecutors to later use as potential evidence, both physical (such as pictures of the slashed tire) and testimonial (witnesses).

Investigator/Detective Considerations

After the initial response in stalking cases, the case is often turned over to a detective or investigator to compile evidence and conduct a thorough investigation of the stalker and his criminal behaviors. [Note: In smaller jurisdictions, the patrol officer may also be the investigating officer. In these cases, departmental policy should address the support needed for investigating officers in order to adequately investigate an ongoing stalking case.] The investigator's primary goal in stalking cases is to establish corroboration of the stalking behavior to the suspect – marry the stalker to the stalking conduct in every way possible. Essential aspects of the investigation include:

Backgrounding the suspect. Learn as much about the stalker as possible. In domestic stalking cases, the victim is an extremely valuable source of information: no one knows more about the domestic stalker than the victim. You must ascertain the stalker's resources, modus operandi, motivation, and potential for violence. Conduct a thorough background

investigation of the stalker, utilizing all national and state databases and collecting vehicle, workplace, residential, and personal information about the suspect.

Advising the victim to consider obtaining an Order of Protection. Obtaining an order of protection provides law enforcement with an effective arrest and violence prevention tool. Victims should work with a victim advocate to consider the pros and cons in obtaining an order of protection, conduct a risk/threat assessment, and safety plan prior to obtaining any order.

Explaining the victim's role in the investigation. Victims can have an important role in the investigation of stalking. They are often the primary witness to the crime and, therefore, law enforcement can ask that they document any and all incidents of stalking and provide that information to the investigator.⁷ Victims should also consider how their behaviors affect their safety throughout the investigation process. Explain to the victim that they should avoid contact with the suspect so as to not encourage the offender further or be subject to further violence. Encourage victims to work with a victim advocate to assess their risk or threat in situations and to continually plan for how to keep them safe.

Early police intervention. If appropriate, i.e. after a review of the suspect's background information and an assessment of safety for both law enforcement and the victim, if there is not enough evidence for an immediate arrest, and if the suspect is not represented by counsel, attempt to make contact with the suspect in an official capacity. Explain that they are a suspect in an ongoing criminal stalking investigation and that their behavior must stop immediately. Further explain that if the behavior persists, they will face arrest and criminal prosecution. This warning should be well documented in a police report (including any statements made by the suspect in defense of their behavior) as it provides actual notice to the offender that his behavior is causing fear in the victim. Any subsequent stalking behavior following this warning is cause for an arrest.

Comprehensive evidence collection. In a stalking case, it is critical to collect all available evidence to prove the stalker's pattern of behavior and the additional elements of the statute. The stalking statute requires proof that the stalker (1) knowingly pursued (2) a pattern of conduct when they (3) intended that the pattern of conduct would place the victim in (4) reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of themselves or another person. The following are types of evidence that can be used to prove these four sections of the stalking statute:⁸

1. The stalker knowingly pursued a pattern of conduct

Sometimes a stalker utilizes lack of intent as a defense to a stalking charge, arguing that he did not intend to pursue a pattern of conduct. Stalkers may report that they just happened to run into the victim at the grocery store or had to drive by the victim's house in order to get to work every day. Law enforcement can overcome this defense several ways. First, they can utilize testimonial evidence. Victims and witnesses, such as neighbors, co-workers, and people in the grocery store, can provide testimony that the stalker made a statement in the store (such as, "I knew I'd find you here") or that the stalker specifically asked about the victim's whereabouts.

Second, law enforcement and prosecutors can provide physical evidence to prove that the stalker intended to engage in that specific behavior. For instance, in the example above where the stalker indicates that they drive by the victim's house in order to get to work, law

⁷ Examples of documentation and a free, downloadable Stalking Incident and Behavior Log are available at the Stalking Resource Center website (www.ncvc.org/src).

⁸ Please note that this is not an exhaustive compilation of evidence types. Each stalking case is unique and law enforcement should consider all possible behaviors that the stalker may employ in that specific case.

enforcement can create a map of the community that shows the victim's house, the stalker's house and the stalker's workplace. If the shortest route to and from work does not involve driving past the victim's house (or there is an alternate, similar distance route), the stalker is likely intentionally driving by the victim's house. Other physical evidence can prove the stalker intended to engage in a pattern of conduct by simply proving the pattern of conduct. For example, if a part of the pattern of conduct is an email sent to the victim by the stalker, law enforcement would only need to prove that the email came from the stalker's email address and from their IP (internet protocol) address. Therefore, simply by proving the behavior occurred, courts often agree that stalkers intended to engage in that behavior.

Third, law enforcement can strategically engage with the stalker directly to obtain information about their intent to engage in a pattern of behavior. Since stalkers often do not think what they are doing is wrong, they often admit to the various behaviors they have engaged in. If law enforcement begins their interaction with stalkers by disarming the suspect, i.e. "Tell me how we are misunderstanding your actions," stalkers often reply with an admission of their behavior. They may say that they are following the victim to ensure the safety of their children, or to see if the victim has a new romantic partner. These admissions can be great evidence for law enforcement and later prosecutors.

2. Pattern of Conduct

The pattern of behavior conducted by the stalker is often the easiest to prove, but, may take the most time for law enforcement to gather the various types of evidence needed to prove the pattern of behavior. The following are common types of behaviors stalkers employ that law enforcement should consider while collecting evidence in a stalking case:

Following Behaviors

- Following or "shadowing" on car or foot
- Sudden appearance at predictable places, such as work or residence, and times
- Hiring a private investigator (PI) or other person to report on whereabouts or activities
- Indirect following: using family, friends, co-workers or others to follow victim or report on her/his whereabouts or activities (*sometimes called stalking-by-proxy*)
- Destruction of victim's property: slashing tires, "keying" the victim's car, destroying personal property
- Exterior tampering with residence: vandalism, criminal damage
- Interior tampering with residence: rearranging furniture, theft of certain items, leaving items in residence, closing drains and turning water on, running dishwasher or laundry, turning up/down heat or air/conditioner
- "Bumping into" the victim at public places

Tracking Behaviors

- Using police reports or other public records (including online information brokers) to find victim's location, phone number or other information
- Tampering with victim's/friends/relatives mail to locate, harass, or screen the victim's associates, friends
- Following victim to determine new work, friends, residence, gym, church, etc.
- Use of electronic devices in victim's home, car, or workplace to monitor her/his activities (surveillance cameras, global positioning system (GPS) devices, computer or cell phone spyware, internet account passwords, recording devices, etc.)
- Hiring outside personnel or enlisting other third parties to track victim
- Direct contact with family, co-workers, friends, neighbors, etc. to obtain information about victim
- Ruse contact by the stalker pretending to be a co-worker, supervisor, faith leader, etc.
- Third party contact by private investigators or accomplices/co-conspirators to obtain information

from unwitting persons regarding the victim

- Family Violence Protection Act (FVPA) violations

Invasion of Victim's Privacy Behaviors

- Using postal service or private carrier to send cards, letters, flowers, gifts, or other suggestive items
- Placing/leaving notes/flowers/photos at victim's residence or workplace
- Following/tracking the victim, including repetitive drive-bys of victim's home, work, school, place of worship
- Unexpected encounters with stalker at work, home, gym, etc.
- Waiting/parking/going past victim's employment, school, residence
- Going through victim's mail/trash/e-mail to obtain information
- Tampering with or disabling alarm, lighting, phone, or utility systems
- Promulgating/circulating derogatory or inflammatory information about victim to others regardless of whether it is true
- Threatening, harassing, or repetitive phone calls, emails, text messages, social networking posts, etc.

Behaviors that Violate Statutory Law

- TRO or Order of Protection violations
- Tampering with mail or sending threats through mail
- Physical trespass
- Burglary
- Larceny (particularly of sentimental or precious objects)
- Vandalism
- Intimidation of a witness
- Criminal Damage to Property
- Harassment (by telephone, following, or tracking behaviors)
- Use of telephone to terrify, threaten, etc.
- Assault and/or battery
- False Imprisonment
- Kidnapping
- Abuse and/or cruelty to animals
- False or slanderous statements/reports

Evidence of the stalker's pattern of conduct can be testimonial (victims and witnesses testifying as to their observations of the stalker) or physical. Law enforcement can gather this evidence using a variety of methods – interviews of the stalker, the victim and all witnesses, physical surveillance of the stalker, search warrants of the stalker's house, or documentation from the victim or witnesses. The following list the types of evidence generated by each method:

Evidence Generated By the Victim or Witnesses

- Any documents/logs/journal/diary/record that the victim may have kept of the stalking behavior. This can show dates, times, locations of suspect behaviors and/or encounters.
- Any items delivered to the victim (letters, cards, notes, flowers, gifts, etc.) [*DNA and latent fingerprints may be obtainable.*]
- Proof of damaged property (either the item damaged or a digital photo with proper chain of custody)
- Any type of recorded materials (messages, songs, etc.): tapes/discs, voicemail, digital recordings, etc. Always document the date and time; create suitable digital recording of the messages if appropriate for future evidence submission. [*These can often be evidence of content and the tone of the communication.*]
- Prior orders of protection or police reports from other jurisdictions
- Any telephone call trace or phone traps from the telephone company.
- Telephone, cell phone, or credit card records
- Any evidence of phone tapping or other electronic surveillance (spyware, computer or text monitoring) by the suspect.
- Medical records (*with victim agreement*)

Evidence Generated by Law Enforcement

Search Warrants of Residences, Vehicles, Workplaces, Etc.

- Taped phone messages with victim and/or friends, family members
- Photographs of victim, trophies, keepsakes, souvenirs, etc.
- Photographs of victim's home, children, workplace, children's school, car, etc.
- Recorded evidence of documents, diaries, logs, videos, photo albums, etc. that show suspect's stalking activities and/or his/her fantasies or thoughts about the victim or other past or future victims
- Personal items that belong to the victim [*always ask victim to report to you any personal items that are missing*], including house and vehicle keys
- Equipment used in the stalking: cameras, video cameras, tape recorders, binoculars, electronic listening or surveillance equipment
- Videos or other tapes showing stalking activity or surveillance footage
- Desktop, laptop, cell phone, or other types of computing and/or recording devices containing activity logs, diaries, text messages, or other information regarding the stalker and his activities
- Information that shows the stalker is accessing the internet to research the victim (search history, social networking sites, blogs, spyware, use of information brokers, etc.)
- Stalking resource materials: books, videos, blogs, websites or manuals that deal with stalking, police procedures, kidnapping, violence, etc.

Additional Evidence Generated by Law Enforcement

- 911/Dispatch recordings
- Security video of relevant locations (stores, gym, banks, parking lots, workplace, etc.) that show the suspect stalking the victim
- Telephone, cell phone and credit card records [*look for any use of spoofing services or purchases of stalking equipment*]

- Email documentation [*notify the internet service provider at earliest possible time to prevent automatic destruction of the email*]
- Any certified copies of police report, convictions, order of protection, etc.
- Photographs/videos of damage, vandalism, graffiti, etc.
- Latent prints or DNA
- In line recorder device with voice activated digital recorder
- Call trace and trap installed on phone
- Collateral witness corroboration of stalking and/or harassment
- Work records and other information showing suspect's location and whereabouts in order to deflect alibi defenses
- Diagrams and Maps
- Law enforcement surveillance video or photographs of the stalker

3. The stalker intended that the pattern of conduct would place the victim in reasonable apprehension of...

This element often poses the most difficulty for law enforcement and prosecutors. Stalkers may report that they are following a victim out of concern for their welfare, or that they just wanted to prove how much they loved the victim. Stalkers may not easily admit that they intended their behavior to cause fear in the victim. Fortunately, law enforcement and prosecutors often have several types of evidence they can use to prove that reasonable people would feel fear based on the stalkers behavior and that the stalker should have known that their behavior would cause fear in the victim. First, if there is an existing order of protection or other court order in place that prohibits the stalker from contacting the victim and they do so anyway, this is clear evidence the stalker had notice that their behavior is wrong and by continuing the behavior, they would cause fear in their victims.

Second, law enforcement can use the offender's own behaviors as proof that the stalker knew they were intending to cause fear in the victim. Many of the stalker's declarative statements or threats-both verbal and physical- can be used against them when testified by the victim or witnesses:

Declarative Statements/Threats

- "I'm going to kill you."
- "I'm going to put a bullet in your brain."
- "You're going to cause your own death."
- "I hope you have life insurance at work."
- "You should tell your nosy mother good-bye."

Physical actions/Threats

- Pet mutilation or killing
- Black rose on car or porch
- Displaying weapon or making weapon-like gestures
- Doll in homicidal pose
- Family picture with face crossed out, yearbook with picture cut out
- Funeral home advertisement
- Sending life insurance information

It is vital to include context information with any of these types of evidence. A statement about the victim's mother may not be as threatening until it's discovered that the victim lives with a disability and relies upon their mother for daily life activities and financial support. Context is key to understanding the stalker's behavior, the victim's fear and therefore, the stalking case.

4. Reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of themselves or another person

In many stalking cases, victims report suffering a general fear for their safety. It is important for law enforcement to identify the victim's specific fear and why they may be feeling that way. As explained above, in many stalking cases, only the victim can explain the context of the relationship between themselves and the stalker. The victim may have to explain that they fear being sexually assaulted again because of a prior sexual assault by the offender or a specific threat the stalker made in the past. Testimonial evidence from the victim is often the most important in explaining reasonable apprehension in a stalking case.

To help establish the victim's reasonable apprehension, it's often helpful for law enforcement to ascertain what lifestyle changes the victim has made in response to the stalking behavior. These lifestyle changes can include:

- Moving to a different area/location/city
- Becoming a virtual shut-in in their own home
- Changing phone number, email address, or locks on their doors
- Taking medication, getting professional medical/mental help (*be sensitive to victim confidentiality concerns before presenting this as evidence*)
- Putting recording devices on her phone or saving other evidence of the stalker's behavior
- Missing work
- Being overly protective of children
- Telling others (including security personnel, neighbors, co-workers) about the stalking
- No longer going out or visiting places that were previously frequented
- Making personal safety changes (buying a dog or gun, installing a house alarm, obtaining pepper spray or a personal alarm, self-defense instruction, etc.)

Aggravated Stalking

While collecting evidence in a stalking case, law enforcement should consider whether they have any aggravating evidence. As aggravated stalking is a fourth degree felony, courts have more options to manage a stalker following criminal charges (e.g. supervised probation, educational or treatment programming), which may prevent the stalker from continuing criminal behavior and keep the victim safer. To charge aggravated stalking, law enforcement must gather evidence to prove the above four elements as well as an additional aggravator.

The aggravators are:

1. The stalker knowingly violated a permanent or temporary order of protection issued by a court
2. The stalker knowingly violated a court order setting conditions of release and bond
3. The stalker is in possession of a deadly weapon [*while committing any stalking behavior*]
4. The victim is less than sixteen years of age.

Neutralizing the Stalker. Every stalking investigation must be focused on keeping the victim safe, neutralizing the offender, preventing future harm, and building a quality stalking case. The investigator should:

- Use proactive law enforcement intervention early in the case
- Thoroughly investigate and monitor the suspect and all stalking behaviors
- Document everything
- Arrest when appropriate

- Assist in comprehensive evidence collection to ensure offender accountability
- Obtain search warrants
- Prepare a quality case file
- Continually monitor and assess the stalker for changes in activity or frequency and for increased evidence of violent intent
- Continually monitor and assess the victim's safety, including conducting ongoing threat assessment for the victim
- Be alert for "Significant or Dramatic Moments" where the stalker is again rejected, served with an order of protection or other legal documents (such as divorce papers), has contact with law enforcement, becomes angry or enraged, etc.

CONCLUSION

Early identification and effective disposition of stalking cases can prevent future criminal behavior and keep our communities safer. Law enforcement plays a crucial role in keeping stalking victims safe and holding stalkers accountable for their criminal behavior. Clear policy and guidance from agency leadership, comprehensive training on stalking identification and investigation techniques, and consistent application of the principles discussed in this guide will allow law enforcement to fulfill this role.

STRANGULATION IN SEXUAL ASSAULT & DOMESTIC VIOLENCE

By Ann Badway, Special Prosecutor, New Mexico Attorney General's Office and Former Deputy District Attorney, Felony Domestic Violence Division, 2nd Judicial District Attorneys Office, Albuquerque, NM.

PREVALENCE

In the year 2002, the Second Judicial District Attorney's Office, Felony Domestic Violence Division, prosecuted 396 cases. Of those, approximately 75% involved acts of strangulation.

The prevalence of strangulation during criminal sexual penetration (CSP) must also be noted. The Second Judicial District Attorney's Office, Violent Crimes Division, received 74 cases involving CSP in 2002. Of the twenty that were domestic violence related, eight also reported being strangled. Out of the remaining 54 CSP cases (not domestic violence related), six victims reported some aspect of strangulation.

In 2002, in Bernalillo County, two homicides were the result of strangulation, both were domestic violence related.

Nationwide, 10% of violent deaths in the U.S. each year are due to strangulation.

DEFINITION

Strangulation is defined as a form of asphyxia (lack of oxygen) characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck.

ANATOMY

The neck area is the single most vulnerable part of our anatomy. Clinical features of the neck include the hyoid bone, a horseshoe-shaped bone in the neck which helps support the tongue. The larynx, made up of cartilage, not bone, consists of two parts: the thyroid cartilage and the tracheal rings. Carotid arteries are the major vessels that transport the oxygenated blood from the heart and lungs to the brain. These are the arteries at the side of the neck that persons administering CPR (cardiopulmonary resuscitation) check for pulses. Jugular veins are the major vessels that transport deoxygenated blood from the brain back to the heart.

A victim may report to the officer he was "choked." Choke means the windpipe is blocked entirely or partly by some foreign object such as food. Strangle means to obstruct seriously or fatally the normal breathing of a person. Use the correct vocabulary when speaking with a victim.

SEQUENCE OF STRANGULATION

The sequence of someone who is being strangled is one of severe pain, followed by unconsciousness, then brain death. The victim will lose consciousness by any one or all of the following: 1. blocking of the carotid arteries (depriving brain of oxygen); 2. blocking of the jugular veins (preventing deoxygenated blood from exiting the brain); 3. closing off the airway, causing the victim to be unable to breathe.

UNCONSCIOUSNESS

1. Carotid Artery Occlusion (most common)

Takes only eleven (11) pounds of pressure for 10 seconds. If the pressure is released immediately, consciousness is regained in 10 seconds

2. **Jugular Vein Occlusion** (lateral neck location)
Takes only 4.4 lbs. of pressure to completely occlude

3. **Tracheal Occlusion**
Takes only 33 lbs. of pressure to completely occlude

4. **Brain Death**
Occurs within 4-5 minutes if strangulation persists

SYMPTOMS (subjective)

1. Voice Changes

Experienced by 50% of strangulation victims.
Ranges from minor hoarseness (which may turn out to be permanent) to a complete voice loss

2. Swallowing Changes

Ranges from difficult to painful due to the injury of the larynx cartilage and/or hyoid bone.

