

1. I would recommend we sponsor legislation amending the existing stalking statute to include cyber stalking, use of the internet, following with the intent to commit a sexual assault, the killing of animals and the use of threats to deport the victim. Changes are highlighted in yellow.

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;
- (3) use of technology, a computer, the internet, or or a third person to place another person under surveillance by monitoring the 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
- (4) Use of cultural context to stalk or intimidate a victim i.e. immigration related threats
- (5) 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

(6) when the victim is less than sixteen years of age.

(7) Following the victim with out the victims knowledge with the intent to sexually assault the victim

(8) Uses technology, a computer or the internet to impersonate the victim, or commit identity theft ,or interfere with the victims credit

(9) Uses technology, a computer or the internet to humiliate or degrade another by posting pictures, images or the likeness of the victim on the internet, or by disseminating embarrassing or inaccurate information though electronic means

(10) Uses extreme cruelty to animals

(a) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(b) maliciously killing an animal.

(11) Use of cultural context to stalk or intimidate a victim i.e. immigration related threats

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.

2. I would recommend we sponsor legislation amending the determination of competency statute to include aggravated stalking. Many stalkers suffer from DSM 4 diagnosis. Though the simple obsessional stalkers are the most dangerous and numerous there is an influx of high profile celebrities within New Mexico that attract other types of stalking behavior. In some cases these individuals exhibit a clear and present threat to society but are exempt from a determination of competency and evidentiary hearing because stalking is not an enumerated offense. Changes are highlighted in yellow.

[31-9-1.5. Determination of competency; evidentiary hearing.](#)

A. As provided for in Subsection A of [Section 31-9-1.4](#) NMSA 1978, a hearing to determine the sufficiency of the evidence shall be held if the case is not dismissed and if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in [Section 30-17-6](#) NMSA 1978; criminal sexual penetration, as provided in [Section 30-9-11](#) NMSA 1978; criminal sexual contact of a minor, as provided in [Section 30-9-13](#) NMSA 1978; or aggravated stalking as provided in [Section 30-3A-3.1](#)

NMSA 1978. Such hearing shall be conducted by the district court without a jury. The state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in [Section 30-17-6](#) NMSA 1978; criminal sexual penetration, as provided in [Section 30-9-11](#) NMSA 1978; criminal sexual contact of a minor, as provided in [Section 30-9-13](#) NMSA 1978; or aggravated stalking as provided in [Section 30-3A-3.1](#) NMSA 1978, the district court shall dismiss the criminal case with prejudice; however, nothing in this section shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code [[Chapter 43, Article 1](#) NMSA 1978], and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

[43-1-1. Mental condition of criminal defendants; evaluation; treatment.](#)

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state shall visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the

evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, the secretary of health shall call upon the county sheriff of the county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant charged with a felony pursuant to [Section 31-9-1.2](#) NMSA 1978 or may dismiss the charges without prejudice and refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code [this article]. A defendant so committed under the Mental Health and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. Whenever the secretary of health determines that he does not have the ability to meet the medical needs of a defendant committed pursuant to [Sections 31-9-1.2](#) through [31-9-1.5](#) NMSA 1978, the secretary or his designee shall serve upon the district court and the parties a written certification of the lack of ability to meet the medical needs of the defendant. The court shall set a hearing upon the certification within ten days of its filing and shall, after the hearing, make a determination regarding disposition of the criminal case. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to [Section 31-9-1.2](#) NMSA 1978 may be returned by the county sheriff to the custody of the court upon not less than three days' notice. The secretary shall provide written notification to the court and parties within three days of the defendant's discharge.

F. All acts to be performed by the secretary of health pursuant to provisions of this section may be performed by the secretary's designee.