

AN ACT  
RELATING TO CRIMINAL LAW; CHANGING THE ELEMENTS OF CERTAIN  
CRIMINAL OFFENSES PERPETRATED AGAINST MINORS; AMENDING  
SECTIONS OF THE NMSA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-9-10 NMSA 1978 (being Laws 1975, Chapter 109, Section 1, as amended) is amended to read:

"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 visually handicapped, 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 Las Vegas medical center 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. "

Section 2. Section 30-9-11 NMSA 1978 (being Laws 1975, Chapter 109, Section 2, as amended) is amended to read:

"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. 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.

D. Criminal sexual penetration in the second

degree consists of all criminal sexual penetration perpetrated:

(1) on a child thirteen to eighteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(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.

E. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion.

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

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

(1) not defined in Subsections C through E 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."

Section 3. Section 30-9-13 NMSA 1978 (being Laws 1975, Chapter 109, Section 4, as amended) is amended to read:

"30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR. -- 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.

A. 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.

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

(1) not defined in Subsection A 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."

Section 4. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. \_\_\_\_\_