3. Breathing Changes

Range from difficult (e.g. hyperventilation) to inability to breathe. **NOTE-although breathing changes may initially appear to be mild, underlying injuries may kill the victim up to 36 or more hours later due to decompensation of the injured structures.** Breathing changes are due to laryngeal swelling or fracture.

4. Psychiatric Changes

Early on: restlessness and combativeness
Long term: psychosis and amnesia

SIGNS (objective, what the officer may see or hear)

1. Involuntary urination/defecation

2. **Miscarriage:** anecdotally reported, occurring hours to days later

3. **Visible Injuries**-scratches/abrasions/scrapes may be due to victim's own fingernails as a defensive maneuver, but commonly are a combination of lesions caused by both victim and attacker's fingernails. Lesion location will depend on: whether one or two hands were used and whether the strangulation occurred from in front of the victim vs. from the back of the victim.

4. **Fingernail Markings**- 3 types: a. impression-nails cut into the skin, comma or semi-circle shape; b. claw mark-skin undermined, dramatic, and may be grouped, parallel markings vertically down the neck, or scattered; c. scratches-superficial, long, narrow or wide as nail itself.

5. **Redness**- may be fleeting, may darken to a bruise. NOTE- because redness may not appear for hours or days, it is important to do follow up photos. Suggest that the victim have photos taken by friends/family. A single bruise on the neck is most frequently caused by the attacker's thumb. Look under chin, along jaw lines, behind ear.

6. **Spots (Petechiae)**- due to capillary rupture, found around the eyes (e.g. blood red eyes), face, and neck area and suggests a vigorous struggle.

7. **Ligature Marks-** These are distinctively different from hanging marks. The marks may reflect the type of ligature used, e.g. rope, chain, etc.. Photograph the neck area and collect ligature as evidence (e.g. bra, rope, phone cord).
8. **Neck Swelling-** may be caused by internal bleeding, underlying neck structure, or fracture of the larynx. **NOTE-SWELLING MAY CLOSE OFF THE AIRWAY WITHIN HOURS.**
9. **Lung Damage-** may be caused by vomit inhaled by the victim during strangulation. This is a very serious event, and may cause acid to digest the lung tissue, or cause the lungs to fill with liquid. **VERY SERIOUS.**
10. **Raspy Breathing- “stridor”-PRE-MORTAL, VERY SERIOUS.**
11. Victims may have no visible injuries whatsoever, with only fleeting symptoms. However, because of underlying brain damage due to the lack of oxygen during the strangling, **VICTIMS HAVE DIED UP TO SEVERAL WEEKS LATER.** Officers at the scene should request paramedics for a medical evaluation of all victims who report being strangled.

INVESTIGATION

Once a victim reports she was strangled, a thorough interview and investigation must be conducted. Given the dynamics of domestic violence, this may be the only opportunity to obtain complete, accurate information from the victim and witnesses. The level of injuries and symptoms will depend on many factors including method of strangulation, age and health of victim, whether victim tried to break free, size and weight of attacker, amount of force used, etc. **IN MOST CASES, THERE WILL BE NO VISIBLE INJURIES AT ALL.** The following outline should be used to elicit specific information about her symptoms which are consistent with someone who has been strangled, and will also assist in charging decisions.

METHOD/MANNER

1. How were you strangled? Describe and demonstrate.
2. Describe the position of you and the attacker? Did he use one or two hands? Did he use his forearm?
3. Was an object used?
4. Did he strangle you from the front or from the back?
5. Were you against a wall, or on the floor?
6. Photograph victim’s demonstration.
7. Tag object used
8. Where were you strangled? Location in the house, car etc. Look for corroborating evidence.
9. How long did it appear to go on? Did the strangling stop and start again?
10. How many times? Were different methods used?
11. How much pressure did you feel was used on a scale from 1 to 10, 10 being the most pressure?

IDENTIFY VISIBLE INJURIES

Look behind injuries, around the face, neck, scalp, shoulders, chest, eyelids, under the chin, and jaw. Document redness, scratch marks, scrapes, finger print marks, ligature marks and any patterns, tiny red spots, swelling, lumps around the neck area. Ask the victim to remove makeup. Ask the victim if she tried to release attacker's grip, and, if so, what she did. Remember, marks on the neck may also be from the victim attempting to stop the strangling. Note the length of both the victim and the attacker's nails.

EVIDENCE GATHERING

1. PAIN: Document if the victim has any pain and where. Is there any pain in her head, in any lumps?
2. LOCATION: If strangulation was near a wall or floor, was her head banged against the wall or floor during strangulation?
3. OBJECT used? Locate, tag, photo, describe how used.
4. PROPERTY damaged? Dry wall damaged from victim's head? Hair in dry wall?
5. PHOTOGRAPH THE VICTIM, OFFENDER, CHILDREN PRESENT, AND THE SCENE.
6. CHILDREN PRESENT? If so, where? How close were they to the physical violence?
7. INTERVIEW CHILDREN: What did they see and hear? Obtain their names and ages.
8. 911: Who called? If not the victim, get their name and what they saw and heard.
9. NEIGHBORS? Did they see or hear anything?
10. MEDICAL TREATMENT RECOMMENDED?
**** OBTAIN APPROPRIATE MEDICAL RELEASE FOR PARAMEDICS AND HOSPITAL *****

IDENTIFYING SYMPTOMS AND / OR INTERNAL INJURY

1. SHAKING going on during strangulation? Whiplash?
2. THROWING against wall, floor, car? Concussion?
3. BREATHING difficulty? Hyperventilating? Stridor?
4. THROAT pain?
5. Trouble swallowing? Drooling?
6. VOICE changes? Coughing?
7. ABILITY TO BREATHE IMPAIRED?
8. DIZZY, faint, lose consciousness?
9. URINATE/defecate?
10. PREGNANT? Attacker aware?
11. HOW PAINFUL was strangulation?
12. HEADACHES? WEAKNESS on either side of body?
13. Sensory deficits?
14. VOMIT? NAUSEA?
15. FORCED sexual acts occur?

ESTABLISHING MOTIVE, INTENT

1. What did the attacker say during the strangulation? Use quotes.
2. Describe attacker's demeanor, facial expression.

3. Where did objects come from, if ligature strangulation. May show premeditation.
4. What did the victim think was going to happen? (going to die?)
5. What caused the attacker to stop? (victim pass out, witness interrupt)
6. Prior acts of strangulation? Domestic violence?

ELIMINATE DEFENSES /EXCUSES

1. Did victim do anything to protect/defend herself?
2. Injuries on attacker? Where?
3. Take photos of suspect-especially if no injuries
4. Are any observed injuries on victim or attacker pre-existing?
5. Recent surgery?
6. If the alleged attacker claims mutual aggression or self-inflicted injuries, ask the victim to describe how they protected themselves. Attacker may be the only party with a visible injury. This is particularly true if he used the back approach for strangulation, as the victim may have bitten or scratched his arm.

IDENTIFYING DOMINANT AGGRESSOR

1. Height, weight of parties
2. Who is fearful of whom
3. Detail of statement and corroboration
4. Use of alcohol, drugs
5. Whether either party is subject to a restraining order or on probation for domestic violence
6. Pattern evidence
7. Injuries consistent with reported statement
8. Signs/symptoms of strangulation
9. Offensive/defensive injuries

CHARGING

1. Aggravated Battery Against a Household Member (Great Bodily Harm) 30-3-16 3rd degree felony
2. **Battery Against a Household Member 30-3-15 misdemeanor**
3. Attempt to Commit a Felony 30-28-1 penalty one degree lower than crime attempting
4. Assault Against A Household Member With Intent To Commit A Violent Felony 30-3-14, 3rd degree felony (crime intended must be one of 7 enumerated crimes listed under 30-3-14)
5. Attempted First Degree Murder 30-28-1 and 30-2-1 (A)
6. Attempted Second Degree Murder 30-28-1 and 30-2-1 (B)

Portions gratefully borrowed from San Diego Assistant City Attorney Gael Strack and George Mc Clane, M.D.

IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL VIOLENCE: SPECIAL CONSIDERATIONS

By **Melissa Ewer**, Esq., VAWA immigration attorney, Catholic Charities, Albuquerque, NM.

OVERVIEW

Immigrant victims of domestic and sexual violence often face additional fears and barriers as compared to American citizen victims of domestic and sexual violence. Just because an immigrant victim is married to a person in lawful status (e.g. an American citizen or permanent resident/"green card" holder) does not automatically assign the immigrant any legal status of his/her own. Under the rules of family-based immigration law, it is the decision of the U.S. citizen or permanent resident spouse to apply for the legal immigration status of his/her immigrant spouse. If the citizen or permanent resident chooses not to petition for his or her immigrant spouse and no paperwork is submitted to the U.S. Citizenship and Immigration Service (formerly "INS"), the immigrant may remain in an undocumented status regardless of the length of time the immigrant has been in this country. In domestic violence relationships, it is common for the U.S. citizen or permanent resident abuser to use tactics of power and control and either refuse to file the necessary paperwork to obtain legal immigration status for the victim or to make threats either to withdraw a pending application or turn the victim and his/her children over to Immigration. These threats may even be stated in front of law enforcement officers, which should be noted in the incident report. Some commonly heard threats from immigrant victims include:

"If you leave me, I'll call Immigration and have you deported. You'll never see your children again because they are U.S. citizens and they will stay here with me."

"Go ahead and call the police—they'll just turn you in to Immigration because you're here illegally."

"You have no rights in this country because you're here illegally. No one will help you because you're just a 'wetback'."

"I can do whatever I want to you because I'm an American citizen."

"I'll cancel your immigration papers if you tell anyone what I did to you."

"If you call the police and I get deported, I'll come back and kill you."

COMPLEXITY OF IMMIGRATION LAW AND LAW ENFORCEMENT'S ROLE

There are immigrants in every community and they are more visible in some communities than others. It is often difficult to figure out someone's immigration status. There are visas from A to V, in addition to many other kinds of legal immigration status, such as immigrants here with employment visas, conditional residents, immigrants in temporary protected status, asylees, parolees and refugees. A person may have a pending application with Immigration and not necessarily have any easily identifiable proof that they are here in lawful status. Immigration law is complex and it has been stated that immigration law is as complicated or more than the federal tax code. It is a difficult system to navigate even for those who are educated native English speakers. At present, local law enforcement [as opposed to Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP)] is not required to perform the difficult task of determining one's immigration status and in the case of immigrants reporting the crimes of domestic or sexual violence, officers should focus on the investigation of the reported crime rather than inquiring into the immigration status of the victim.

FEARS OF DEPORTATION AND HOW IT AFFECTS AN INVESTIGATION

Asking a victim about his/her immigration status can be very intimidating and discourage an immigrant victim from contacting law enforcement in the future. Just as in a dual arrest situation, if an immigrant victim believes that law enforcement is working in conjunction with Immigration, s/he may not cooperate fully with the investigation of the crime and may not call for help in the future for fear of being deported. It is common for the perpetrator to make comments to law enforcement regarding the immigration status of the victim if the victim is undocumented. This should be viewed as another form of threatening behavior by the perpetrator and is meant to distract law enforcement from investigating the crime at hand. Merely being present in the United States without permission is *not* currently a crime and there may be immigration options available to those here present without permission that would allow them to stay in the United States. Undocumented immigrant victims can still seek relief in the form of an order for protection and can still successfully participate in the prosecution of the offender, but fear of deportation may affect the victim's interest in accessing the legal system.

LANGUAGE AND INTERPRETATION ISSUES

Accuracy in reporting the details of a domestic or sexual violence investigation is essential and may be hindered if the victim is not a native English speaker. Even if a victim understands some English, s/he may not understand everything well and it is best to either call in for an officer that speaks the victim's language proficiently or use a telephonic interpretation service such as the AT & T Language Line (1-877-886-3885) to facilitate communication. Be sure to indicate in the incident report the language spoken by the victim and if an interpreter was used. If possible, avoid using children as interpreters, as this puts children in the awkward position of explaining (sometimes inaccurately) what happened between their parents and if an arrest is made, a child may blame him/herself or face violence him/herself as a consequence. Do not rely on the abuser to interpret for the victim, as this may lead to inaccurate information about the incident. Additionally, agencies receiving federal funding must comply with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin.

See <http://www.usdoj.gov/crt/cor/Pubs/policeqa.htm> for more information about serving crime victims who have limited English proficiency.

FEDERAL PROTECTIONS FOR UNDOCUMENTED IMMIGRANT VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE

In 1994, Congress passed the Violence Against Women Act (VAWA) and created provisions to allow certain immigrants who are victims of battery or extreme cruelty (physical abuse not required) to self-petition for lawful immigrant status without the assistance or knowledge of the abuser. In 2000, Congress amended VAWA, which eliminated many of the barriers faced by battered immigrants and also created two new visa categories: the T visa for certain victims of human trafficking and the U visa for certain victims of violent crimes, including domestic and sexual violence, who have been helpful, are being helpful or are likely to be helpful in the investigation or prosecution of the crime. In January 2006, Congress once again amended VAWA to create VAWA 2005, which further improves the available immigration remedies for immigrant victims. Regulations were issued for the U visa process in the fall 2007, requiring the signature of a chief or designated supervisor within the law enforcement/prosecuting agency attesting to the victim's helpfulness in order for the victim to proceed with a U visa application.

Some of the immigrant victims who may be eligible for relief under VAWA include:

- abused immigrants married to a U.S. citizen or legal permanent resident (“green card” holder)
- abused immigrant children who are the children (unmarried and under 25) or step-children of an abusive U.S. citizen or legal permanent resident
- abused immigrant parents (includes elder abuse) whose U.S. citizen son or daughter over 21 has been abusive
- immigrant parents of abused children when the abuser is a U.S. citizen or permanent resident
- abused immigrants who have cooperated in a law enforcement investigation or prosecution who are NOT married to the abuser
- abused immigrants who have cooperated in a law enforcement investigation or prosecution whose abusers are also here illegally
- abused conditional residents who married the abusive spouse in good faith who need to remove the conditions on the residency when the abusive spouse refuses to help with filing the application to remove the conditions on residency

If it seems that a victim of domestic or sexual violence may have an immigration issue, address this concern privately away from the abuser. Loss of actual or perceived power and control over the victim’s immigration status by the abuser can increase lethality. Also, rather than directly asking the victim what his/her immigration status is, it may be helpful to say to him/her: “I know there is help available for immigrant victims, even if they don’t have legal status in this country. If this is your situation, there may be a way for you to get your immigration status legalized without your boyfriend/husband.” Never create a sense of false hope in the victim that they will be able to legalize their status, but advise them to consult about their situation with immigration lawyer who routinely represents victims of domestic violence. DO NOT suggest that the victim go to Immigration to ask about what may be done regarding his/her immigration status, as this may result in the victim’s deportation.

**NEW MEXICO STATUTES
REGARDING SEXUAL OFFENSES OCTOBER, 2008**

**CHAPTER 30 CRIMINAL OFFENSES
ARTICLE 9: SEXUAL OFFENSES**

30-9-10. Definitions.

As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

A. "force or coercion" means:

- (1) the use of physical force or physical violence;
- (2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;
- (3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
- (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
- (5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion;

B. "great mental anguish" means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C. "patient" means a person who seeks or obtains psychotherapy;

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. "position of authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. "psychotherapist" means a person who is or purports to be a:

- (1) licensed physician who practices psychotherapy;
- (2) licensed psychologist;
- (3) licensed social worker;
- (4) licensed nurse;
- (5) counselor;
- (6) substance abuse counselor;
- (7) psychiatric technician;
- (8) mental health worker;
- (9) marriage and family therapist;

(10) hypnotherapist; or

(11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. "psychotherapy" means professional treatment or assessment of a mental or an emotional illness, symptom or condition;

H. "school" means any public or private school, including the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the New Mexico behavioral health institute at Las Vegas and the Carrie Tingley crippled children's hospital, that offers a program of instruction designed to educate a person in a particular place, manner and subject area. "School" does not include a college or university; and

I. "spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.

© 30-9-11. Criminal sexual penetration.

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under nine years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.

D. Criminal sexual penetration in the first degree consists of all sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) by the use of force or coercion on a child thirteen to eighteen years of age;

(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978].

F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section. Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

(1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child: or

(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.

30-9-12. Criminal sexual contact.

A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.

B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:

(1) inadvertent;

(2) casual social contact not intended to be sexual in nature; or

(3) generally recognized by mental health professionals as being a legitimate element of psychotherapy.

C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:

(1) by the use of force or coercion that results in personal injury to the victim;

(2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or

(3) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.

E. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

30-9-13. Criminal sexual contact of a minor.

A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:

- (1) on a child under thirteen years of age; or
- (2) on a child thirteen to eighteen years of age when:
 - (a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;
 - (b) the perpetrator uses force or coercion that results in personal injury to the child;
 - (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
 - (d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:

- (1) on a child under thirteen years of age; or
- (2) on a child thirteen to eighteen years of age when:
 - (a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;
 - (b) the perpetrator uses force or coercion which results in personal injury to the child;
 - (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons;or
- (d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child.

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

- (1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or
- (2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract

employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

30-6-3. Contributing to delinquency of minor.

Contributing to the delinquency of a minor consists of any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of eighteen years.

Whoever commits contributing to the delinquency of a minor is guilty of a fourth degree felony.

30-9-14. Indecent exposure.

A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.

B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C. Whoever commits indecent exposure is guilty of a misdemeanor.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.

© 30-9-14.1. Indecent dancing.

Indecent dancing consists of a person knowingly and intentionally exposing his intimate parts to public view while dancing or performing in a licensed liquor establishment. "Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola, and "exposing" does not include any act in which the intimate part is covered by any nontransparent material.

Whoever commits indecent dancing is guilty of a petty misdemeanor.

A liquor licensee, his transferee or their lessee or agent who allows indecent dancing on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

© 30-9-14.2. Indecent waitering.

Indecent waitering consists of a person knowingly and intentionally exposing his intimate parts to public view while serving beverage or food in a licensed liquor establishment. "Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola and "exposing" does not include any act in which the intimate part is covered by any nontransparent material.

Whoever commits indecent waitering is guilty of a petty misdemeanor.

A liquor licensee or his lessee or agent who allows indecent waitering on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

30-9-14.3. Aggravated indecent exposure.

A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:

- (1) exposure to a child less than eighteen years of age;
- (2) assault, as provided in Section 30-3-1 NMSA 1978;
- (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
- (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (5) battery, as provided in Section 30-3-4 NMSA 1978;
- (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or
- (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.

B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

© 30-9-16. Testimony; limitations; in camera hearing.

A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct, shall not be admitted unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that, the court finds that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible,

the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted.

