



Child Abuse Reporting Requirements Clarified

By Wheeler Cowperthwaite
SUN Staff Writer

Despite a flurry of media reports about the requirement that “everyone” is mandated to report child abuse, following a March 9 New Mexico Supreme Court decision, the requirements remain limited to abuse perpetrated by only three classes of people.

New Mexico law only requires that abuse or neglect perpetrated by a parent, guardian or adult who lives with a child, be reported to law enforcement or the Children Youth and Families Department.

If the abuse or molestation is perpetrated by anyone other than a parent, guardian or “custodian,” there is no mandate to report the abuse.

The New Mexico Children’s Code defines a custodian as an

adult who lives with a child, but is neither the child’s parent nor the child’s guardian.

The Child Abuse and Neglect Act lists five kinds of abuse and five kinds of neglect that are covered by mandated reporting, but in every instance, the abuse or neglect must be perpetrated by a “parent, guardian or custodian,” the Act states.

The Court clarified in a March 9 decision, *State of New Mexico v. Jason Strauch*, that everyone who learns of abuse that falls within those three categories must report it.

The Court reversed a lower court ruling that the social worker was not a mandated reporter because he was not working in an “official capacity” because he was a private, not a state-hired, therapist, Justice Charles Daniels

wrote for the Court.

The things he learned during private therapy sessions, about a father allegedly molesting his daughter, were not protected by physician-client privilege, Daniels wrote.

Everyone, not just certain types of professionals, is a mandated reporter of child abuse, Daniels wrote.

Daniels did not acknowledge the limited scope of child abuse in New Mexico’s mandatory reporting law.

The Act, last amended in 2005, states “every person,” which includes a list of occupations, “who knows or has a reasonable suspicion that a child is an abused or neglected child shall report the matter immediately to” a law enforcement agency, the Children, Youth and Families Department

or a tribal law enforcement or social serves agency on tribal land.

Other court cases

This limited scope for mandated child abuse reporting is borne out by multiple federal and state court cases, including the lawsuit against former Española School District teacher Gary Gregor.

Gregor allegedly abused at least one of his students while he taught at Fairview Elementary School and claims of abuse were allegedly ignored by the principal for whom he worked, Ruby Archuleta.

The *Rio Grande SUN* ran a two-part series April 3 and 10, 2014, on the lawsuit the parents of the girl, only identified by her initials “K.S.,” filed against

Gregor, the District and Santa Fe Public Schools.

In that case, K.S.’s parents alleged the Santa Fe Public Schools officials were negligent because they never reported abuse they thought Gregor was allegedly committing against his students while he worked for the Schools.

U.S. Magistrate Judge Steven Yarbrough dismissed certain counts against the Schools and former Santa Fe principal Vickie Sewing, Oct. 31, 2014, because Sewing is not required, under New Mexico’s mandatory reporting law, to report abuse unless it is perpetrated by a parent, guardian or custodian, something none of her teachers were to their students.

“Nor does (the mandated reporting) duty imposed by the state statute Plaintiffs cite appear

to apply to Defendants,” Yarbrough wrote.

Yarbrough then wrote the definitions of an abused child, a parent, a guardian and a custodian.

“It would appear, therefore, that this statute mandates the reporting of parental abuse or neglect, not abuse by a school employee,” Yarbrough wrote.

He cited a 2000 New Mexico Appeals Court case, *State ex rel. Children, Youth and Families Department*, that codifies the definition of an abused child.

“Under the act, an abused child is one who has suffered abuse or other harm by the child’s parent, guardian or custodian,” Appeals Court Judge Jonathan Sutin wrote in the 2000 case.

In that case, a stepfather had

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FRESH FACE ON THE FORCE

Cory Atencio is Española Police Department’s newest officer

By Wheeler Cowperthwaite
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After Mayor Alice Lucero anointed the Española Police Department’s newest uncertified police officer, he was given over to his new brothers in blue.

“Thank you all,” Chief Richard Gallegos said March 10. “He’s ours now.”

Gallegos said Cory Atencio, 21, has the ambition to become a police officer and to challenge himself.

“He just moved on forward and did it,” Gallegos said.

Gallegos said Atencio was an especially good pick for the uncertified position because he engaged in “self-initiated activities,” such as requesting to go on ride-alongs with officers.

Atencio said he applied for the position while he was going to college at the University of New Mexico for a bachelor’s degree in criminal justice — a goal he has since sidelined.

Atencio, a graduate of the Española Valley High School, saw the posting online for his hometown police department and decided to test to see if he would be eligible to take the plunge and ditch his job as a waiter, he said.

Atencio said once he gets out of the police academy, he will begin to take university courses online to try to finish his degree. He has two years to go.



(SUNfoto by Wheeler Cowperthwaite) Michelle Jacquez pins her son, Cory Atencio, as Española’s newest police officer during a ceremony, March 10, at the Española Municipal Court. Atencio, 21, must obtain his Law Enforcement Certification within a year of his hiring.



(SUNfoto by Wheeler Cowperthwaite) Española’s newest police officer, Cory Atencio, listens, March 10, to Municipal Judge Stephen Salazar recite his oath to uphold the law in the Española Municipal Court.

When he tested, the elements pushed his mettle. “They were hard,” Atencio

said. “The physical parts were hard. It was cold and windy, it was awful. The weather had a

huge factor in it.”

The tests and the cold conditions pushed him to his limits, he said.

“I was so determined to finish and pass and not let the weather affect me,” he said.

Atencio’s mother, Michelle Jacquez, said it feels good to let her son go to his first career job.

