

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Fourth Year, 2018

AN ACT

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION CRIMINAL CODE AT 17 N.N.C. §§ 203, 209, 303.01, 318 AND 319 FOR PURPOSES OF ADDRESSING CYBERBULLYING

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council and is empowered with the authority to review and make recommendations to the Navajo Nation Council on amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§ 164 (A)(1), 600 (A), and 601(B)(14).
- B. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council. The committee, among other powers, has the authority to "review and recommend ... [r]esolutions relating to social services, health, environmental health, education, veterans and veterans services, employment and labor." 2 N.N.C. § 401(B)(6)(a).
- C. The Naabik'íyáti' Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 164 (A)(9), reviews proposed legislation which requires final action by the Navajo Nation Council. CO-45-12.
- D. The Navajo Nation Council must review and approve enactments or amendments of positive law. 2 N.N.C. § 164 (A).

SECTION TWO. FINDINGS

- A. The Navajo Nation is a sovereign government responsible for providing critical governmental services to and protecting its people. Repeated instances of cyberbullying on the Nation have raised concerns, especially given such behavior has been shown to be a contributing factor to youth suicide.
- B. Cyberbullying is the use of an electronic communication, such as text messages, emails, phone calls, social media,

etc. to bully another person. Approximately 1 in 3 children report being a victim of cyberbullying and 87% of children have witnessed cyberbullying. Given the suicide rate among Native children is more than three times the national average, addressing cyberbullying on the Navajo Nation is of critical concern.

- C. Given the severe negative impact of cyberbullying on the Nation's people, especially children, Council proposes the following amendments to strengthen the Nation's ability to hold offenders accountable and deter future offenses.

SECTION THREE. AMENDING TITLE 17, NAVAJO NATION CRIMINAL CODE

The Navajo Nation Council hereby amends Title 17, the Navajo Nation Criminal Code, as follows:

Chapter 2. General Provisions
Subchapter 1. General

§ 203. Territorial applicability

- A. The Navajo Nation Courts shall have jurisdiction over any person who commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. For purposes of determining jurisdiction for offenses involving electronic communications, an offense is committed within the Navajo Nation if an electronic communication device transmission either originates or is received in the Navajo Nation.
- B. The Navajo Nation Courts shall also have jurisdiction over any member of the Navajo Nation who commits an offense against any other member of the Navajo Nation wherever the acts or conduct which constitutes the offense occurs. Under this circumstance, the Navajo Nation shall not prosecute the offender if another tribal or state jurisdiction has already initiated prosecution.

§ 209. General definitions

- J. "Electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, wireless mobile telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.
- ~~J.~~ K. "Explosive" means any dynamite, nitroglycerine or other similar device or material;
- ~~K.~~ L. "Facilitate" means to engage in conduct which knowingly provides another with the means or opportunity for the commission of an offense;
- ~~L.~~ M. "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include an antique firearm or a firearm in permanently inoperable condition which is kept as a curio or museum piece or for educational purposes;
- ~~M.~~ N. "Litter" means any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind of description, including junked or abandoned vehicles, whether or not any of these items are of value;
- ~~N.~~ O. "Material misrepresentation" means pretense, promise, representation or statement of fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services; the pretense may be verbal or it may be a physical act;
- ~~O.~~ P. "Nályééh" means the traditional, Navajo common law process for open discussions of an offense and the Navajo values which apply to that offense, the mediation and assignment of liability under this process, and the use of reconciliation, restorative justice and reparation in place of fines and jailing;
- ~~P.~~ Q. "Omission" means a failure to perform an act as to which a duty of performance is imposed by law;

- ~~Q.~~ R. "Peace officer" means any person who is a law enforcement officer vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific classes of offenses or offenders;
- ~~R.~~ S. "Person", "he", "she", and "actor" includes any natural person, and where relevant, a corporation, partnership or an unincorporated association, a government or a government authority;
- ~~S.~~ T. "Possess" means to have physical possession or otherwise to exercise dominion or control over property;
- ~~T.~~ U. "Property" means anything of value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership;
- ~~U.~~ V. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ;
- ~~V.~~ W. "Services" include labor, professional service, transportation, telephone, gas or electrical services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property;
- ~~W.~~ X. "Statute" or "law" includes any resolution of the Navajo Nation Council and any local law or ordinance of a political subdivision of the Navajo Nation;
- ~~X.~~ Y. "Tamper" means any act of interference;
- ~~Y.~~ Z. "Navajo Nation official" means any person who is an officer or employee of the Navajo Nation government, including a peace officer, whether elected, appointed or otherwise employed and any person participating as advisor, consultant or otherwise in performing a Navajo Nation governmental function; the term does not include jurors or witnesses;
- ~~Z.~~ AA. "Unlawful" means contrary to law or, where the context so requires, not permitted by law; it does not mean immoral;

~~AA.~~ BB. "Utility" means any enterprise, public or private, which provides gas, electric, steam water or communications services, as well as any common carrier on land, sea or air.

Chapter 3. Offenses

Subchapter 2. Offenses Against Persons

§ 303. Criminal homicide

§ 303.01 Manslaughter

A. Offense. A person commits manslaughter if the person recklessly causes or contributes to the death of another, including via electronic communication device.