© 30-9-17. Videotaped depositions of alleged victims who are under sixteen years of age; procedure; use in lieu of direct testimony.

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of Rule 611 of the New Mexico Rules of Evidence [Rule 11-611 NMRA]. Any videotaped deposition taken under the provisions of this act [this section] shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.

D. The cost of such videotaping shall be paid by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

© 30-9-17.1. Victims; polygraph examinations; prohibited actions.

A law enforcement officer, prosecuting attorney or other government official shall not ask or require an adult, youth or child victim of a sexual offense provided in Sections 30-9-11 through 30-9-13 NMSA 1978 to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation, charging or prosecution of the offense. The victim's refusal to submit to a polygraph examination or other truth-telling device shall not prevent the investigation, charging or prosecution of the offense.

© 30-9-18. Alleged victims who are under thirteen years of age; psychological evaluation.

In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, if the alleged victim is under thirteen years of age, the court may hold an evidentiary hearing to determine whether to order a psychological evaluation of the alleged victim on the issue of competency as a witness. If the court determines that the issue of competency is in sufficient doubt that the court requires expert assistance, then the court may order a psychological evaluation of the alleged victim, provided however, that if a psychological evaluation is ordered it shall be conducted by only one psychologist or psychiatrist selected by the court who may be utilized by either or both parties; further provided that if the alleged victim has been evaluated on the issue of competency during the course of investigation by a psychologist or psychiatrist selected in whole or in part by law enforcement officials, the psychological evaluation, if any, shall be conducted by a psychologist or psychiatrist selected by the court upon the recommendation of the defense.

© 30-9-19. Sexual assault; submission of DNA samples by law enforcement and laboratories.

A. Samples from biological material collected pursuant to a medical examination of a sexual assault victim shall be submitted by the investigating law enforcement agency to that agency's servicing laboratory for DNA testing. Records derived from DNA testing that qualify for insertion into CODIS shall be submitted by the servicing laboratory to the administrative center.

B. As used in this section:

(1) "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system pursuant to the provisions of the DNA Identification Act [29-16-1 NMSA 1978];

(2) "biological material" means material that is derived from a human body and includes bodily fluids, hair and skin cells;

(3) "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

(4) "DNA" means deoxyribonucleic acid

(5) "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples; and

(6) "sample" means a sample of biological material sufficient for DNA testing.

© 30-9-20. Voyeurism prohibited; penalties.

A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:

(1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or

(2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony

C. As used in this section:

(1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and

(2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

30-4-1. Kidnapping.

A. Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

- (1) that the victim be held for ransom;
- (2) that the victim be held as a hostage or shield and confined against his will;
- (3) that the victim be held to service against the victim's will; or
- (4) to inflict death, physical injury or a sexual offense on the victim.

B. Whoever commits kidnapping is guilty of a first degree felony, except that he is guilty of a second degree felony when he voluntarily frees the victim in a safe place and does not inflict physical injury or a sexual offense upon the victim.

30-4-3. False imprisonment.

False imprisonment consists of intentionally confining or restraining another person without his consent and with knowledge that he has no lawful authority to do so.

Whoever commits false imprisonment is guilty of a fourth degree felony.

30-10-3. Incest.

Incest consists of knowingly intermarrying or having sexual intercourse with persons within the following degrees of consanguinity: parents and children including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews.

Whoever commits incest is guilty of a third degree felony.

FORCED PROSTITUTION, PROSTITUTION, AND HUMAN TRAFFICKING

30-9-2. Prostitution.

Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire.

As used in this section "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission.

Whoever commits prostitution is guilty of a petty misdemeanor, unless such crime is a second or subsequent conviction, in which case such person is guilty of a misdemeanor.

30-9-3. Patronizing prostitutes.

Patronizing prostitutes consists of:

A. entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or

B. knowingly hiring or offering to hire a prostitute, or one believed by the offer or to be a prostitute, to engage in a sexual act with the actor or another.

As used in this section, "a sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or an anal opening of another whether or not there is any emission.

Whoever commits patronizing prostitutes is guilty of a petty misdemeanor, unless such crime is a second or subsequent conviction, in which case such person is guilty of a misdemeanor.

30-9-4. Promoting prostitution.

Promoting prostitution consists of any person, acting other than as a prostitute or patron of a prostitute:

- A. knowingly establishing, owning, maintaining or managing a house of prostitution or a place where prostitution is practiced, encouraged or allowed, or participating in the establishment, ownership, maintenance or management thereof;
- B. knowingly entering into any lease or rental agreement for any premises which a person partially or wholly owns or controls, knowing that such premises are intended for use as a house of prostitution or as a place where prostitution is practiced, encouraged or allowed;
- C. knowingly procuring a prostitute for a house of prostitution or for a place where prostitution is practiced encouraged or allowed;
- D. knowingly inducing another to become a prostitute;
- E. knowingly soliciting a patron for a prostitute or for a house of prostitution or for any place where prostitution is practiced, encouraged or allowed;
- F. knowingly procuring a prostitute for a patron and receiving compensation therefore,
- G. knowingly procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of promoting that person's engaging in prostitution;
- H. knowingly procuring through promises, threats, duress or fraud any person to come into the state or causing a person to leave the state for the purpose of prostitution; or
- I. under pretense of marriage, knowingly detaining a person or taking a person into the state or causing a person to leave the state for the purpose of prostitution.

Whoever commits promoting prostitution is guilty of a fourth degree felony.

30-9-4.1. Accepting earnings of a prostitute.

Accepting the earnings of a prostitute consists of accepting, receiving, levying or appropriating money or anything of value, without consideration, from the proceeds of the earnings of a person engaged in prostitution with the knowledge that the person is engaged in prostitution and that the earnings are derived from engaging in prostitution, or knowingly owning or knowingly managing a house or other place where prostitution is practiced or allowed and living or deriving support or maintenance, in whole or in part, from the earnings or proceeds of a person engaged in prostitution at that house or place.

Whoever commits accepting the earnings of a prostitute is guilty of a fourth degree felony.

© 30-52-.1. Human trafficking.

- A. Human trafficking consists of a person knowingly:
 - (1) recruiting, soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity;

(2) recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or

(3) benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

B. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to enforce the provisions of this section.

C. Whoever commits human trafficking is guilty of a third degree felony; except if the victim is under the age of:

(1) sixteen, the person is guilty of a second degree felony; or

(2) thirteen, the person is guilty of a first degree felony.

D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

E. In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.

F. A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages in accordance with Section 31-17-1 NMSA 1978.

G. As used in this section:

(1) "coercion" means:

(a) causing or threatening to cause harm to any person;

(b) using or threatening to use physical force against any person;

(c) abusing or threatening to abuse the law or legal process;

(d) threatening to report the immigration status of any person to governmental authorities; or

(e) knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person; and

(2) "commercial sexual activity" means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.

© 30-52-2. Human trafficking; benefits and services for human trafficking victims.

A. Human trafficking victims found in the state shall be eligible for benefits and services from the state until the victim qualifies for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000; provided that the victim cooperates in the investigation or prosecution of the person charged with the crime of human trafficking. Benefits and services shall be provided to eligible human trafficking victims regardless of immigration status and may include:

(1) case management;

(2) emergency temporary housing;

(3) health care;

(4) mental health counseling;

(5) drug addiction screening and treatment;

(6) language interpretation, translation services and English language instruction;

- (7) job training, job placement assistance and post-employment services for job retention;
- (8) services to assist the victim and the victim's family members; or
- (9) other general assistance services and benefits as determined by the children, youth and families department.

B. As used in this section, "human trafficking victim" means a person subjected to human trafficking by a person charged in New Mexico with the crime of human trafficking.

ARTICLE 6A SEXUAL EXPLOITATION OF CHILDREN

30-6-1. Abandonment or abuse of a child.

A. As used in this section:

- (1) "child" means a person who is less than eighteen years of age;
- (2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and
- (3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

- (1) placed in a situation that may endanger the child's life or health;
- (2) tortured, cruelly confined or cruelly punished; or
- (3) exposed to the inclemency of the weather.

E. Whoever commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, he is guilty of a first degree felony.

F. Whoever commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. Whoever commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. Whoever commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital.

© **30-6A-1. Short title.**

Sections 1 through 4 [30-6A-1 to 30-6A-4 NMSA 1978] of this act may be cited as the "Sexual Exploitation of Children Act".

30-6A-2. Definitions.

As used in the Sexual Exploitation of Children Act [30-6A-1 NMSA 1978]:

A. "prohibited sexual act" means:

- (1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
- (2) bestiality;
- (3) masturbation;
- (4) sadomasochistic abuse for the purpose of sexual stimulation; or
- (5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

B. "visual or print medium" means:

- (1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or
- (2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

C. "performed publicly" means performed in a place that is open to or used by the public;

D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and

E. "obscene" means any material, when the content is taken as a whole:

- (1) appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;
- (2) portrays a prohibited sexual act in a patently offensive way; and
- (3) lacks serious literary, artistic, political or scientific value.

© **30-6A-3. Sexual exploitation of children.**

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has

reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.

C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony.

E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

F. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.

G. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978.

30-6A-4. Sexual exploitation of children by prostitution.

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

B. Any person hiring or offering to hire a child over the age of thirteen and under the age of sixteen to engage in any prohibited sexual act is guilty of a second degree felony.

C. Any parent, legal guardian or person having custody or control of a child under sixteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a third degree felony.

30-9-1. Enticement of child.

Enticement of child consists of:

A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 to 30-9-9 NMSA 1978] of the Criminal Code; or

B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.

Whoever commits enticement of child is guilty of a misdemeanor.

<p style="text-align: center;">CHAPTER 30 CRIMINAL OFFENSES ARTICLE 37 SEXUALLY ORIENTED MATERIALS HARMFUL TO MINORS</p>
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30-37-1. Definitions.

As used in this act:

A. "minor" means any unmarried person who has not reached his eighteenth birthday;

B. "nudity" means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state;

C. "sexual conduct" means act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;

D. "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

E. "sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;

F. "harmful to minors" means that quality of any description of representation, in whatever form, of nudity,

sexual conduct, sexual excitement or sado-masochistic abuse, when it:

- (1) predominantly appeals to the prurient, shameful or morbid interest of minors; and
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) is utterly without redeeming social importance for minors; and

G. "knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of:

- (1) the character and content of any material described herein, which is reasonably susceptible of examination by the defendant;
- (2) the age of the minor.

30-37-2. Offenses; books; pictures.

It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or

B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

30-37-2.1. Offenses; retail display.

A. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the cover of which depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement and which is harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such books, magazines or printed materials may be displayed behind an opaque covering which conceals the depiction of nudity, sado-masochistic abuse, sexual conduct or sexual excitement, provided that those books, magazines or printed materials are not within the convenient reach of minors who may frequent the retail establishment.

B. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the content of which exploits, is devoted to or is principally made up of descriptions or depictions of nudity, sado-masochistic abuse, sexual conduct or sexual excitement and which are harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

30-37-3. Offenses; motion pictures; plays.

It is unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

30-37-3.1. Outdoor theaters; offenses.

A. It is unlawful for the owner or operator of an outdoor motion picture theater to show or exhibit any motion picture which in whole or in part depicts unclothed sexual conduct in an outdoor theater unless the exhibitor can prove that the outdoor screen on which the picture is to be shown cannot be seen by any minor who has not taken extraordinary measures to view the screen or who is not within the area provided for those persons who have been admitted by a ticket or pass.

B. As used in this section, "unclothed sexual conduct" means an act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's unclothed genitals, pubic area or buttocks.

C. The notice provisions of Section 30-37-4 NMSA 1978 shall not apply to this section.

© 30-37-3.2. Child solicitation by electronic communication device.

A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child. Whoever commits child solicitation by computer is guilty of a fourth degree felony.

B. Whoever commits child solicitation by electronic communication device is guilty of a:

(1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or

(2) third degree felony if the child is under thirteen years of age

C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:

(1) third degree felony if the child is at least thirteen but under sixteen years of age; or

(2) second degree felony if the child is under thirteen years of age.

D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.

E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.

F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

© 30-37-3.3. Criminal sexual communication with a child; penalty.

A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.

B. Whoever commits sexual communication with a child is guilty of a fourth degree felony.

C. As used in this section:

(1) "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and

(2) "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

30-37-4. Notice; prosecution.

A. No prosecution based under this act shall be commenced unless the district attorney of the county in which the offense occurs shall have previously determined that the matter or performance is harmful to minors and the defendant shall have received actual or constructive

notice of such determination. Persons shall be presumed to have constructive notice of such determination on the fifth business day following publication of a notice of such determination in a newspaper of general circulation in the county in which the prosecution takes place.

B. Any person adversely affected by such determination may, at any time within thirty days after such notice is given, seek a judicial determination of its correctness. The court shall, unless otherwise agreed by the parties, render judgment not later than two court days following trial. Filing of an action under this section shall stay prosecution until a judicial determination is rendered, but no appeal shall have such effect unless so ordered by the trial court.

C. No criminal action shall be commenced in any other judicial district within this state during the pendency of the civil action authorized by Subsection B of Section 4 [this section] regarding the same matter, exhibition or performance.

30-37-5. Exclusions; defenses.

No person shall be guilty of violating the provisions of this act:

A. where such person had reasonable cause to believe that the minor involved had reached his eighteenth birthday, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor had reached his eighteenth birthday; or

B. if the minor was accompanied by his parent or guardian, or the parent or guardian has in writing waived the application of this act either generally or with reference to the particular transaction; or

C. where such person had reasonable cause to believe that the person was the parent or guardian of the minor; or

D. where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

30-37-6. Offenses by minor.

A. It is unlawful for any minor to falsely represent to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that such minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 [30-37-2 NMSA 1978] of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 [30-37-3 NMSA 1978] of this act.

B. It is unlawful for any person to knowingly make a false representation to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that he is the parent or guardian of any minor, or that any minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 [30-37-2 NMSA 1978] of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 [30-37-3 NMSA 1978] of this act.

30-37-7. Penalties.

A. A person violating Section 30-37-2, 30-37-2.1, 30-37-3 or 30-37-3.1 NMSA 1978 is guilty of a misdemeanor

B. Any person violating the provisions of Section 30-37-6 NMSA 1978 shall be guilty of a petty misdemeanor.

© 30-37-8. Uniform application.

In order to provide for the uniform application of this act to all minors within this state, it is intended that the sole and only regulation of the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to, or exhibition of, any performance described in Section 3 [30-37-3 NMSA 1978], shall be under this act, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to any performance described in Section 3 [30-37-3 NMSA 1978], including but not limited to criminal offenses, classification of suitable matter or performances for minors, or licenses or taxes respecting the sale, distribution, exhibition or provision of matter regulated under this act. All such laws, ordinances, regulations, taxes or licenses, whether enacted before or after this act, shall be or become void, unenforceable and of no effect upon the effective date of this act.

© 30-37-9. Legislative findings and purpose.

The legislature finds that children do not have the judgment necessary to protect themselves from harm and that the legislature has the inherent power to control commercial conduct within this state for the protection of minors in a manner that reaches beyond the scope of its authority to protect adults. The legislature also finds that regulation of content at outdoor theaters does not deprive adults from viewing that content at indoor theaters.

30-37-10. Offenses; certain tie-in arrangements unlawful.

A. It is unlawful for any person offering for sale, selling or distributing books, magazines or other printed material to require, as a condition for any such sale or delivery, that the purchaser or receiver of the delivery purchase or accept the delivery of any other book, magazine or other printed matter which contains sexually oriented material harmful to minors as defined in Subsection F of Section 30-37-1 NMSA 1978. Nothing in this subsection prohibits the sale or purchase on a voluntary basis of books, magazines or other printed material containing sexually oriented material.

B. Any person violating the provisions of Subsection A of this section shall be guilty of a misdemeanor.

30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions.

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

- (1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or
- (2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

- (1) humanely destroying a sick or injured animal; or
- (2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent

conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

- (1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or
- (2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;
- (5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;
- (6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or
- (7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

<p style="text-align: center;">CHAPTER 32A CHILDREN'S CODE ARTICLE 4: CHILD ABUSE AND NEGLECT</p>

32A-4-2. Definitions.

As used in the Abuse and Neglect Act [32A-4-1 NMSA 1978]:

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

- (1) left the child without provision for the child's identification for a period of fourteen days; or
- (2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

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

B. "abused child" means a child:

- (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
- (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
- (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
- (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
- (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

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

- (1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
- (2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;
- (3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
- (4) had his parental rights over a sibling of the child terminated involuntarily;

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

E. "neglected child" means a child:

- (1) who has been abandoned by the child's parent, guardian or custodian;
- (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
- (3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;
- (4) whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
- (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code [32A-1-1 NMSA 1978] shall be construed to imply that a child who

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

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

- (1) there is not a justifiable explanation for the condition or death;
- (2) the explanation given for the condition is at variance with the degree or nature of the condition;
- (3) the explanation given for the death is at variance with the nature of the death; or
- (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

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

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

- (1) allowing, permitting or encouraging a child to engage in prostitution;
- (2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
- (3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law.

© 32A-4-3. Duty to report child abuse and child neglect; responsibility to investigate child abuse or neglect; penalty.

A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- (1) a local law enforcement agency;
- (2) the department; or
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.

B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

- C. The recipient of the report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child-care facilities.
- D. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by a local law enforcement officer trained in the investigation of child abuse and neglect. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.
- E. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act [32A-4-1 NMSA 1978].
- F. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

© 32A-4-4. Complaints; referral; preliminary inquiry.

- A. Reports alleging neglect or abuse shall be referred to the department, which shall conduct an investigation to determine the best interests of the child with regard to any action to be taken. The name and information regarding the person making the report shall not be disclosed absent the consent of the informant or a court order.
- B. During the investigation of a complaint alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. A representative of the department shall at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was made.
- C. After completion of the investigation on a neglect or abuse report, the department shall either recommend or refuse to recommend the filing of a petition.
- D. When a child is taken into custody, the department shall file a petition within two days. If a petition is not filed in a timely manner, the child shall be released to the child's parent, guardian or custodian.

© 32A-4-5. Admissibility of report in evidence; immunity of reporting person; investigation of report.

- A. In any proceeding alleging neglect or abuse under the Children's Code [32A-1-1 NMSA 1978] resulting from a report required by Section 32-4-3 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject

of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32-4-3 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the public official, any school personnel or other person who has the duty to report child abuse pursuant to Section 32-4-3 NMSA 1978 shall permit a member of a law enforcement agency, including tribal police officers, an employee of the district attorney's office, an investigative interviewer for a program described in Subsection E of this section or an employee of the department, to interview a child with respect to a report without the permission of the child's parent or guardian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. An investigation may be conducted by law enforcement, the district attorney's office, a program described in Subsection E of this section and the department. Interviews shall be conducted in a manner and place that protects the child and family from unnecessary trauma and embarrassment. The investigating entity shall conduct the investigation in a manner that will protect the privacy of the child and the family, with the paramount consideration being the safety of the child.