“I’m very excited for him,” she said. “It’s always been his dream. To see it come to pass, I’m so happy and I’m so proud.”

She said she is a little sad and a little worried to see her son enter a “dangerous profession.”

“He’s a very strong boy and this is his calling,” she said.

Registered Sex Offender Allegedly Rapes, Beats Woman

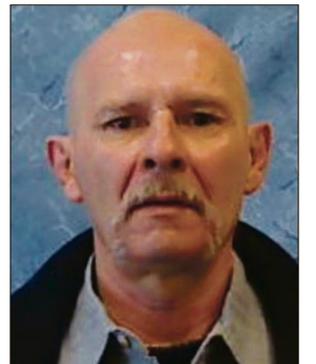
By Wheeler Cowperthwaite
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Rio Arriba County Sheriff’s deputies arrested a 57-year-old Alcalde man, March 6, after he allegedly beat, choked, cut and raped a woman the previous night.

Deputies arrested Robert Martinez on a warrant charging first-degree kidnapping, second-degree rape, two counts of aggravated battery with a deadly weapon, aggravated battery, aggravated indecent exposure while committing aggravated battery and interference with communications.

Deputies were called to the La Tiendita gas station at 8:46 a.m. because a woman, visibly battered and covered in blood, walked into the store and a man may have also walked in, looking for her, Deputy Leon Gallegos wrote in an affidavit for Martinez’s arrest.

“Affiant made contact with



Martinez

the female victim, inside the establishment,” Gallegos wrote. “I observed she had bruising around her both eyes and covered with blood on the left side of her face.”

She told Gallegos a few details of her alleged violent ordeal and was transported to the

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Judge Rejects Alleged Drunk Driver’s Plea Deal

By Wheeler Cowperthwaite
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A district judge rejected two drunk driving plea deals and then scolded prosecutors, March 13, in Santa Fe, for offering too-lenient sentences.

Judge Mary Marlowe Sommer denied a plea deal offered to Norman Martinez, 43, address unavailable, that would have given him a year of house arrest,

suspended most of his sentence and had him plead to DWI fourth offense, and dismiss the DWI fifth offense charge pending against him.

Martinez was arraigned for the fourth offense DWI, Aug. 12, 2014, when, two days later, he was arrested for aggravated DWI fifth offense. In that second case, his blood-alcohol level was

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Man Asks for Modified Release Conditions

By Wheeler Cowperthwaite
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The man accused of brutalizing his girlfriend at a Taos campground and holding her hostage in Española before she succumbed to her injuries, is asking the judge handling his case, to modify his release conditions.

Henry Wilton’s lawyer, Dan Marlowe, filed a motion March 10 in Taos District Court, asking Judge Jeff McElroy to allow Wilton to work side jobs as a plumber so he can continue to pay for his house arrest.

A grand jury indicted Wilton on charges of second-degree murder, second-degree kidnapping and threatening a witness

on July 17, 2014.

Marlowe wrote Wilton, 48, of Española, is paying \$640 a month for his electronic monitoring and alcohol testing, or SCRAM, bracelets.

“Defendant is now on house arrest and on electronic monitoring with GPS and a scam (sic) bracelet,” Marlowe wrote in his motion. “He continues to have his household expenses but is not able to work side jobs to make ends meet as he did while not charged.”

The combination of the electronic monitoring costs and his inability to work side jobs has created a situation where he cannot meet his monthly expenses,

Marlowe wrote.

“Defendant is not asking to be taken off electronic monitoring,” Marlowe wrote. “He is only asking for the ability to work while remaining on electronic monitoring. There is no evidence of substance abuse with this Defendant.”

He would do contract work for two separate plumbing companies, provide proof of his work and obtain prior approval from the person handling his electronic monitoring, Marlowe wrote.

“Defendant is asking that he be allowed to work side jobs so he can pay for the monitoring and SCRAM bracelet,” Mar-

lowe wrote. “Alternatively the GPS and Scram (sic) can be deleted and Defendant could make it with his leave pay, while it lasts.”

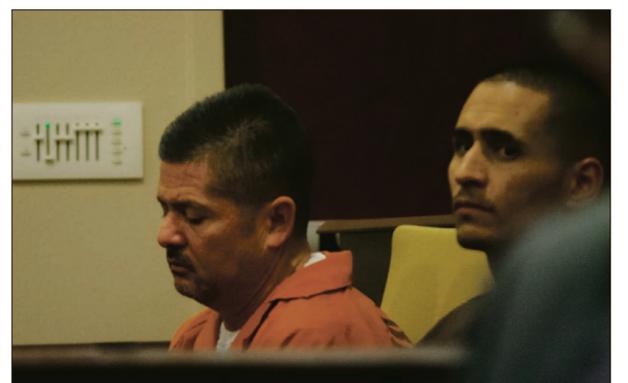
The prosecutor opposes the motion, Marlowe wrote.

McElroy previously allowed Wilton a one-day furlough to cut wood for the winter.

No hearing date has been set for the motion. Wilton will next be in court at 9 a.m., May 12 in Taos District Court.

He will then be in court at 9 a.m., June 22, the day all final motions are due and for a docket call hearing.

Jury selection is set for 9 a.m., June 29.



(SUNfoto by Wheeler Cowperthwaite) Norman Martinez (left) stares straight ahead, March 13, in Santa Fe District Court, after his drunk driving plea deal was rejected by District Judge Mary Marlowe Sommer. After Sommer heard the machinations for another DWI plea deal, she had the prosecutors and defense attorneys approach for a private bench conference.