

January 11, 2011

Stalking Quickly Escalates to Felony Charges in New Mexico

Stalking is a common domestic violence charge in New Mexico. The definition of stalking under the New Mexico statutes is fairly broad allowing prosecutors great latitude in bringing stalking charges.

Under the statute, stalking is defined to include any of the following acts on more than one occasion:

1) following a person in a place other than the residence of the alleged stalker, 2) placing another under surveillance by being present outside the 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.

Each and every element of the definition can be read very broadly to include some fairly innocuous behavior. A first time stalking offense is a misdemeanor. Under the prior law, a 3rd offense was a 4th degree felony.

However, due to the growing concern with domestic violence, the law was amended in 1997 to make a second offense a 4th degree felony. In addition, aggravated stalking may be charged for knowingly violating a protective order or no contact order.

Aggravated stalking is also a 4th degree felony. Aggravated stalking consists of knowingly violating protective order, violating a no contact order under conditions of release, stalking while in possession of a deadly weapon, or stalking a person under 16 years of age.

A 4th degree felony carries very serious penalties with possible jail time of 18 months and fines up to \$5000 for each count. Most prosecutors will charge the offense of aggravated stalking only in cases involving real and serious danger to a victim. Others may err on the side of caution and charge it whenever the statute allows. Then there are those prosecutors that will charge everything conceivably possible under the alleged facts in order to gain strategic advantage. And felony charges most definitely place enormous plea pressure on a defendant due to the great risks associated with conviction.

To avoid any risk of charges for aggravated stalking, a person under a protective order or no contact order should have absolutely no contact with the alleged victim of any kind. This means avoiding contact even when the alleged

DISCLAIMER

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>

victim initiates the contact. Charges under these circumstances are far too common.

The statute reads that a mutual violation "may" constitute a defense. Thus, a mutual violation is not an absolute defense. Nor does a mutual violation prevent the charges from being filed.

In short, it is highly inadvisable to test the boundaries of the statute. In a case of alleged domestic violence or stalking, the defendant should either stay away from the victim, or get the protective order or no contact order lifted. Any other course of action is extremely risky carrying very serious felony consequences.

DISCLAIMER

**Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958**

<http://www.albuquerquecriminallawyerblog.com/>