E. If a community has a program for child abuse investigation that includes an investigation interview of the alleged victim, the investigation may be conducted at a site designated by the community program.

F. Prior to interviewing a child, the department shall notify the parent or guardian of the child who is being interviewed, unless the department determines that notification would adversely affect safety of the child about whom the report has been made or compromise the investigation.

© 30-6-4. Obstruction of reporting or investigation of child abuse or neglect.

Obstruction of reporting or investigation of child abuse or neglect consists of:

A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting, pursuant to Section 32-1-15 NMSA 1978, child abuse or neglect, including child sexual abuse; or

B. knowingly obstructing, delaying, interfering with or denying access to a law enforcement officer or child protective services social worker in the investigation of a report of child abuse or sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a misdemeanor.

**CONTENTS OF JUDICIAL VOLUMES RULES OF EVIDENCE
ARTICLE 5 PRIVILEGES**

11-506. Communications to clergy.

A. Definitions. As used in this rule:

- (1) a "member of the clergy" is a minister, priest, rabbi or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that person;
- (2) a communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy as a spiritual adviser.

C. Who may claim the privilege. The privilege may be claimed by the person or by the person's guardian, conservator or, upon death, personal representative. The member of the clergy may claim the privilege on behalf of the person. The authority to claim the privilege is presumed in the absence of evidence to the contrary.

ADULT PROTECTIVE SERVICES ACT

CHAPTER 27 PUBLIC ASSISTANCE ARTICLE 7 ADULT PROTECTIVE SERVICES

© 27-7-16. Definitions.

As used in the Adult Protective Services Act [27-7-14 NMSA 1978]:

- A. "ability to consent" means an adult's ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision;
- B. "abuse" means:
- (1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish;
 - (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult; or
 - (3) sexual abuse, including criminal sexual contact, incest and criminal sexual penetration;
- C. "adult" means a person eighteen years of age or older;
- D. "caretaker" means a facility, provider or individual that has assumed the responsibility for the care of an adult;
- E. "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of an incapacitated adult;
- F. "court" means the district court having jurisdiction;
- G. "department" means the aging and long-term services department;
- H. "emergency" means that an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to the adult or others;
- I. "exploitation" means an unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise;
- J. "facility" means a hospital, nursing home, residential care facility, group home, foster care home, assisted living facility or other facility licensed by the state, but does not include a jail, prison or detention facility;
- K. "guardian" means a person who has qualified to provide for the care, custody or control of an incapacitated adult pursuant to testamentary or court appointment, but excludes one who is a guardian ad litem;
- L. "incapacitated adult" means any adult with a mental, physical or developmental condition that substantially impairs the adult's ability to provide adequately for the adult's own care or protection;

- M. "multidisciplinary team" means a team composed of diverse professionals who meet periodically to consult on or enhance appropriate community responses to abuse, neglect or exploitation of adults;;
- N. "neglect" means the failure of the caretaker of an adult to provide for the basic needs of the adult, such as clothing, food, shelter, supervision and care for the physical and mental health of that adult; "neglect" includes self-neglect;
- O. "protected adult" means an adult for whom a guardian or conservator has been appointed or other protective order has been made or an abused, neglected or exploited adult who has consented to protective services or protective placement;
- P. "protective placement" means the placement of an adult with a provider or in a facility or the transfer of an adult from one provider or facility to another;
- Q. "protective services" means the services furnished by the department or its delegate, as described in Section 27-7-21 NMSA 1978;
- R. "provider" means a private-residence or health care worker or an unlicensed residential or nonresidential entity that provides personal, custodial or health care;
- S. "self-neglect" means an act or omission by an incapacitated adult that results in the deprivation of essential services or supports necessary to maintain the incapacitated adult's minimal mental, emotional or physical health and safety;
- T. "substantiated" means a determination, based on a preponderance of collected and assessed credible information, that abuse, neglect or exploitation of an incapacitated or protected adult has occurred; and.
- U. "surrogate" means a person legally authorized to act on an adult's behalf.

© 27-7-30. Duty to report.

- A. Any person, including financial institutions, having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited shall immediately report that information to the department.
- B. The report required in Subsection A of this section may be made orally or in writing. The report shall include the name, age and address of the adult, the name and address of any other person responsible for the adult's care, the nature and extent of the adult's condition, the basis of the reporter's knowledge and other relevant information.
- C. Any person failing or refusing to report, or obstructing or impeding any investigation, as required by Subsection A of this section is guilty of a misdemeanor.
- D. The department may assess a civil penalty not to exceed ten thousand dollars (\$10,000) per violation against a person that violates the provisions of Subsection A of this section or obstructs or impedes any investigation as required pursuant to Subsection A of this section. The department may assess and collect the penalty, after notice and an opportunity for hearing before a hearing officer designated by the department to hear the matter, upon a determination that a person violated the provisions of Subsection A of this section or obstructed or impeded any investigation as required pursuant to this section. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum. Additionally, if the violation is against a person covered by the Personnel Act [10-9-1 NMSA 1978], the department shall refer the matter to the agency

employing the person for disciplinary action. Any party may appeal a final decision by the department to the court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

27-7-31. Immunity.

Any person making a report pursuant to Section 27-7-30 NMSA 1978, testifying in any judicial proceeding arising from the report or participating in a required evaluation pursuant to the Adult Protective Services Act [27-7-14 NMSA 1978] or any law enforcement officer carrying out his responsibilities under that act or any person providing records or information as required under that act shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose.

CHAPTER 30 CRIMINAL OFFENSES
ARTICLE 47 RESIDENT ABUSE AND NEGLECT

30-47-2. Purpose.

The purpose of the Resident Abuse and Neglect Act [30-47-1 NMSA 1978] is to provide meaningful deterrents and remedies for the abuse, neglect or exploitation of care facility residents and to provide an effective system for reporting instances of abuse, neglect or exploitation.

30-47-3. Definitions.

As used in the Resident Abuse and Neglect Act [30-47-1 NMSA 1978]:

A. "abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

- (1) physical contact that harms or is likely to harm a resident of a care facility;
- (2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a resident;
- (3) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;
- (4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;
- (5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;
- (6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident;

B. "care facility" means a hospital; skilled nursing facility; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or out-patient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care, sheltered care or nursing care for one or more persons; adult day care center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home but does not include a care facility located at or performing services for any correctional facility;

C. "department" means the human services department or its successor, contractor, employee or designee;

D. "great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care;

E. "great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time;

F. "neglect" means, subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

- (1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;
- (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident; or
- (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident;

G. "person" means any individual, corporation, partnership, unincorporated association or other governmental or business entity;

H. "physical harm" means an injury to the body that causes substantial pain or incapacitation; and

I. "resident" means any person who resides in a care facility or who receives treatment from a care facility.

30-47-4. Abuse of a resident; criminal penalties.

A. Whoever commits abuse of a care facility resident that results in no harm to the resident is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978.

B. Whoever commits abuse of a resident that results in physical harm or great psychological harm to the resident is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever commits abuse of a resident that results in great physical harm to the resident is guilty of a third degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Whoever commits abuse of a resident that results in the death of the resident is guilty of a second degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-47-5. Neglect of a resident; criminal penalties.

A. Whoever commits neglect of a resident that results in no harm to the resident is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978.

B. Whoever commits neglect of a resident that results in physical harm or great psychological harm to the resident is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever commits neglect of a resident that results in great physical harm to the resident is guilty of a third degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Whoever commits neglect of a resident that results in the death of the resident is guilty of a second degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

© 30-47-6. Exploitation; criminal penalties.

A. Exploitation of a resident's property consists of the act or process, performed intentionally, knowingly or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

B. Whoever commits exploitation of a resident's property when the value of the property exploited is two hundred fifty dollars (\$250) or less is guilty of a petty misdemeanor.

C. Whoever commits exploitation of a resident's property when the value of the property exploited is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a misdemeanor.

D. Whoever commits exploitation of a resident's property when the value of the property exploited is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony.

E. Whoever commits exploitation of a resident's property when the value of the property exploited is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.

F. Whoever commits exploitation of a resident's property when the value of the property exploited is over twenty thousand dollars (\$20,000) is guilty of a second degree felony.

30-47-9. Reporting requirements; failure to report; crime created; criminal penalty; discrimination or retaliation for filing a report prohibited.

A. Any person paid in whole or part for providing to a resident any treatment, care, good, service or medication who has reasonable cause to believe that the resident has been abused, neglected or exploited shall report the abuse, neglect or exploitation in accordance with the provisions of Section 27-7-30 NMSA 1978.

B. Any person required to make a report pursuant to Subsection A of this section who fails to do so is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

C. In addition to those persons required to report pursuant to Subsection A of this section, any other person shall make a report if the person has reasonable cause to believe that a patient or resident of a facility has been abused, neglected or exploited.

D. Any person making a report pursuant to Subsection C of this section shall not be liable in any civil or criminal action based on the report if it was made in good faith.

E. No facility shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by the Resident Abuse and Neglect Act [30-47-1 NMSA 1978], or testifies, or is about to testify, in any proceeding about the abuse, neglect or exploitation of a resident in that facility. For the purposes of this section, "retaliate" includes transferring to another facility, without just

cause, over the objection of the resident or the resident's guardian, any resident who has reported an incident pursuant to this section.

VICTIMS OF CRIME ACT

CHAPTER 31 CRIMINAL PROCEDURE ARTICLE 26 VICTIMS OF CRIME

31-26-1. Short title.

Chapter 31, Article 26 NMSA 1978 may be cited as the "Victims of Crime Act".

31-26-2. Purpose of act.

Recognizing the state's concern for victims of crime, it is the purpose of the Victims of Crime Act [31-26-1 NMSA 1978] to assure that:

- A. the full impact of a crime is brought to the attention of a court;
- B. victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process;
- C. victims' rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants; and
- D. the provisions of Article 2, Section 24 of the constitution of New Mexico are implemented in statute.

31-26-3. Definitions.

As used in the Victims of Crime Act [31-26-1 NMSA 1978]:

- A. "court" means magistrate court, metropolitan court, children's court, district court, the court of appeals or the supreme court;
- B. "criminal offense" means:
 - (1) negligent arson resulting in death or bodily injury, as provided in Subsection B of Section 30-17-5 NMSA 1978;
 - (2) aggravated arson, as provided in Section 30-17-6 NMSA 1978;
 - (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
 - (4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
 - (5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
 - (6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;
 - (7) murder, as provided in Section 30-2-1 NMSA 1978;
 - (8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (10) kidnapping, as provided in Section 30-4-1 NMSA 1978;
 - (11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

- (12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
- (13) armed robbery, as provided in Section 30-16-2 NMSA 1978;
- (14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;
- (15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- (16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978;
- (17) stalking or aggravated stalking, as provided in the Harassment and Stalking Act [30-3A-1 NMSA 1978];
- (18) aggravated assault against a household member, as provided in Section 30-3-13 NMSA 1978;
- (19) assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978;
- (20) battery against a household member, as provided in Section 30-3-15 NMSA 1978; or
- (21) aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;

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

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

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

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

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

31-26-4. Victim's rights.

A victim shall have the right to:

- A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- B. timely disposition of the case;
- C. be reasonably protected from the accused throughout the criminal justice process;
- D. notification of court proceedings;
- E. attend all public court proceedings the accused has the right to attend;
- F. confer with the prosecution;

G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;

I. information about the conviction, sentencing, imprisonment, escape or release of the accused;

J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;

K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and

L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender.

31-26-5. Exercise of rights; requirements for victim.

A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act [31-26-1 NMSA 1978] only if he:

A. reports the criminal offense within five days of the occurrence or discovery of the criminal offense, unless the district attorney determines that the victim had a reasonable excuse for failing to do so;

B. provides the district attorney with current and updated information regarding the victim's name, address and telephone number; and

C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.

31-26-6. When rights and duties take effect; termination of rights and duties.

The rights and duties established pursuant to the provisions of the Victims of Crime Act [31-26-1 NMSA 1978] take effect when an individual is formally charged by a district attorney for allegedly committing a criminal offense against a victim. Those rights and duties remain in effect until final disposition of the court proceedings attendant to the charged criminal offense.

31-26-7. Designation or appointment of victim's representative.

A. A victim may designate a victim's representative to exercise all rights provided to the victim pursuant to the provisions of the Victims of Crime Act [31-26-1 NMSA 1978]. A victim may revoke his designation of a victim's representative at any time.

B. When a victim is deceased, incompetent or unable to designate a victim's representative, the court may appoint a victim's representative for the victim. If a victim regains his competency, he may revoke the court's appointment of a victim's representative.

C. When the victim is a minor, the victim's parent or grandparent may exercise the victim's rights; provided, that when the person accused of committing the criminal offense against the

victim is the parent or grandparent of the victim, the court may appoint a victim's representative for the victim.

31-26-8. Procedures for providing victims with preliminary information; law enforcement agencies.

The law enforcement agency that investigates a criminal offense shall:

- A. inform the victim of medical services and crisis intervention services available to victims;
- B. provide the victim with the police report number for the criminal offense and a copy of the following statement: "If within thirty days you are not notified of an arrest in your case, you may call (telephone number for the law enforcement agency) to obtain information on the status of your case."; and
- C. provide the victim with the name of the district attorney for the judicial district in which the criminal offense was committed and the address and telephone number for that district attorney's office.

31-26-9. Procedures for providing victims with notice of rights and information regarding prosecution of a criminal offense; district attorneys.

- A. Within seven working days after a district attorney files a formal charge against the accused for a criminal offense, the district attorney shall provide the victim of the criminal offense with:
 - (1) a copy of Article 2, Section 24 of the constitution of New Mexico, regarding victims' rights;
 - (2) a copy of the Victims of Crime Act [31-26-1 NMSA 1978]
 - (3) a copy of the charge filed against the accused for the criminal offense;
 - (4) a clear and concise statement of the procedural steps generally involved in prosecuting a criminal offense; and
 - (5) the name of a person within the district attorney's office whom the victim may contact for additional information regarding prosecution of the criminal offense.
- B. The district attorney's office shall provide the victim with oral or written notice, in a timely fashion, of a scheduled court proceeding attendant to the criminal offense.

31-26-10. Procedures for providing victims with notice of a court proceeding; courts; district attorneys.

A court shall provide a district attorney's office with oral or written notice no later than seven working days prior to a scheduled court proceeding attendant to a criminal offense, unless a shorter notice period is reasonable under the circumstances. The district attorney's office shall convey the information concerning the scheduled court proceeding to the victim, as provided in Subsection B of Section 9 [31-26-9 NMSA 1978] of the Victims of Crime Act.

© 31-26-10.1. Crime victim presence at court proceedings; plea agreement notification

- A. At any scheduled court proceeding, the court shall inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in § 31-26-4 NMSA 1978. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall:

- (1) reschedule the hearing; or
- (2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and
- (3) order the district attorney to notify the victim of the rescheduled hearing.

B. The provisions of this section shall not limit the district attorney's ability to exercise prosecutorial discretion on behalf of the state in a criminal case.

C. The provisions of this section shall not require the court to continue or reschedule any proceedings if it would result in a violation of a jurisdictional rule.

31-26-11. Procedures when an inmate or delinquent child escapes; corrections department; children, youth and families department.

A. The corrections department or the children, youth and families department shall immediately notify the sentencing judge or the children's court judge, the district attorney of the judicial district from which the inmate or delinquent child was committed and the probation officer who authored the presentence report when an inmate or delinquent child:

- (1) escapes from a correctional facility or juvenile justice facility under the jurisdiction of the corrections department or the children, youth and families department; or
- (2) convicted in New Mexico of a capital, first degree or second degree felony and transferred to a facility under the jurisdiction of another state escapes from that facility.

B. The district attorney shall immediately notify any person known to reside in his district who was a victim of the criminal or delinquent offense for which the inmate or delinquent child was committed.

31-26-12. Procedures when an inmate is released from incarceration; adult parole board; corrections department; procedures when a delinquent child is released from custody; juvenile parole board; children, youth and families department; district attorneys.

A. The adult parole board and the juvenile parole board shall provide a copy of their respective regular release dockets to each district attorney in the state at least ten working days before the docket is considered by the board. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

B. The adult parole board and the juvenile parole board shall provide a copy of a supplemental, addendum or special docket to each district attorney at least five working days before the release docket is considered by the board.

C. Following consideration of a release docket by the adult parole board or the juvenile parole board, each board shall promptly notify each district attorney of any recommendations adopted by the board for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

D. In the case of an inmate scheduled to be released from incarceration without parole or prior to parole for any reason, or a delinquent child scheduled to be released from custody, the corrections department or the children, youth and families department shall notify each district attorney at least fifteen working days before the inmate's or delinquent child's release. The district attorney shall notify any person known to reside in his district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

31-26-13. Disclaimer.

Nothing in the Victims of Crime Act [31-26-1 NMSA 1978] creates a cause of action on behalf of a person against a public employer, public employee, public agency, the state or any agency responsible for the enforcement of rights or provision of services set forth in that act.

31-26-14. Effect of noncompliance.

A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of the Victims of Crime Act [31-26-1 NMSA 1978].

<p style="text-align: center;">CHAPTER 24 HEALTH AND SAFETY ARTICLE 10D SEXUAL ASSAULT SURVIVORS EMERGENCY CARE</p>

24-10D-1. Short title.

This act [24-10D-1 to 24-10D-5 NMSA 1978] may be cited as the "Sexual Assault Survivors Emergency Care Act".

24-10D-2. Definitions.

As used in the Sexual Assault Survivors Emergency Care Act [24-10D-1 NMSA 1978]:

- A. "department" means the department of health;
- B. "emergency care for sexual assault survivors" means medical examinations, procedures and services provided by a hospital to a sexual assault survivor following an alleged sexual assault;
- C. "emergency contraception" means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse;
- D. "hospital" means a facility providing emergency or urgent health care;
- E. "medically and factually accurate and objective" means verified or supported by the weight of research conducted in compliance with accepted scientific methods and standards; published in peer-reviewed journals; and recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field of obstetrics and gynecology, such as the American college of obstetricians and gynecologists;
- F. "sexual assault" means the crime of criminal sexual penetration; and
- G. "sexual assault survivor" means a female who alleges or is alleged to have been sexually assaulted and who presents as a patient to a hospital.

© 24-10D-3. Emergency care for sexual assault survivors; standard of care

A. A hospital that provides emergency care for sexual assault survivors shall:

- (1) provide each sexual assault survivor with medically and factually accurate and objective written and oral information about emergency contraception;

(2) orally and in writing inform each sexual assault survivor of her option to be provided emergency contraception at the hospital; and

(3) provide emergency contraception at the hospital to each sexual assault survivor who requests it.