B. Sentence.

1. Any person found guilty of manslaughter may be sentenced to imprisonment for a term not to exceed 365 days, and/or ordered to pay a fine not to exceed five thousand dollars (\$5,000).
2. The trial court may sentence a person found guilty of manslaughter to attend rehabilitative therapy.
3. The trial court may order that restitution or nályééh be paid to the victim(s).
4. The trial court may utilize the services of the Navajo Peacemaking Program to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
5. The trial court may impose a peace or security bond upon the defendant, including the pledges of family or clan sureties.
6. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

7. The trial court may impose community service sentences, to be served under the supervision of an organization or an individual designated by the court.

§ 539- 318. Stalking

A. Offense. ~~An individual person~~ commits stalking if ~~he/she~~ that person or his or her agent intentionally or knowingly ~~pursues a pattern of conduct that would cause a victim to feel frightened, intimidated or threatened. In furtherance of the stalking, or by his/her agent, the alleged stalker must commits~~ one or more of the following acts on two or more occasions that causes another to feel frightened, intimidated, or threatened:

~~1. Placing another family member under any form of surveillance whether it be electronic, visual, or physical by being present outside the victim's residence, school, work place, motor vehicle or any other place frequented by the victim; or~~

~~2. The victim is subjected to fear of death or bodily injury, sexual assault, confinement, or restraint or the alleged stalker intends to cause emotional distress for the victim.~~

1. Following another;

2. Appearing at another's residence, school, work place, motor vehicle or any other place frequented by another;

3. Making unwanted or frightening contact with another through postal mail, Internet, or electronic communication, including but not limited to radio, fax, phone, texting, or email;

4. Making threats to harm another or another's children, relatives, friends, pets or livestock;

5. Sending unwanted items to another;

6. Vandalizing another's property; or

7. Securing personal information about another by accessing public records, hiring private investigators, using Internet search services, contacting friends, family, work or neighbors, or going through another's garbage.

B. Sentence.

1. Any individual found guilty of stalking may be sentenced to imprisonment not to exceed one hundred eighty (180) days, and/or be ordered to pay a fine not less than five hundred dollars (\$500.00) and not to exceed five thousand dollars (\$5,000.00).
2. Upon a second or subsequent conviction such person shall be sentenced to imprisonment for a term of not less than one hundred eighty (180) days and not to exceed three hundred sixty-five (365) days, and/or be ordered to pay a fine not less than one thousand dollars (\$1,000.00) and not to exceed five thousand dollars (\$5,000.00).
3. The trial court may order that restitution or nályééh be paid to the victim(s).
4. The trial court may utilize the services of the Navajo Peacemaking Program to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
5. The trial court may impose a peace or security bond upon the defendant, including the pledges of family or clan sureties.
6. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
7. The trial court may impose community service sentences, to be served under the supervision of an organization or an individual designated by the court.

§ 540 319. Harassment

- A. Offense. ~~An individual~~ A person commits harassment when ~~he/she~~ that person intentionally or knowingly causes emotional ~~alarm~~ and distress to another by repeatedly shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity, including via electronic communication device.
- B. Sentence.
1. An individual found guilty of harassment may be sentenced to imprisonment not to exceed sixty (60) days, and/or be ordered to pay a fine not less than one hundred dollars (\$100.00) and not to exceed two hundred fifty dollars (\$250.00).
 2. Upon a second or subsequent conviction such individual shall be sentenced to imprisonment for a term of not less than sixty (60) days and not to exceed one hundred eighty (180) days, and/or be ordered to pay a fine not less than two hundred fifty dollars (\$250.00) and not to exceed one thousand dollars (\$1,000.00).
 3. The trial court may order that restitution or nályééh be paid to the victim(s).
 4. The trial court may utilize the services of the Navajo Peacemaking Program to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
 5. The trial court may impose a peace or security bond upon the defendant, including the pledges of family or clan sureties.
 6. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
 7. The trial court may impose community service sentences, to be served under the supervision of an organization or an individual designated by the court.

SECTION FOUR. EFFECTIVE DATE

The amendments enacted herein shall be effective pursuant to 2 N.N.C. §221(B).

SECTION FIVE. CODIFICATION

The provisions of these amendments of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amendments in the next codification of the Navajo Nation Code.

SECTION SIX. SAVINGS CLAUSE

Should any provision of these amendments be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those amendments that are not determined invalid shall remain the law of the Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 14 in favor and 00 opposed, on this 25th day of January 2018.



LoRenzo C. Bates, Speaker
23rd Navajo Nation Council

2 - 1 - 18


Date

Motion: Honorable Jonathan L. Hale
Second: Honorable Jonathan Perry

Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (10), on this 11th day of February 2018.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c) (11), on this _____ day of _____ 2018 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 946

Winter Session

1/25/2018
03:00:56 PM

Amd# to Amd#

Legislation 0366-17

PASSED

MOT Hale

Amending the Navajo Nation

SEC Perry

Criminal Code at 17 NNC 203

Yea : 14

Nay : 0

Excused : 0

Not Voting : 10

Yea : 14

Begay, NM
Begay, S
BeGaye, N
Chee

Crotty
Damon
Daniels
Filfred

Hale
Jack
Perry

Pete
Smith
Witherspoon

Nay : 0

Excused : 0

Not Voting : 10

Bates
Begay, K
Bennett

Brown
Phelps
Shepherd

Slim
Tso

Tsosie
Yazzie