B. The provision of emergency contraception pills shall include the initial dose that the sexual assault survivor can take at the hospital as well as the subsequent dose that the sexual assault survivor may self-administer twelve hours following the initial dose.

CHAPTER 31 CRIMINAL PROCEDURE
ARTICLE 18 SENTENCING OF OFFENDERS

31-18-25. Two violent sexual offense convictions; mandatory life imprisonment; exception.

A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment imposed for the second violent sexual offense conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

B. Notwithstanding the provisions of Subsection A of this section, when a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and the victim of each violent sexual offense was less than thirteen years of age at the time of the offense, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall be punished by a sentence of life imprisonment without the possibility of parole.

C. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the second violent sexual offense conviction, pursuant to the provisions of Section 31-18-26 NMSA 1978.

D. For the purposes of this section, a violent sexual offense conviction incurred by a defendant before he reaches the age of eighteen shall not count as a violent sexual offense conviction.

E. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent sexual offense for the purposes of the Criminal Sentencing Act [Chapter 31-18-12 NMSA 1978] if the crime would be considered a violent sexual offense in New Mexico.

F. As used in the Criminal Sentencing Act, "violent sexual offense" means:

(1) criminal sexual penetration in the first degree, as provided in Subsection C of Section 30-9-11 NMSA 1978; or

(2) criminal sexual penetration in the second degree, as provided in Subsection D of Section 30-9-11 NMSA 1978.

31-18-26. Two violent sexual offense convictions; sentencing procedure.

A. The court shall conduct a separate sentencing proceeding to determine any controverted question of fact regarding whether the defendant has been convicted of two violent sexual offenses. Either party to the sentencing proceeding may demand a jury sentencing proceeding.

B. A jury sentencing proceeding shall be conducted as soon as practicable by the original trial judge before the original trial jury. A non-jury sentencing proceeding shall be conducted as soon as practicable by the original trial judge. In the case of a plea of guilty, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge or by the original trial jury, upon demand of the defendant.

C. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments. In a non-jury sentencing proceeding or upon a plea of guilty when the defendant has not demanded a jury, the judge shall allow arguments and determine the verdict.

CHAPTER 29 ARTICLE 11
SEX CRIMES PROSECUTION AND TREATMENT ACT

© **29-11-1. Short title.**

This act [29-11-1 to 29-11-7 NMSA 1978] may be cited as the "Sexual Crimes Prosecution and Treatment Act".

© **29-11-2. Purpose.**

The purpose of the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978] is to promote effective law enforcement and prosecution of sexual crimes and to provide medical and psychological assistance for victims of such crimes. Implementation of the Sexual Crimes Prosecution and Treatment Act will serve to assist existing community-based victim treatment programs, to provide interagency cooperation, training of law enforcement, criminal justice and medical personnel and to effect proper handling and testing of evidence in sexual crime offenses.

© **29-11-3. Definitions.**

As used in the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978]:

- A. "administrator" means the director of the mental health division of the department of health, or such person or office as the administrator may designate to act in his stead;
- B. "evidence" means that evidence relating to the commission of a sexual crime;
- C. "medical and psychological treatment" includes that medical, mental or emotional treatment provided a victim of a sexual crime. In addition to the improved physical and emotional condition of a victim, the treatment should result in the improved ability of a victim to make informed and rational choices about serving as a witness in the prosecution of a suspect of a sexual crime; and
- D. "sexual crime" includes any act which may be alleged to be a sexual offense or an attempted sexual offense under the provisions of Sections 30-9-10 through 30-9-16 and 30-10-3 NMSA 1978.

© **29-11-4. Fund created; administration.**

A. There is created in the state treasury the "sexual crimes prosecution and treatment fund". Money appropriated to the fund shall be used to carry out the purposes of the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978].

B. The funds shall be administered by the administrator.

© 29-11-5. Sexual crimes prosecution and treatment program.

A. The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes; to develop strategies for prevention of such crimes; to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes; and to provide medical and psychological treatment to victims of such crimes. This plan shall include, but not be limited to:

- (1) education and training of law enforcement officers and criminal justice and medical personnel;
- (2) collection, processing and analysis of evidence which facilitates prosecution of suspects of sexual crimes; and
- (3) medical and psychological treatment of victims of such crimes.

B. The comprehensive plan shall be implemented throughout the state, and the administrator may contract with appropriate persons, entities, agencies or community-based programs to provide the services to be rendered pursuant to Subsection A of this section and may pay a reasonable fee for such services.

C. Nothing in this section shall be construed to require criminal prosecution of a suspect of a sexual crime by the victim to whom services are rendered pursuant to the provisions of the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978].

D. Training for law enforcement officers in the proper treatment of victims of sexual crimes and collection of evidence and coordination among agencies shall be incorporated in the regular training program for recruits by the New Mexico state police; the basic course taught by the New Mexico law enforcement academy or by other authorized law enforcement agencies. Already-commissioned officers and sex-crime investigators shall receive advanced training through in-service programs.

© 29-11-6. Report.

By December 15 of each year, a report shall be filed with the governor and the legislative council by the administrator concerning all aspects of the sexual crimes prosecution and treatment program and specifically the administrator's conclusions and recommendations regarding the effectiveness of the sexual crimes prosecution and treatment program implemented throughout the state.

© 29-11-7. Free forensic medical exams for victims of sexual crimes.

The administrator shall:

- A. provide free forensic medical exams to victims of sexual crimes;
- B. arrange for victims of sexual crimes to obtain free forensic medical exams; or
- C. reimburse victims of sexual crimes for the cost of forensic medical exams, provided that:

- (1) the reimbursement covers the full cost of the forensic medical exam, without any deductible requirement or limit on the amount of the reimbursement;
- (2) the victim of a sexual crime is entitled to apply for reimbursement for a period of one year from the date of the forensic medical exam;
- (3) reimbursement is provided not later than ninety days after the administrator receives written notification of the expense incurred by the victim for the forensic medical exam; and
- (4) all victims of sexual crimes, including victims with limited or no English proficiency, are provided with information at the time of the forensic medical exam regarding how to obtain reimbursement for the cost of the exam.

CHAPTER 29 ARTICLE 11A
SEX OFFENDER REGISTRATION AND NOTIFICATION

© **29-11A-1. Short title.**

Chapter 29, Article 11A NMSA 1978 may be cited as the "Sex Offender Registration and Notification Act".

© **29-11A-2. Findings; purpose.**

A. The legislature finds that:

- (1) sex offenders pose a significant risk of recidivism; and
- (2) the efforts of law enforcement agencies to protect their communities from sex offenders are impaired by the lack of information available concerning convicted sex offenders who live within the agencies' jurisdictions

B. The purpose of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] is to assist law enforcement agencies' efforts to protect their communities by:

- (1) requiring sex offenders who are residents of New Mexico to register with the county sheriff of the county in which the sex offender resides
- (2) requiring sex offenders who are residents in other states, but who are employed in New Mexico or who attend school in New Mexico, to register with the county sheriff of the county in which the sex offender works or attends school;
- (3) requiring the establishment of a central registry for sex offenders; and
- (4) providing public access to information regarding certain registered sex offenders

© **29-11A-3. Definitions.**

As used in the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978].

A. "conviction" means a conviction in any court of competent jurisdiction and includes a deferred sentence, but does not include a conditional discharge;

B. "institution of higher education" means a:

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

- (2) trade school; or
- (3) professional school;

C. “registration requirement” means any requirement set forth in Section 29-11A-4 NMSA 1978 that requires a sex offender to register, provide information including a DNA sample, renew, revise or change registration information or provide written notice or disclosure regarding his status as a sex offender;

D. “sex offender” means a person who:

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

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

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

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

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

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

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

E. “sex offense” means any of the following offenses or their equivalents in any other jurisdiction::

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

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

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

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

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

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

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

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

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

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

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

(12) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (10) of this subsection, as provided in Section 30-28-1 NMSA 1978.

29-11A-4. Registration of sex offenders; information required; criminal penalty for noncompliance.

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

B. A sex offender who is a resident of New Mexico shall register with the county sheriff no later than ten days after being released from the custody of the corrections department, a municipal or county jail or a federal, military or tribal correctional facility or detention center or being placed on probation or parole. A sex offender who changes his residence to New Mexico shall register with the county sheriff no later than ten days after his arrival in this state. When a sex offender registers with the county sheriff, he shall provide the following registration information:

- (1) his legal name and any other names or aliases that he is using or has used;
- (2) his date of birth;
- (3) his social security number;
- (4) his current address;
- (5) his place of employment;
- (6) the sex offense for which he was convicted; and
- (7) the date and place of his sex offense conviction.

C. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff for the county in which the sex offender is working or attending school or an institution of higher education.

D. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff no later than ten days after beginning work or school. When the sex offender registers with the county sheriff, he shall provide the following registration information:

- (1) his legal name and any other names or aliases that he is using or has used;
- (2) his date of birth;
- (3) his social security number;
- (4) his current address in his state of residence and, if applicable, the address of his place of lodging in New Mexico while he is working or attending school or an institution of higher education;
- (5) his place of employment or the name of the school he is attending;
- (6) the sex offense for which he was convicted; and
- (7) the date and place of his sex offense conviction.

E. When a sex offender registers with a county sheriff, the sheriff shall obtain:

- (1) a photograph of the sex offender and a complete set of the sex offender's fingerprints;
- (2) a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and
- (3) a sample of his DNA for inclusion in the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act. [29-16-1 NMSA 1978].

F. When a sex offender who is registered changes his residence within the same county, the sex offender shall send written notice of his change of address to the county sheriff no later than ten days after establishing his new residence.

G. When a sex offender who is registered changes his residence to a new county in New Mexico, the sex offender shall register with the county sheriff of the new county no later than ten days after establishing his new residence. The sex offender shall also send written notice

of the change in residence to the county sheriff with whom he last registered no later than ten days after establishing his new residence.

H. When a sex offender who is registered or required to register does not have an established residence, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico, the sex offender shall register with the county sheriff for each county in which the sex offender is living or temporarily located. The sex offender shall register no later than ten days after a change in his living arrangements or temporary location.

I. When a sex offender who is registered or required to register is employed, begins a vocation or is enrolled as a student at an institution of higher education in New Mexico, the sex offender shall disclose his status as a sex offender in writing to the county sheriff for the county in which the institution of higher education is located, the law enforcement entity responsible for the institution of higher education and the registrar for the institution of higher education no later than ten days after beginning employment, beginning a vocation or enrolling at the institution of higher education. The sex offender shall also send written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar no later than ten days after the change in his employment, vocation or enrollment status.

J. When a sex offender who is registered or required to register is employed or is enrolled as a student at a public or private school in New Mexico, the sex offender shall disclose his status as a sex offender in writing to the county sheriff for the county in which the school is located and to the principal of the school no later than ten days after enrolling at the school. The sex offender shall also send written notice of any change regarding his enrollment status at a school to the county sheriff and the principal no later than ten days after the change in his enrollment status.

K. When a sex offender who is registered or required to register is employed, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, the sex offender shall disclose his status as a sex offender in writing to his employer, supervisor or person similarly situated. The written disclosure shall be made immediately upon beginning his employment, vocation or volunteer service.

L. Following his initial registration pursuant to the provisions of this section:

(1) a sex offender required to register pursuant to the provisions of Subsection D of Section 29-11A-5 NMSA 1978 shall renew his registration with the county sheriff not less than once in each ninety-day period following the date of the sex offender's initial registration for the entirety of his natural life; and

(2) a sex offender required to register pursuant to the provisions of Subsection E of Section 29-11A-5 NMSA 1978 shall annually renew his registration with the county sheriff prior to December 31 of each subsequent calendar year for a period of ten years.

M. Notwithstanding the provisions of Paragraph (2) of Subsection L of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in Subsection E of Section 29-11A-5 NMSA 1978, he shall renew his registration with the county sheriff not less than once in each ninety-day period following the date of the sex offender's initial registration for the entirety of his natural life.

N. A sex offender who willfully or knowingly fails to comply with the registration requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly fails to comply with the registration requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree

felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful failure to comply with any registration requirement set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

O. A sex offender who willfully or knowingly provides false information when complying with the registration requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly provides false information when complying with the registration requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful providing by a sex offender of false information with respect to the registration requirements set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

29-11A-4.1. Procedures when a sex offender moves from New Mexico to another state.

A. If a sex offender intends to move from New Mexico to another state, no later than thirty days prior to moving to the other state, he shall:

- (1) notify the county sheriff of the county he resides in that he is moving to the other state; and
- (2) provide the county sheriff with a written notice that identifies the state to which the sex offender is moving.

B. Within five days of receiving a sex offender's written notice of intent to move to another state, the county sheriff shall transmit that information to the department of public safety. Within five days of receiving that information from a county sheriff, the department shall contact the state agency responsible for registering sex offenders in the state to which the sex offender is moving. The department shall provide that state agency with registration information regarding the sex offender. The department shall also obtain information regarding registration requirements for sex offenders in the state to which the sex offender is moving. The department shall provide the sex offender with written notification of the registration requirements in the state to which the sex offender is moving.

C. A sex offender who willfully fails to comply with the requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

29-11A-5. Local registry; central registry; administration by department of public safety; participation in the national sex offender registry; rules.

A. A county sheriff shall maintain a local registry of sex offenders in the sheriff's jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978].

B. The county sheriff shall forward:

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

(2) samples of DNA obtained from sex offenders to the administrative center for the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act. [29-16-1 NMSA 1978].

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

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

- (1) criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;
- (2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;
- (3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;
- (4) kidnapping, as provided in Section 30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim; or
- (5) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978; or
- (6) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.

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

- (1) criminal sexual penetration in the fourth degree, as provided in Section 30-9-11 NMSA 1978;
- (2) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;
- (3) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;
- (4) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;
- (5) enticement of child, as provided in Section 30-9-1 NMSA 1978;
- (6) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;
- (7) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or
- (8) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (6) of this subsection, as provided in Section 30-28-1 NMSA 1978.

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

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

© 29-11A-5.1. Public access to information regarding certain registered sex offenders; active community notification; internet web site.

A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

- (1) aggravated criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;
- (2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;
- (3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;
- (4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or
- (5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

B. A person who wants to obtain registration information regarding sex offenders described in Subsection A of this section may request that information from the:

- (1) sheriff for the county in which the sex offenders reside;
- (2) chief law enforcement officer for the municipality in which the sex offenders reside;
- (3) district attorney for the judicial district in which the sex offenders reside; or
- (4) secretary of public safety.

C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number and DNA information, within a reasonable period of time, and no later than seven days after receiving the request.

D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number and DNA information.

E. The department of public safety shall establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section, except that the department of public safety shall not provide registration information on the internet web site regarding a sex offender who was less than eighteen years of age when the sex offender committed the sex offense for which the sex offender was convicted as a youthful offender, as provided in Section 32A-2-3 NMSA 1978, unless at the time of sentencing, the court made a finding that the sex offender is not amenable to treatment and is a danger to the community. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social security number or DNA information or a sex offender's place of employment, unless the sex offender's employment requires the sex offender to have direct contact with children.

29-11A-7. Notice to sex offenders of duty to register.

A. A court shall provide a sex offender convicted in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978]. The written notice shall be included in judgment and sentence forms provided to the sex offender. The written notice shall inform the sex offender that he is required to:

- (1) register with the county sheriff for the county in which the sex offender will reside or if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and
- (9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible court official, designated by the chief judge for that judicial district, has explained the written notice to the sex offender.

B. The corrections department, a municipal or county jail or a detention center at the time of release of a sex offender in its custody, shall provide a written notice to the sex offender of his duty to register, pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall inform the sex offender that he is required to:

- (1) register with the county sheriff for the county in which the sex offender will reside or, if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;

(5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;

(6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and

(9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible corrections department official, designated by the secretary of corrections, or a responsible municipal or county jail official or detention center official has explained the written notice to the sex offender.

C. A court, the corrections department, a municipal or county jail or a detention center shall also provide written notification regarding a sex offender's release to the sheriff of the county in which the sex offender is released and to the department of public safety.

D. The department of public safety, at the time it is notified by officials from another state that a sex offender will be establishing residence in New Mexico, shall provide written notice to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act .

29-11A-8. Immunity.

Nothing in the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] creates a cause of action on behalf of a person against a public employer, public employee or public agency responsible for enforcement of the provisions of that act, so long as the public employer, public employee or public agency complies with the provisions of that act.

29-11A-9. State Preemption; Saving Clause.

A. The state preempts the field of sex offender registration and notification. Cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or continuing in effect any ordinance, rule, regulation, resolution or statute on sex offender registration and notification.

B. After January 18, 2005, cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or amending an ordinance, rule, regulation or resolution on sex offender registration and notification. An ordinance in effect on January 18, 2005 shall continue in force and effect until repealed; provided that the ordinance shall only continue in force and effect with regard to sex offenders who are required to register pursuant to the provisions of the ordinance, but who are not required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978]. All other sex offenders shall register pursuant to the provisions of the Sex Offender Registration and Notification Act.

29-11A-10. Severability.

If any part or application of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] is held invalid, the remainder of that act and its application to other situations or persons shall not be affected.

© 29-1-16. Electronic recordings of custodial interrogations

A. A state or local law enforcement officer shall comply when reasonably able to do so with the following procedures when conducting a custodial interrogation:

- (1) the custodial interrogation shall be electronically recorded in its entirety;
- (2) if conducted in a police station, the custodial interrogation shall be electronically recorded by a method that includes audio or visual or both, if available; and
- (3) the electronic recording shall include the advice of constitutional rights required by law.

B. A law enforcement officer shall comply with the provisions of this section unless the law enforcement officer has good cause not to electronically record the entire custodial interrogation and makes a contemporaneous written or electronic record of the reasons for not doing so. Good cause includes:

- (1) the electronic recording equipment was not reasonably available;
- (2) the electronic recording equipment failed and obtaining replacement equipment was not feasible;
- (3) the individual refused to be recorded; or
- (4) the statement was made in a court proceeding or a grand jury proceeding.

C. Statements that are spontaneously volunteered and not the result of custodial interrogation are not subject to the provisions of this section.

D. The provisions of this section shall apply only to custodial interrogations when, at the time of the interrogation, the person is suspected of committing a felony offense.

E. The provisions of this section do not apply to custodial interrogations conducted outside the state of New Mexico.

F. The provisions of this section do not apply to statements used for impeachment purposes.

G. The provisions of this section do not apply within a correctional facility.

H. As used in this section:

- (1) "custodial interrogation" means questioning by law enforcement officers that requires the advice of constitutional rights; and
- (2) "electronic recording" means a complete and authentic electronic recording created by visual or audio media, including by motion picture, videotape, audio tape or digital media.

I. This section shall not be construed to exclude otherwise admissible evidence in any judicial proceeding.

© 29-16-1. Short title.

Chapter 29, Article 16 NMSA 1978 may be cited as the "DNA Identification Act".

© 29-16-2. Purpose of Act.

The purpose of the DNA Identification Act is to:

- A. establish a DNA Identification system for covered offenders and persons required to provide a DNA sample pursuant to the provisions of Section 1 of this 2006 act [29-3-10 NMSA 1978];
- B. facilitate the use of DNA records by local, state and federal law enforcement agencies in the:
 - (1) identification, detection or exclusion of persons in connection with criminal investigations; and
 - (2) registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978];
- C. establish a missing persons DNA identification system consisting of the following DNA indexes:
 - (1) unidentified persons;
 - (2) unidentified human remains; and
 - (3) relatives of, or known reference samples from, missing persons; and
- D. facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification and location of missing and unidentified persons or human remains.

29-16-3. Definitions.

As used in the DNA Identification Act [29-16-1 NMSA 1978]:

- A. “administrative center” means the law enforcement agency or unit that administers and operates the DNA identification system;
- B. “DNA oversight committee” means the DNA identification system oversight committee;
- C. “CODIS” means the federal bureau of investigation’s national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;
- D. “covered offender” means any person convicted of a felony offense as an adult under the Criminal Code [30-1-1 NMSA 1978], the Motor Vehicle Code [66-1-1 NMSA 1978] or the constitution of New Mexico or convicted as adult pursuant to youthful offender or serious youthful offender proceedings under the Children’s Code [32A-1-1 NMSA 1978] or a sex offender required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978];
- E. “department” means the department of public safety;
- F. “DNA” means deoxyribonucleic acid as the basis of human heredity;
- G. “DNA identification system” means the DNA identification system established pursuant to the DNA Identification Act;
- H. “DNA records” means the results of DNA testing and related information;
- I. “DNA testing” means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples;
- J. “fund” means the DNA identification system fund;

K. “missing persons DNA identification system” means the missing persons DNA identification system established by the DNA Identification Act;

L. “sample” means a sample of biological material sufficient for DNA testing; and

M. “sex offender DNA identification system” means the sex offender DNA identification system established by the DNA Identification Act.

Section 14. Applicability.

The provisions of this 2005 version of the Sex Offender Registration and Notification Act are applicable to:

A. A person convicted of a sex offense on or after July 1, 2005; and

B. A person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

Section 15. Effective Date.

The effective date of the provisions of this act is July 1, 2005.

NEW MEXICO STATUTES REGARDING DOMESTIC VIOLENCE

© 30-3-11. Definitions.

As used in the Crimes Against Household Members Act [30-3-10 NMSA 1978]:

A. "household member" means a spouse, former spouse or family member, including a relative, parent, present or former step-parent, present or former in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of the Crimes Against Household Members Act; and

B. "continuing personal relationship" means a dating or intimate relationship.

30-3-12. Assault against a household member.

A. Assault against a household member consists of:

- (1) an attempt to commit a battery against a household member; or
- (2) any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.

B. Whoever commits assault against a household member is guilty of a petty misdemeanor.

30-3-13. Aggravated assault against a household member.

A. Aggravated assault against a household member consists of:

- (1) unlawfully assaulting or striking a household member with a deadly weapon; or
- (2) willfully and intentionally assaulting a household member with intent to commit any felony.

30-3A-2. 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.

30-3A-3. Stalking; penalties

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.

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.

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

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

30-3A-3.1. Aggravated stalking; penalties.

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

- (1) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
- (2) in violation of a court order setting conditions of release and bond;
- (3) when the person is in possession of a deadly weapon; or
- (4) when the victim is less than sixteen years of age.

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

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

30-3A-4. Exceptions.

The provisions of the [Harassment and] Stalking Act [30-3A-1 NMSA 1978] do not apply to:

- A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute; or
- B. a peace officer in the performance of his duties.

30-3-14. Assault against a household member with intent to commit a violent felony.

- A. Assault against a household member with intent to commit a violent felony consists of any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.
- B. Whoever commits assault against a household member with intent to commit a violent felony is guilty of a third degree felony.

© 30-3-15. Battery against a household member.

- A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

- B. Whoever commits battery against a household member is guilty of a misdemeanor. (Rev. 7-01)
- C. Upon conviction pursuant to this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- D. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

© 30-3-16. Aggravated battery against a household member.

- A. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.
- B. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.
- C. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.
- D. Upon conviction pursuant to Subsection B of this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- E. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to the provisions of Subsection B of this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

31-1-7. Arrest without warrant; liability.

- A. Notwithstanding the provisions of any other law to the contrary, a peace officer may arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member. 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 purposes of this section.

- B. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section, provided he acts in good faith and without malice.
- C. Whether or not an arrest is made pursuant to this section, a peace officer may remain with the victim and assist the victim in getting to a shelter or receiving proper medical attention.

© 30-1-15. Alleged victims of domestic abuse, stalking or sexual assault; forbearance of costs.

- A. An alleged victim of an offense specified in Subsection B of this section is not required to bear the cost of:
 - (1) the prosecution of a misdemeanor or felony domestic violence offense, including costs associated with filing a criminal charge against an alleged perpetrator of the offense;
 - (2) the filing, issuance or service of a warrant;
 - (3) the filing, issuance or service of a witness subpoena; or
 - (4) the filing, issuance, registration or service of a protection order.
- B. The provisions of Subsection A of this section apply to:
 - (1) alleged victims of domestic abuse as defined in Section 40-13-2 NMSA 1978;
 - (2) sexual offenses described in Sections 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;
 - (3) crimes against household members described in Sections 30-3-12 through 30-3-16 NMSA 1978;
 - (4) harassment, stalking and aggravated stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978; and
 - (5) the violation of an order of protection that is issued pursuant to the Family Violence Protection Act [40-13-1 NMSA 1978] or entitled to full faith and credit.

© 31-12-11. Court fees; deposit in the domestic violence treatment or intervention fund.

- A. In addition to any other fees collected in the district court, metropolitan court and magistrate court, those courts shall assess and collect from a person convicted of a penalty assessment misdemeanor, traffic violation, petty misdemeanor, misdemeanor or felony offense a "domestic violence offender treatment fee" of five dollars (\$5.00).
- B. Domestic violence offender treatment fees shall be deposited in the domestic violence offender treatment or intervention fund.

© 31-12-12. Domestic violence offender treatment or intervention fund created; appropriation; program requirements.

- A. The "domestic violence offender treatment or intervention fund" is created in the state treasury. All fees collected pursuant to the provisions of Section 31-12-11 NMSA 1978 shall

be transmitted monthly to the department of finance and administration for credit to the domestic violence offender treatment or intervention fund.

B. Balances in the domestic violence offender treatment or intervention fund are appropriated to the children, youth and families department to provide funds to domestic violence offender treatment or intervention programs to defray the cost of providing treatment or intervention to domestic violence offenders. Unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

C. Payment out of the domestic violence offender treatment or intervention fund shall be made on vouchers issued and signed by the secretary of children, youth and families upon warrants drawn by the department of finance and administration.

D. In order to be eligible for money from the domestic violence offender treatment or intervention fund, a domestic violence offender treatment or intervention program shall include the following components in its program:

- (1) an initial assessment to determine if a domestic violence offender will benefit from participation in the program;
- (2) a written contract, which must be signed by the domestic violence offender, that sets forth:
 - (a) attendance and participation requirements;
 - (b) consequences for failure to attend or participate in the program; and
 - (c) a confidentiality clause that prohibits disclosure of information revealed during treatment or intervention sessions;
- (3) strategies to hold domestic violence offenders accountable for their violent behavior;
- (4) a requirement that group discussions are limited to members of the same gender;
- (5) an education component that:
 - (a) defines physical, emotional, sexual, economic and verbal abuse and techniques for stopping those forms of abuse; and
 - (b) examines gender roles, socialization, the nature of violence, the dynamics of power and control and the effects of domestic violence on children;
- (6) a requirement that a domestic violence offender not be under the influence of alcohol or drugs during a treatment or intervention session;
- (7) a requirement, except with respect to a domestic violence offender who is a voluntary participant in the program, that the program provide monthly written reports to the presiding judge or the domestic violence offender's probation or parole officer regarding:
 - (a) proof of the domestic violence offender's enrollment in the program
 - (b) progress reports that address the domestic violence offender's attendance, fee payments and compliance with other program requirements; and
 - (c) evaluations of progress made by the domestic violence offender and recommendations as to whether or not to require the offender's further participation in the program; and
- (8) a requirement that the term of the program be at least fifty-two weeks.

E. Counseling for couples shall not be a component of a domestic violence offender treatment or intervention program.

F. As used in this section, "domestic violence offender" means a person:

- (1) convicted for an offense pursuant to the provisions of the Crimes Against Household Members Act [30-3-10 NMSA 1978];
- (2) convicted for violating an order of protection granted by a court pursuant to the provisions of the Family Violence Protection Act [40-13-1 NMSA 1978];
- (3) referred to a domestic violence offender treatment or intervention program by a judge, a domestic violence special commissioner or the parole board; or
- (4) who voluntarily participates in a domestic violence offender treatment or intervention program.

CHAPTER 40 ARTICLE 13 FAMILY VIOLENCE PROTECTION

© **40-13-2. Definitions.**

As used in the Family Violence Protection Act [40-13-1 NMSA 1978]:

- A. "co-parents" means persons who have a child in common, regardless of whether they have been married or have lived together at any time;
- B. "court" means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;
- C. "domestic abuse":
 - (1) means an incident of stalking or sexual assault whether committed by a household member or not;
 - 2) means an incident by a household member against another household member consisting of or resulting in:
 - (a) physical harm;
 - (b) severe emotional distress;
 - (c) bodily injury or assault;
 - (d) a threat causing imminent fear of bodily injury by any household member;
 - (e) criminal trespass;
 - (f) criminal damage to property;
 - (g) repeatedly driving by a residence or work place;
 - (h) telephone harassment;
 - (i) harassment; or
 - (j) harm or threatened harm to children as set forth in this paragraph; and
 - (3) does not mean the use of force in self-defense or the defense of another;
- D. "household member" means a spouse, former spouse, family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, or a person with whom the petitioner has had a continuing personal

relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section; and

- E. "mutual order of protection" means an order of protection that includes provisions that protect both parties;
- F. "order of protection" means an injunction or a restraining or other court order granted for the protection of a victim of domestic abuse;
- G. "protected party" means a person protected by an order of protection; and
- H. "restrained party" means a person who is restrained by an order of protection.

© 40-13-3. Petition for order of protection; contents; standard forms.

- A. A victim of domestic abuse may petition the court under the Family Violence Protection Act [40-13-1 NMSA 1978] for an order of protection.
- B. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.
- C. The petition shall state whether any other domestic action is pending between the petitioner and the respondent.
- D. If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from the Family Violence Protection Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.
- E. Any action brought under the Family Violence Protection Act is independent of any proceeding for annulment, separation or divorce between the petitioner and the parties.
- F. Remedies granted pursuant to the Family Violence Protection Act are in addition to and shall not limit other civil or criminal remedies available to the parties.
- G. Standard simplified petition forms with instructions for completion shall be available to all parties. Law enforcement agencies shall keep such forms and make them available upon request to alleged victims of domestic abuse.

© 40-13-3.1. Forbearance of costs associated with domestic abuse offenses.

An alleged victim of domestic abuse shall not be required to bear the cost of:

- A. filing a criminal charge against an alleged abusing household member;
 - (1) the prosecution of a misdemeanor or felony offense arising out of an incident of domestic abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;
 - (2) the filing, the issuance or service of a warrant;
 - (3) the filing, issuance or service of a witness subpoena;
 - (4) the filing, issuance or service of a petition for an order of protection;
 - (5) the filing, issuance or service of an order of protection; or

(6) obtaining law enforcement reports relating to the alleged abuse or pattern of abuse.

B. No witness fee shall be charged where prohibited by federal law.

© **40-13-3.2. Ex parte emergency orders of protection.**

- A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.
- B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:
- (1) if necessary, pursuant to the judge's oral approval, write and sign the order on an approved form;
 - (2) if possible, immediately serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;
 - (3) immediately provide the protected party with a signed copy of the order; and
 - (4) provide the original order to the court by the close of business on the next judicial day.
- C. The court may grant the following relief in an emergency order for protection upon a probable cause finding that domestic abuse has occurred:
- (1) enjoin the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members;
 - (2) enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and
 - (3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.
- D. A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.
- E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.
- F. A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.
- G. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.
- H. Emergency orders of protection are enforceable in the same manner as other orders of protection that are issued pursuant to the provisions of the Family Violence Protection Act [40-13-1 NMSA 1978].

© **40-13-4. Temporary order of protection; hearing; dismissal.**

- A. Upon the filing of a petition for order of protection, the court shall:
1. immediately grant an ex parte temporary order of protection without bond, if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic abuse has occurred;
 2. cause the temporary order of protection together with notice of hearing to be served immediately on the alleged perpetrator of the domestic abuse; and
 3. within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or
 4. if an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; provided if notice of hearing cannot be served within seventy-two hours, the temporary order of protection shall be automatically extended for ten days.
- B. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate.
- C. Except for petitions alleging stalking or sexual assault, if the court finds that the alleged perpetrator is not a household member, the court shall dismiss the petition.

40-13-5. Order of protection; contents; remedies; title to property not affected.

- A. Upon finding that domestic abuse has occurred, the court shall enter an order of protection ordering the respondent to refrain from abusing the petitioner or any other household member. The court shall specifically describe the acts the court has ordered the respondent to do or refrain from doing. As a part of any order of protection, the court may:
- (1) grant sole possession of the residence or household to the petitioner during the period the order of protection is effective or order the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support;
 - (2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the petitioner on a basis that gives primary consideration to the safety of the victim and the children;
 - (3) order that the respondent shall not initiate contact with the petitioner;
 - (4) restrain the parties from transferring, concealing, encumbering or otherwise disposing of petitioner's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the party restrained in court;
 - (5) order the respondent to reimburse the petitioner or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;
 - (6) order the respondent to participate in, at the respondent's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and

- (7) order other injunctive relief as the court deems necessary for the protection of the petitioner, including orders to law enforcement agencies as provided by this section.
- B. The order shall contain a notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both.
- C. If the order supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.
- D. No order issued under the Family Violence Protection Act [this article] shall affect title to any property or allow the petitioner to transfer, conceal, encumber or otherwise dispose of respondent's property or the joint property of the parties.
- E. Either party may request a review hearing to amend the order. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances.

40-13-6. Service of order; duration; penalty; remedies not exclusive.

- A. An order of protection granted under the Family Violence Protection Act [this article] shall be filed with the clerk of the court and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the respondent, unless he or his attorney was present at the time the order was issued. The order shall be filed and served without cost to the petitioner.
- B. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the petitioner and the respondent.
- C. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order pursuant to this section.
- D. State courts shall give full faith and credit to tribal court orders of protection and orders of protection issued by courts of other states. A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:
 - (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
 - (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.
- E. A person convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent

conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

- F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and order the person convicted to participate in and complete a program of professional counseling, at his own expense, if possible.
- G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.
- H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the petitioner.

40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an abusing household member is released from detention; statement in judgment and sentence document.

- A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.
- B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:
 - (1) advising the victim of the remedies available under the Family Violence Protection Act [this article], the right to file a written statement or request for an arrest warrant and the availability of domestic violence shelters, medical care, counseling and other services;
 - (2) upon the request of the petitioner, providing or arranging for transportation of the victim to a medical facility or place of shelter;
 - (3) upon the request of the petitioner, accompanying the victim to the victim's residence to remove the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;
 - (4) upon the request of the petitioner, assist in placing the petitioner in possession of the dwelling or premises or otherwise assist in execution or service of the order of protection;
 - (5) arresting the abusing household member when appropriate and including a written statement in the attendant police report to indicate that the arrest of the abusing household member was, in whole or in part, premised upon probable cause to believe that the abusing household member committed domestic abuse against the victim; and
 - (6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.
- C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the abusing household member is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the abusing household member is released from custody.
- D. Any law enforcement officer responding to the request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable

attempt to provide notification that an abusing household member is released from custody is immune from civil liability to the extent allowed by law.

- E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.

27-2B-5. Work requirements; work participation rates. (victim of domestic abuse exceptions E-(4).)

- E. The following qualify as temporary alternative **work** activities that the department may establish for no longer than twelve weeks except as otherwise provided:
 - 1) participating in parenting classes, money management classes or life skills training;
 - 2) participating in a certified alcohol or drug addiction program;
 - 3) in the case of a homeless benefit group, finding a home;
 - 4) in the case of a participant who is a victim of domestic violence residing in a domestic violence shelter or receiving counseling or treatment or participating in criminal justice activities directed at prosecuting the domestic violence perpetrator, for no longer than twenty-four weeks; and

27-2B-6. Durational Limits

- A. Pursuant to the federal act, on or after July 1, 1997 a participant may receive federally funded cash assistance and services for up to sixty months.
- B. During a participant's fourth, sixth and eighth semi-annual reviews, the department shall examine the participant's progress to determine if the participant has successfully completed an educational or training program or increased the number of hours he is working as required by the federal act. The department may refer the participant to alternative work activities or provide additional services to address possible barriers to employment facing the participant.
- C. Up to twenty percent of the population of participants may be exempted from the sixty-month durational limit set out in Subsection A of this section because of hardship or because those participants are battered or subject to extreme cruelty.
- D. For the purposes of this section, a participant has been battered or subjected to extreme cruelty if he can demonstrate by reliable medical, psychological or mental reports, court orders or police reports that he has been subjected to and currently is affected by:
 - (1) physical acts that result in physical injury;
 - (2) sexual abuse;
 - (3) being forced to engage in nonconsensual sexual acts or activities;
 - (4) threats or attempts at physical or sexual abuse;
 - (5) mental abuse; or
 - (6) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.
- E. For the purposes of this section, a hardship exception applies to a person who demonstrates through reliable medical, psychological or mental reports, social security administration records, court orders, police reports or department records that he is a

person:

- (1) who is barred from engaging in a work activity because he is temporarily or completely disabled;
- (2) who is the sole provider of home care to an ill or disabled family member;
- (3) whose ability to be gainfully employed is affected by domestic violence;
- (4) whose application for supplemental security income is pending in the application or appeals process and who:
 - (a) meets the criteria of Paragraph (1) of this subsection; or
 - (b) was granted a waiver from the work requirement pursuant to Paragraph (1) of Subsection I of Section 27-2B-5 NMSA 1978 in the last twenty-four months; or
- (5) who otherwise qualifies for a hardship exception as defined by the department.

- F. Pursuant to the federal act, the department shall not count a month of receipt of cash assistance or services toward the sixty-month durational limit if during the time of receipt the participant:
- (1) was a minor and was not the head of a household or married to the head of a household; or
 - (2) lived in Indian country, as defined in the federal act, if the most reliable data available with respect to the month indicate that at least fifty percent of the adults living in Indian country or in the village were not employed.

47-8-33. – J. Breach of agreement by resident and relief by owner. (domestic violence subsection)

- J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

59A-23E-11. Group health plan; group health insurance; prohibiting discrimination based on health status against individual participants and beneficiaries in eligibility to enroll.

- A. Except as provided in Subsection B of this section, a group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall not establish rules for eligibility or continued eligibility of any individual to enroll or continue to participate in a health plan based on any of the following health status related factors in relation to the individual or a dependent of the individual:
- (1) health status;
 - (2) medical condition, including both physical and mental illnesses;
 - (3) claims experience;
 - (4) receipt of health care;
 - (5) medical history;
 - (6) genetic information;

- (7) evidence of insurability, including conditions arising out of acts of domestic violence; or
- (8) disability.

B. To the extent consistent with the provisions of Section 59A-23E-3 NMSA 1978, the provisions of Subsection A of this section do not require a group health plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the plan or coverage or to prevent the plan or coverage from establishing limitations or restrictions on the amount, level, extent or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

CHAPTER 34, 35 LAWS 2002

Relating To Domestic Abuse; Providing For Forbearance Of Costs For Filing Of Criminal Charges For Victims Of Domestic Abuse; Clarifying Policy Regarding Dual Arrests In Domestic Abuse Incidents; Providing For Training For Police Officers; Declaring An Emergency.

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:

"Alleged victims of domestic abuse, stalking or sexual assault--forbearance of costs.--

- A. An alleged victim of an offense specified in Subsection B of this section is not required to bear the cost of:
 - (1) filing a criminal charge against an alleged perpetrator of the offense;
 - (2) the issuance or service of a warrant;
 - (3) the issuance or service of a witness subpoena; or
 - (4) the issuance or service of a protection order.
- B. The provisions of Subsection A of this section apply to alleged victims of domestic abuse as defined in Section 40-13-2 NMSA 1978 and:
 - (1) sexual offenses described in Sections 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;
 - (2) crimes against household members described in Sections 30-3-12 through 30-3-16 NMSA 1978;
 - (3) harassment, stalking and aggravated stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978; and
 - (4) the violation of an order of protection described in Subsection E of Section 40-13-6 NMSA 1978."

Section 2. A new section of the Family Violence Protection Act is enacted to read:

"Legislative findings--state policy--dual arrests.--The legislature finds that domestic abuse incidents are complex and require special training on the part of law enforcement officers to respond appropriately to domestic abuse incidents. The state of New Mexico discourages dual arrests of persons involved in incidents of domestic abuse. A law enforcement officer, in making arrests for domestic abuse, shall seek to identify and shall consider whether one of the parties acted in self defense."

Section 3. A new section of the Law Enforcement Training Act is enacted to read:

"Domestic abuse incident training.--Domestic abuse incident training shall be included in the curriculum of each basic law enforcement training class. Domestic abuse incident training shall be included as a component of in-service training each year for certified police officers."

Section 4. Emergency.--It is necessary for the public peace, health and safety that this act take effect immediately.

Senate Bill 294, and House Judiciary Committee Substitute For House Bill 242As Amended With Emergency Clause
Signed/Effective March 4, 2002

**NEW MEXICO STATUTES ON GENERAL ASSAULT, BATTERY AND
AGGRAVATED ASSAULT AND BATTERY, INJURY TO
PREGNANT WOMEN**

30-3-1. Assault. (1963)

Assault consists of either:

- A. an attempt to commit a battery upon the person of another;
- B. any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery; or
- C. The use of insulting language toward another impugning his honor, delicacy or reputation.

Whoever commits assault is guilty of a petty misdemeanor.

30-3-2. Aggravated assault. (1963)

Aggravated assault consists of either:

- A. unlawfully assaulting or striking at another with a deadly weapon;
- B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or
- C. willfully and intentionally assaulting another with intent to commit any felony.

Whoever commits aggravated assault is guilty of a fourth degree felony.

30-3-3. Assault with intent to commit a violent felony.

Assault with intent to commit a violent felony consists of any person assaulting another with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery or burglary.

Whoever commits assault with intent to commit a violent felony is guilty of a third degree felony.

30-3-4. Battery.

Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

Whoever commits battery is guilty of a petty misdemeanor.

30-3-5. Aggravated battery.

- A. Aggravated battery consists of the unlawful touching or application of force to the person of another with intent to injure that person or another.
- B. Whoever commits aggravated battery, inflicting an injury to the person which is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.
- C. Whoever commits aggravated battery inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.

30-3-6. Reasonable detention; assault, battery, public affray or criminal damage to property.

- A. As used in this section:
 - (1) "licensed premises" means all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors;
 - (2) "proprietor" means the owner of the licensed premises or his manager or his designated representative; and
 - (3) "operator" means the owner or the manager of any establishment or premises open to the public.
- B. Any law enforcement officer may arrest without warrant any persons he has probable cause for believing have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 NMSA 1978 or public affray or criminal damage to property. Any proprietor or operator who causes such an arrest shall not be criminally or civilly liable if he has actual knowledge, communicated truthfully and in good faith to the law enforcement officer, that the persons so arrested have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 NMSA 1978 or public affray or criminal damage to property.

30-3-7. Injury to pregnant woman.

- A. Injury to [a] pregnant woman consists of a person other than the woman injuring a pregnant woman in the commission of a felony causing her to suffer a miscarriage or stillbirth as a result of that injury.
- B. As used in this section:
 - (1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception; and
 - (2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion; and death is manifested by the fact that after the expulsion or extraction the

fetus does not breathe spontaneously or show any other evidence of life such as heart beat, pulsation of the umbilical cord or definite movement of voluntary muscles.

- C. Whoever commits injury to [a] pregnant woman is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**GENERAL NEW MEXICO STATE CRIMINAL STATUTES: FALSE, REPORTS,
EVIDENCE TAMPERING, SENTENCING, TIME LIMITATIONS FOR
PROSECUTION**

30-1-8. Time limitations for commencing prosecution.

No person shall be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed therefore within the time as provided:

- A. for a second degree felony, within six years from the time the crime was committed;
- B. for a third or fourth degree felony, within five years from the time the crime was committed;
- C. for a misdemeanor, within two years from the time the crime was committed;
- D. for a petty misdemeanor, within one year from the time the crime was committed;
- E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;
- F. for a felony pursuant to Sections 7-1-72 or 7-1-73 NMSA 1978 or Section 4 of this 2005 act, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;and
- G. for any crime not contained in the Criminal Code [30-1-1 NMSA 1978] or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and
- H. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime.

30-1-9. Tolling of time limitation for prosecution for crimes.

- A. If after any crime has been committed the defendant shall conceal himself, or shall flee from or go out of the state, the prosecution for such crime may be commenced within the time prescribed in Section 1-8 [30-1-8 NMSA 1978], after the defendant ceases to conceal himself or returns to the state. No period shall be included in the time of limitation when the party charged with any crime is not usually and publicly a resident within the state.
- B. When
 - (1) an indictment, information or complaint is lost, mislaid or destroyed;
 - (2) the judgment is arrested;
 - (3) the indictment, information or complaint is quashed, for any defect or reason; or
 - (4) the prosecution is dismissed because of variance between the allegations of the indictment, information or complaint and the evidence; and a new indictment, information or complaint is thereafter presented, the time elapsing between the preferring of the first indictment, information or complaint and the subsequent indictment, information or complaint shall not be included in computing the period limited for the prosecution of the crime last charged; provided that the crime last

charged is based upon and grows out of the same transaction upon which the original indictment, information or complaint was founded, and the subsequent indictment, information or complaint is brought within five years from the date of the alleged commission of the original crime.

30-1-9.1. Offenses against children; tolling of statute of limitations.

The applicable time period for commencing prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-6-1, 30-9-11 or 30-9-13 NMSA 1978 until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

30-1-9.2. Criminal sexual penetration; tolling of statute of limitations

A. When DNA evidence is available and a suspect has not been identified, the applicable time period for commencing a prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-9-11 NMSA 1978 until a DNA profile is matched with a suspect.

B. As used in this section, "DNA" means deoxyribonucleic acid."

30-22-5. Tampering with evidence.

A. Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.

B. Whoever commits tampering with evidence shall be punished as follows:

- (1) if the highest crime for which tampering with evidence is committed is a capital or first degree felony or a second degree felony, the person committing tampering with evidence is guilty of a third degree felony;
- (2) if the highest crime for which tampering with evidence is committed is a third degree felony or a fourth degree felony, the person committing tampering with evidence is guilty of a fourth degree felony;
- (3) if the highest crime for which tampering with evidence is committed is a misdemeanor or a petty misdemeanor, the person committing tampering with evidence is guilty of a petty misdemeanor; and
- (4) if the highest crime for which tampering with evidence is committed is indeterminate, the person committing tampering with evidence is guilty of a fourth degree felony.

30-39-1. False report; penalty.

It is unlawful for any person to intentionally make a report to a law enforcement agency or official, which report he knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code. Any person violating the provisions of this section is guilty of a misdemeanor.

31-18-15. Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony resulting in the death of a child, life imprisonment;
- (2) for a first degree felony for aggravated criminal sexual penetration, life imprisonment;
- (3) for a first degree felony, eighteen years imprisonment;
- (4) for a second degree felony resulting in the death of a human being, fifteen years

imprisonment;

(5) for a second degree felony for a sexual offense against a child, fifteen years

imprisonment;

(6) for a second degree felony, nine years imprisonment;

(7) for a third degree felony resulting in the death of a human being, six years

imprisonment;

(8) for a third degree felony for a sexual offense against a child, six years imprisonment;

(9) for a third degree felony, three years imprisonment; or

(10) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978].

C. The court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);

(2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars (\$17,500);

(3) for a first degree felony, fifteen thousand dollars (\$ 15,000);

(4) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$ 12,500);

(5) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$ 12,500);

(6) for a second degree felony, ten thousand dollars (\$ 10,000);

(7) for a third degree felony resulting in the death of a human being, five thousand dollars (\$ 5,000);

(8) for a third degree felony for a sexual offense against a child, five thousand dollars (\$ 5,000); or

(9) for a third or fourth degree felony, five thousand dollars (\$ 5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978.

If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners.

31-18-16. Use of firearm; alteration of basic sentence; suspension and deferral limited.

A. When a separate finding of fact by the court or jury shows that a firearm was used in the commission of a noncapital felony, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year, and the sentence imposed by this subsection shall be the first year served and shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by one year.

B. For a second or subsequent noncapital felony in which a firearm is used, the basic sentence of imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be increased by three years, and the sentence imposed by this subsection shall be the first three years served and shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by three years.

C. If the case is tried before a jury and if a prima facie case has been established showing that a firearm was used in the commission of the offense, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that a firearm was used in the commission of the offense, the court shall decide the issue and shall make a separate finding of fact thereon.

31-18-16.1 Repealed.

31-18-17. Habitual offenders; alteration of basic sentence.

A. A person convicted of a noncapital felony in this state whether within the Criminal Code [30-1-1 NMSA 1978] or the Controlled Substances Act [30-31-1 NMSA 1978] or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection.

B. A person convicted of a noncapital felony in this state whether within the Criminal Code or Controlled Substance Act or not who has incurred two prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13

NMSA 1978 is a habitual offender and his basic sentence shall be increased by four years. The sentence imposed by this subsection shall not be suspended or deferred.

C. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by eight years. The sentence imposed by this subsection shall not be suspended or deferred.

D. As used in this section, "prior felony conviction" means:

(1) a conviction, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for a prior felony committed within New Mexico whether within the Criminal Code or not, but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978; or

(2) a prior felony, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for which the person was convicted other than an offense triable by court martial if:

(a) the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico;

(b) the offense was punishable, at the time of conviction, by death or a maximum term of imprisonment of more than one year; or

(c) the offense would have been classified as a felony in this state at the time of conviction.

E. As used in this section, "nonviolent felony offense" means application of force, threatened use of force or a deadly weapon was not used by the offender in the commission of the offense.

31-18-25. Two violent sexual offense convictions; mandatory life imprisonment; exception.

A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment imposed for the second violent sexual offense conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

B. Notwithstanding the provisions of Subsection A of this section, when a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and the victim of each violent sexual offense was less than thirteen years of age at the time of the offense, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall be punished by a sentence of life imprisonment without the possibility of parole.

C. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the second violent sexual offense conviction, pursuant to the provisions of Section 31-18-26 NMSA 1978.

D. For the purposes of this section, a violent sexual offense conviction incurred by a defendant before he reaches the age of eighteen shall not count as a violent sexual offense conviction

E. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent sexual offense for the purposes of the Criminal Sentencing Act [31-18-12 NMSA 1978] if the crime would be considered a violent sexual offense in New Mexico.

F. As used in the Criminal Sentencing Act, "violent sexual offense" means:

(1) criminal sexual penetration in the first degree, as provided in Subsection C of Section 30-9-11 NMSA 1978; or

2) criminal sexual penetration in the second degree, as provided in Subsection D of Section 30-9-11 NMSA 1978.

31-18-26. Two violent sexual offense convictions; sentencing procedure.

A. The court shall conduct a separate sentencing proceeding to determine any controverted question of fact regarding whether the defendant has been convicted of two violent sexual offenses. Either party to the sentencing proceeding may demand a jury sentencing proceeding.

B. A jury sentencing proceeding shall be conducted as soon as practicable by the original trial judge before the original trial jury. A nonjury sentencing proceeding shall be conducted as soon as practicable by the original trial judge. In the case of a plea of guilty, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge or by the original trial jury, upon demand of the defendant

C. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments. In a nonjury sentencing proceeding, or upon a plea of guilty when the defendant has not demanded a jury, the judge shall allow arguments and determine the verdict.

31-19-1. Sentencing authority [;] misdemeanors; imprisonment and fines; probation.

A. Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

B. Where the defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than five hundred dollars (\$500) or to both such imprisonment and fine in the discretion of the judge.

C. When the court has deferred or suspended sentence, it shall order the defendant placed on supervised or unsupervised probation for all or some portion of the period of deferment or suspension.

CHAPTER 109A-SEXUAL ABUSE

Sec. 2241. Aggravated sexual abuse

(a) By Force or Threat. - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act -

- (1) by using force against that other person; or
- (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By Other Means. - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly -

- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby -
 - (A) substantially impairs the ability of that other person to appraise or control conduct; and
 - (B) engages in a sexual act with that other person; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With Children. - Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of Mind Proof Requirement. - In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

Sec. 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly -

- (1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or
- (2) engages in a sexual act with another person if that other person is -
 - (A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.

Sec. 2243. Sexual abuse of a minor or ward

(a) Of a Minor. - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who –

- (1) has attained the age of 12 years but has not attained the age of 16 years; and
- (2) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) Of a Ward. - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is -

- (1) in official detention; and
- (2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.

(c) Defenses. -

(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of Mind Proof Requirement. - In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew -

- (1) the age of the other person engaging in the sexual act; or
- (2) that the requisite age difference existed between the persons so engaging.

Sec. 2244. Abusive sexual contact

(a) Sexual Conduct in Circumstances Where Sexual Acts Are Punished by This Chapter. - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate -

- (1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;
- (2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;
- (3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or
- (4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than six months, or both.

(b) In Other Circumstances. - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in sexual contact with another person without that other person's permission shall be fined under this title, imprisoned not more than six months, or both.

(c) Offenses involving young children – If the sexual contact that violates this section is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.

Sec.2245. Sexual abuse resulting in death

A person who, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

Sec. 2246. Definitions for chapter

As used in this chapter -

(1) the term "prison" means a correctional, detention, or penal facility;

(2) the term "sexual act" means -

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(5) the term "official detention" means -

(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or

(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.

(1) the term "State" means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

Sec.2247. Repeat offenders

(a) Maximum Term of Imprisonment – The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter, unless section 3559(e) applies.

(b) Prior Sex Offense Conviction Defined – In this section, the term “prior sex offense conviction” has the meaning given that term in section 2426(b).

CHAPTER 213 – LIMITATIONS

Sec. 3283. Offenses against children

No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child.

CHAPTER 73 – OBSTRUCTION OF JUSTICE

Sec.1510. Obstruction of criminal investigations

(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both.

Section 3581. Sentence of imprisonment

(a) In general – A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) Authorized terms – The authorized terms of imprisonment are –

(1) for a Class A felony, the duration of the defendant’s life or any period of time;

(2) for a Class B felony, not more than twenty-five years;

(3) for a Class C felony, not more than twelve years;

(4) for a Class D felony, not more than three years;

(5) for a Class E felony, not more than three years;

(6) for a Class A misdemeanor, not more than one year;

(7) for a Class B misdemeanor, not more than six months;

(8) for a Class C misdemeanor, not more than thirty days; and

(9) for an infraction, not more than five days.

CHAPTER 110A SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Sec. 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (d), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (d) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering –

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct; shall be punished as provided under subsection (d).

(2) The circumstance referred to in paragraph (1) is that -

(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed.

(d) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title or imprisoned not less than 10 years nor more than 20 years, and (FOOTNOTE 1) both, but if such person has one prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 30 years, but if such person has 2 or more prior convictions under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 30 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by

death or imprisoned for any term of years or for life. (FOOTNOTE 1) So in original. Probably should be "or".

Section 2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either -

- (1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
- (2) with intent to promote either -
 - (A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - (B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either -

- (1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
- (2) with intent to promote either -
 - (A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - (B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; shall be punished by imprisonment for not less than 20 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that -

- (1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in interstate or foreign commerce;
- (2) any offer described in such subsections was communicated or transported in interstate or foreign commerce by any means including by computer or mail; or
- (3) the conduct described in such subsections took place in any territory or possession of the United States.

Section 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who -

- (1) knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if -
 - (A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
 - (B) such visual depiction is of such conduct;
- (2) knowingly receives, or distributes, any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if -

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either -

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means, including by computer, if -

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either -

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if -

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraphs (FOOTNOTE 1) (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than 15 years, or both, but if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 5 years nor more than 30 years. (FOOTNOTE 1) So in original. Probably should be "paragraph".

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 5 years, or both, but if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 2 years nor more than 10 years.

(c) Affirmative Defense. - It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant -

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof -

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

Section 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who -

(1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes -

(A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;

(3) knowingly reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer;

(4) either -

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) either -

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), or (4) of subsection (a) shall be fined under this title or imprisoned not more than 15 years, or both, but, if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 5 years nor more than 30 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 5 years, or both, but, if such person has a prior conviction under this chapter, chapter 109A, or chapter 117, or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 2 years nor more than 10 years.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), or (4) of subsection (a) that -

(1) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct;

(2) each such person was an adult at the time the material was produced; and

(3) the defendant did not advertise, promote, present, describe, or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.

(d) Affirmative Defense. - It shall be an affirmative defense to a charge of violating subsection (a) (5) that the defendant -

- (1) possessed less than three images of child pornography; and
- (2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof -
 - (A) took reasonable steps to destroy each such image; or
 - (B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

Section 2252B. Misleading domain names on the Internet

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 4 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as "sex" or "porn", is not misleading.

(d) For the purposes of this section, the term "material that is harmful to minors" means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context -

- (1) predominantly appeals to a prurient interest of minors;
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term "sex" means acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Section 2256. Definitions for chapter

For the purposes of this chapter, the term -

- (1) "minor" means any person under the age of eighteen years;
- (2) "sexually explicit conduct" means actual or simulated -
 - (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (B) bestiality;
 - (C) masturbation;
 - (D) sadistic or masochistic abuse; or
 - (E) lascivious exhibition of the genitals or pubic area of any person;
- (3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;
- (4) "organization" means a person other than an individual;
- (5) "visual depiction" includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;
- (6) "computer" has the meaning given that term in section 1030 of this title;

- (7) "custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;
- (8) "child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-
- (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;
 - (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or
 - (D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and
- (9) "identifiable minor" -
- (A) means a person -
 - (i) (I) who was a minor at the time the visual depiction was created, adapted, or modified; or
 - (II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
 - (ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
 - (B) shall not be construed to require proof of the actual identity of the identifiable minor.

Section 2258. Failure to report child abuse

Another section 2258 is set out after section 2259. A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.

Section 2260. Production of sexually explicit depictions of a minor for importation into the United States

(a) Use of Minor. - A person who, outside the United States, employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor with the intent that the minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, intending that the visual depiction will be imported into the United States or into waters within 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(b) Use of Visual Depiction. - A person who, outside the United States, knowingly receives, transports, ships, distributes, sells, or possesses with intent to transport, ship, sell, or distribute any visual depiction of a minor engaging in sexually explicit conduct (if the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct), intending that the visual depiction will be imported into the United States or into waters within a distance of 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(c) Penalties. - A person who violates subsection (a) or (b), or conspires or attempts to do so -
(1) shall be fined under this title, imprisoned not more than 10 years, or both; and

(2) if the person has a prior conviction under this chapter or chapter 109A, shall be fined under this title, imprisoned not more than 20 years, or both.

Section 1466. Engaging in the business of selling or transferring obscene matter

(a) Whoever is engaged in the business of selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term "engaged in the business" means that the person who sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection.

Section 1466A. Obscene visual representations of the sexual abuse of children

(a) In general – Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that –

(1) (A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so,

shall be subject to the penalties provided in section 2252A (b)(1), including the penalties provided for cases involving a prior conviction.

(b) Additional offenses – Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting that –

(1) (A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so shall be subject to the penalties provided in section 2252A (b) (2), including the penalties provided for cases involving a prior conviction.

(c) Nonrequired element of offense – It is not a required element of any offense under this section that the minor depicted actually exist.

(d) Circumstances – The circumstance referred to in subsections (a) and (b) is that –

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

(e) Affirmative defense – It shall be an affirmative defense to a charge of violating subsection (b) that the defendant –

(1) possessed less than 3 such visual depictions; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction –

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(f) Definitions – For purposes of this section –

(1) the term “visual depiction” includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture whether made or produced by electronic, mechanical, or other means;

(2) the term “sexually explicit conduct” has the meaning given the term in section 2256(2) (A) or 2256(2) (B); and

(3) the term “graphic” when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

Section 1470. Transfer of obscene material to minors

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

CHAPTER 53 INDIANS

Sec. 1169. Reporting of child abuse

(a) Any person who -

(1) is a -

(A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,

(B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,

- (C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,
 - (D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,
 - (E) psychiatrist, psychologist, or psychological assistant,
 - (F) licensed or unlicensed marriage, family, or child counselor,
 - (G) person employed in the mental health profession, or
 - (H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;
- (2) knows, or has reasonable suspicion, that -
- (A) a child was abused in Indian country, or
 - (B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and
- (3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency, shall be fined under this title or imprisoned for not more than 6 months or both.
- (b) Any person who -
- (1) supervises, or has authority over, a person described in subsection (a) (1), and
 - (2) inhibits or prevents that person from making the report described in subsection (a), shall be fined under this title or imprisoned for not more than 6 months or both.
- (c) For purposes of this section, the term -
- (1) "abuse" includes -
 - (A) any case in which -
 - (i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and
 - (ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and
 - (B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;
 - (2) "child" means an individual who -
 - (A) is not married, and
 - (B) has not attained 18 years of age;
 - (3) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and
 - (4) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.

(d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

CHAPTER 110A DOMESTIC VIOLENCE AND STALKING

Section 2261. Interstate domestic violence

(a) Offenses. -

(1) Travel or conduct of offender. - A person who travels in interstate or foreign commerce or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim. - A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(b) Penalties. - A person who violates this section or section 2261A shall be fined under this title, imprisoned -

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

Section 2261A. Interstate stalking

Whoever -

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent -

(A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to -

(i) that person;

(ii) a member of the immediate family (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii), shall be punished as provided in section 2261(b).

Section 2262. Interstate violation of protection order

(a) Offenses. -

(1) Travel or conduct of offender. - A person who travels in interstate or foreign commerce, or enters or leaves Indian country, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim. - A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties. - A person who violates this section shall be fined under this title, imprisoned -

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

Section 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

Section 2264. Restitution

(a) In General. - Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and Nature of Order. -

(1) Directions. - The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement. - An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition. - For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for -

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

- (F) any other losses suffered by the victim as a proximate result of the offense.
- (4) Order mandatory. –
 - (A) The issuance of a restitution order under this section is mandatory.
 - (B) A court may not decline to issue an order under this section because of -
 - (i) the economic circumstances of the defendant; or
 - (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) Victim Defined. - For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

8 U.S.C. 12 II I § 1154

Sec. 1154. – Self-petitioning for battered immigrant women and their children

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute allows victims to remain in the United States independent of their abusive husbands/parents.

FEDERAL STATUES ON FULL FAITH AND CREDIT

Section 2265. Full faith and credit given to protection orders

(a) Full Faith and Credit. - Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State, Indian tribe, or territory.

(b) Protection Order. - A protection order issued by a State, tribal, or territorial court is consistent with this subsection if -

- (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
- (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or Counter Petition. - A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if -

- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and Registration. -

(1) Notification. - A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement. - Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on internet publication of registration information. A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction [, restraining order, or injunction] in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) Tribal Court Jurisdiction. - For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

Section 2266. Definitions

In this chapter:

(1) Bodily injury. - The term "bodily injury" means any act, except one done in self-defense that results in physical injury or sexual abuse.

(2) Course of conduct. - The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) Enter or leave Indian country. - The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) Indian country. - The term "Indian country" has the meaning stated in section 1151 of this title.

(5) Protection order. - The term "protection order" includes:

(A) any injunction or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or

motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence or stalking.

(6) Serious bodily injury. - The term "serious bodily injury" has the meaning stated in section 2119(2).

(7) Spouse or intimate partner. - The term "spouse or intimate partner" includes -

- (A) for purposes of -
- (i) sections other than 2261A:
 - a. a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
 - b. a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship; and
 - (ii) section 2261A
 - a. a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
 - b. a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship
- (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.
- (8) State. - The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce. - The term "travel in interstate or foreign commerce" does not include travel from one State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) Dating partner. – The term “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of –

- (A) the length of the relationship; and
- (B) the type of relationship; and
- (C) the frequency of interaction between the persons involved in the relationship.

FEDERAL FIREARM OFFENSES

Federal law 18 U.S.C. 922 (d) 8 and 9, (g) 1, 8-9 Firearm Offenses

18 U.S.C. 922 (d)

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

18 U.S.C. 922 (d) (8) Transfer of a firearm to a person subject to a protection order

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that -

- (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
- (B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

18 U.S.C. 922 (d) (9) Transfer of a firearm to a person convicted of a misdemeanor crime of domestic violence

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

- (9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

18 U.S.C. 922 (g) (1) Felon in possession of a firearm

- (g) It shall be unlawful for any person -

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

18 U.S.C. 922 (g) (8) Possession of a firearm while subject to a protection order

- (g) It shall be unlawful for any person -

- (8) who is subject to a court order that -

- (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (C)
 - (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

18 U.S.C. 922 (g) (9) Possession of a firearm after conviction of a misdemeanor crime of domestic violence

- (g) It shall be unlawful for any person -

- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

New Mexico Statewide Resource Numbers



**To Order Sexual Assault Evidence Kits,
Suspected Offender Evidence Kits, Or Child Protocol Packets**

Call toll-to the New Mexico Coalition of Sexual Assault Programs at 1-888-883-8020 or within the Albuquerque area at 883-8020. This is not a crisis service. Orders will be filled and mailed within two weeks of the order. Be sure to order in a timely manner.

- Clearinghouse on Sexual Assault and Abuse Resources:
 - Statewide.....1-888-883-8020
 - Albuquerque Area.....505-883-8020

- Child Abuse Reporting:
 - Statewide Central Intake (SCI, available 24/7).....1-800-797-3260
 - Albuquerque Area.....505-841-6100

- Domestic Violence:
 - Statewide Crisis Line.....1-800-773-3645
 - NM Coalition Against Domestic Violence (Albuq).....505-246-9240

- Crime Victims Reparation Commission:
 - Statewide.....1-800-306-6262
 - Albuquerque Area.....505-841-9432

- New Mexico Coalition of Sexual Assault Programs:
 - Statewide.....1-888-883-8020
 - Albuquerque Area.....505-883-8020

- Crisis Response of Santa Fe:
 - Statewide.....1-888-920-6333
 - Santa Fe Area.....505-820-6333

- Survivors of Homicide:
 - Albuquerque Area.....505-232-4099

- Grief Intervention Services (O.M.I.):
 - Albuquerque Area.....505-272-2485

- NM State Police Mobile Crime Scene Unit:
 - District 5 (office).....505-841-9273
 - Sgt. Shane Arthur (cell).....505-681-2847

- Para Los Ninos, Pediatric Sexual Abuse Exam Team:
 - Statewide and Albuquerque.....505-272-6849

- RAINN: National Sexual Violence Hotline:
 - National.....1-800-656-4673

- Catholic Charities (ask for VAWA department or identify on phone as victim)
 - Albuquerque and Statewide.....505-247-0442

- AT & T Language Line (telephonic language interpretation)
 - Statewide.....1-877-886-3885

New Mexico Sexual Abuse Program Coordinators

Alamogordo

The Counseling Center
575-437-7404

Albuquerque

Rape Crisis Center of
Central New Mexico
505-266-7711

Programs for Children and

Adolescents

505-272-2190

505-272-2800 after 5pm

Sequoyah Adolescent

Treatment Center

505-222-0300

Anthony

Southern NM Human
Development, Inc.
575-882-5101

Bernalillo

La Buena Vida

505-867-2383, ext. 3015

Carlsbad

Carlsbad Mental Health

575-885-4836

575-885-8888 crisis

Clayton

Tri-County Community

Services, Inc.

575-374-2032

Clovis

Mental Health Resources

575-769-2345, ext 106

1-800-432-2159 crisis

(After hours)

Deming

Border Area Mental Health
Center

575-546-2174

1-800-426-0997 crisis

Espanola

Ana Guldan

505-852-2996

Northern NM Family

Crisis Center

505-753-1656

1-800-206-1656 crisis

Estancia

Valencia Counseling Services

505-384-0220

505-865-4739 crisis

Farmington

Desert View Family

Counseling Center

505-326-7878

505-947-3645 crisis

Farmington Community Health
Center (PMS)

505-325-0238

505-325-1906 crisis

Sexual Assault Services of

Northwest New Mexico

505-325-2805

Ft. Sumner

Mental Health Resources

575-355-2414

1-877-579-8001 crisis

Gallup

Western New Mexico

Counseling Services

505-863-3828

1-800-649-0181 crisis

Grants

Cibola Counseling Services

505-287-7985

1-866-527-2291 crisis

(After hours and wkends)

Hobbs

Guidance Center of

Lea County

575-393-3168, ext. 211

575-393-6633 crisis

Jemez Pueblo

Pueblo of Jemez Social
Services

575-834-7117

Las Cruces

La Pinon Sexual Assault
Recovery Services
575-526-3437
575-526-3437 crisis
1-888-595-7273 crisis

Southern New Mexico
Human Development
575-589-1147

Southwest Counseling
Center
575-647-2874
575-526-3371 crisis

Las Vegas

NM Behavioral Health Ins./
Community Based Services
505-454-5115
505-425-1048 crisis
(After Hours)

Los Alamos

Los Alamos Family Council
505-662-3264
505-662-4422 crisis

Los Lunas

La Buena Vida
505-565-1619

Valencia Counseling
Services
505-865-3350
505-865-3359 crisis

Lovington

Guidance Center of
Lea County
575-396-3818

Portales

Mental Health Resource, Inc.
575-359-1221
1-800-432-2159 crisis

Raton

Tri County Community
Services
575-445-2754

Reserve

Border Area Mental
Health Services
575-533-6649

Rio Rancho

(PMS) Rio Rancho Family
Health Center
505-896-0928
1-888-920-6333 crisis

Roswell

Counseling Associates
575-623-1480, ext. 1036

Susan Wilson
575-623-9385

Ruidoso

The Counseling Center
575-257-5038
1-800-634-3666 (After Hrs)

San Felipe

San Felipe Behavioral Health
& Family Services
505-867-9740

Santa Fe

Santa Fe Rape & Trauma
Treatment Center
505-988-1951
505-986-9111 crisis
1-800-721-7273 advocacy

Santa Rosa

NM Behavior Health
Institute/CBS
575-472-3768
505-425-1048 crisis

Shiprock

Ajooba Four
Corners SAS
505-368-5130

Silver City

El Refugio, Rape Crisis
Services
575-538-2125

Border Area Mental Health
Service, Inc.
575-388-4412, ext. 4614
1-800-426-0997 crisis
575-538-3488 crisis

Socorro

Socorro Mental Health
575-835-2444

Taos

Community Against
Violence
575-758-8082
575-758-9888 crisis

Tri County Community
Services, Inc.
575-758-1125

Truth or Consequences

La Pinon
575-526-3437

Tucumcari

Mental Health
Resources, Inc.
575-461-3013
1-800-432-2159 crisis

New Mexico Sexual Assault Nurse Examiners Programs

Statewide SANE**Coordinator**

Connie Monahan
505-883-8020

Alamogordo

Otero/Lincoln County
SANE Unit
575-443-7901
575-491-1557 emergency

Albuquerque

Albuquerque SANE
Collaborative
505-883-8720
505-884-7263 emergency

Para Los Niños, UNM
Pediatric sex abuse exams
Renee Ornelas, M.D.
505-272-6849
505-884-7263 emergency

Carlsbad

Carlsbad SANE
575-887-4121
Ask for SANE Representative

Clovis

Plains Regional Medical Center SANE
575-769-7335 emergency
Ask for SANE Representative

Farmington

Sexual Assault Services of
Northwest NM
575-325-2805
575-326-4700 crisis
866-906-4700 crisis

Grants

Cibola County SANE
505-287-5260 emergency

Las Cruces

La Piñon SANE Project
505-521-5549
1-888-595-7273 emergency

Lovington

Lea County SANE
575-396-6611
575-390-6999 emergency

Portales

Roosevelt County SANE
575-359-1800
575-359-1800 ext 472 emergency

Roswell

Esperanza House SANE Project
575-625-1457
575-622-7263 emergency

Santa Fe

Santa Fe Christus St. Vincent SANE
505-995-4999
505-989-5952 crisis

Criminalistics Labs

Albuquerque Police Department

Criminalistics Lab (serves Bernalillo County)
Albuquerque Police Department
Contact: Cathy Pfefferle, Forensic Scientist
505-823-4642

New Mexico Department of Public Safety Crime Lab

Contact: Noreen Purcell, Forensic Serology/DNA Analyst
505-827-9136

New Mexico Safehouse Network

Alamogordo

Kids, Inc., A Safehouse
For Kids
575-437-8689

Albuquerque

The Children's Safehouse
505-271-0329

Clovis

The Oasis
575-769-7732

Carlsbad

Eddy County Safehouse
575-885-9763

Farmington

Childhaven
505-325-5358

Hobbs

Option, Inc.
575-397-1576

Las Cruces

Children's Safehouse of Las Cruces
Family and Youth, Inc.
575-522-4004, 575-522-4005

Roswell

Esperanza House
575-625-1095

Santa Fe

Strong Heart Safehouse
505-988-1951

Taos

Community Against
Violence
505-758-8082
505-758-9888 crisis

Taos Saferoom
575-758-2361
575-758-4051

New Mexico Domestic Violence Services

Alamogordo

COPE, Inc.
575-434-3622

Albuquerque

Enlace
505-246-8972
(serving immigrant and
Spanish speaking families)

Safehouse
505-247-4219

Resources, Inc.
505-884-1241

Morning Star House
505-232-8299

Artesia

Grandma's House
575-748-1198

Belen

Valencia Shelter For Victims
of DV
505-864-3202

Bernalillo

Indian Pueblo Legal Service
505-867-3391

Santa Ana Pueblo DV
Program

505-867-3301

Carlsbad

Carlsbad Family Crisis
Center
575-885-4615

Clayton

Golden Spread
Rural/Frontier Coalition
575-374-6207

Clovis

The Hartley House
575-762-0050

Crownpoint

Family Harmony Project
575-786-7031

Deming

The Healing House
575-546-6539

Dulce

Jicarilla Behavioral Health
575-759-3162

Espanola

Crisis Center of Northern
505-753-1656

North Central Community
Based Services
505-756-2327

Farmington

Family Crisis Center
505-325-3549
505-564-9192 crisis

Navajo United Methodist:
New Beginnings
505-325-7578

Gallup

Battered Families Service
505-722-6389

Grants

Roberta's Place
505-287-7724

Hobbs

Option, Inc.
575-397-1576

Jemez Pueblo

Jemez Domestic Violence
Program
575-834-7117

Laguna

Laguna Family Services
505-552-9701

Las Cruces

La Casa
575-526-2819

La Casa (Anthony)
575-882-3008

Los Alamos

Los Alamos Responder
Program
505-662-3264

Raton

Alternatives to Violence
575-445-5778

Rio Rancho

Haven House
505-896-4869

Roswell

Roswell Refuge For Battered
Adults
575-627-8361

San Juan Pueblo

8 Northern Indian Pueblos
Peacekeepers Program
505-753-4790

Santa Fe

Esperanza, Inc.
505-474-5536

Shiprock

Home For Women and
Children
575-368-5124

Silver City

El Refugio
505-538-2125

Socorro

El Puente
505-835-0928

T or C

Domestic Abuse Intervention
Center
575-894-3557

Taos

Community Against
Violence
575-758-8082

Tucumcari

Domestic Violence Program
575-461-4208

Acknowledgements

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