

1 HOUSE BILL 293

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Cathrynn N. Brown and Stefani Lord and William "Bill" R. Rehm
5 and Rachel A. Black
6
7
8
9

10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; INCREASING MANDATORY MINIMUM
12 SENTENCES FOR CERTAIN CRIMINAL SEXUAL OFFENSES AGAINST
13 CHILDREN; INCREASING SENTENCING ENHANCEMENTS FOR HABITUAL
14 OFFENDERS.
15

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

17 SECTION 1. Section 30-9-11 NMSA 1978 (being Laws 1975,
18 Chapter 109, Section 2, as amended) is amended to read:

19 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

20 A. Criminal sexual penetration is the unlawful and
21 intentional causing of a person to engage in sexual
22 intercourse, cunnilingus, fellatio or anal intercourse or the
23 causing of penetration, to any extent and with any object, of
24 the genital or anal openings of another, whether or not there
25 is any emission.

.219768.1

1 B. Criminal sexual penetration does not include
2 medically indicated procedures.

3 C. Aggravated criminal sexual penetration consists
4 of all criminal sexual penetration perpetrated on a child
5 under thirteen years of age with an intent to kill or with a
6 depraved mind regardless of human life. Whoever commits
7 aggravated criminal sexual penetration is guilty of a first
8 degree felony for aggravated criminal sexual penetration.

9 D. Criminal sexual penetration in the first degree
10 consists of all criminal sexual penetration perpetrated:

11 (1) on a child under thirteen years of age;
12 or

13 (2) by the use of force or coercion that
14 results in great bodily harm or great mental anguish to the
15 victim.

16 Whoever commits criminal sexual penetration in the first
17 degree is guilty of a first degree felony.

18 E. Criminal sexual penetration in the second
19 degree consists of all criminal sexual penetration
20 perpetrated:

21 (1) by the use of force or coercion on a
22 child thirteen to eighteen years of age;

23 (2) on an inmate confined in a correctional
24 facility or jail when the perpetrator is in a position of
25 authority over the inmate;

.219768.1

underscoring material = new
~~[bracketed material]~~ = delete

1 (3) by the use of force or coercion that
2 results in personal injury to the victim;

3 (4) by the use of force or coercion when the
4 perpetrator is aided or abetted by one or more persons;

5 (5) in the commission of any other felony;

6 or

7 (6) when the perpetrator is armed with a
8 deadly weapon.

9 Whoever commits criminal sexual penetration in the
10 second degree is guilty of a second degree felony. Whoever
11 commits criminal sexual penetration in the second degree when
12 the victim is a child who is thirteen to eighteen years of age
13 is guilty of a second degree felony for a sexual offense
14 against a child and, notwithstanding the provisions of Section
15 31-18-15 NMSA 1978, shall be sentenced to a minimum term of
16 imprisonment of [~~three~~] five years, which shall not be
17 suspended or deferred. The imposition of a minimum, mandatory
18 term of imprisonment pursuant to the provisions of this
19 subsection shall not be interpreted to preclude the imposition
20 of sentencing enhancements pursuant to the provisions of the
21 Criminal Sentencing Act.

22 F. Criminal sexual penetration in the third degree
23 consists of all criminal sexual penetration perpetrated
24 through the use of force or coercion not otherwise specified
25 in this section.

.219768.1

underscoring material = new
~~[bracketed material] = delete~~

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

3 G. Criminal sexual penetration in the fourth
4 degree consists of all criminal sexual penetration:

5 (1) not defined in Subsections D through F
6 of this section perpetrated on a child thirteen to sixteen
7 years of age when the perpetrator is at least eighteen years
8 of age and is at least four years older than the child and not
9 the spouse of that child; or

10 (2) perpetrated on a child thirteen to
11 eighteen years of age when the perpetrator, who is a licensed
12 school employee, an unlicensed school employee, a school
13 contract employee, a school health service provider or a
14 school volunteer, and who is at least eighteen years of age
15 and is at least four years older than the child and not the
16 spouse of that child, learns while performing services in or
17 for a school that the child is a student in a school.

18 Whoever commits criminal sexual penetration in the
19 fourth degree is guilty of a fourth degree felony."

20 SECTION 2. Section 30-9-13 NMSA 1978 (being Laws 1975,
21 Chapter 109, Section 4, as amended) is amended to read:

22 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

23 A. Criminal sexual contact of a minor is the
24 unlawful and intentional touching of or applying force to the
25 intimate parts of a minor or the unlawful and intentional

.219768.1

1 causing of a minor to touch one's intimate parts. For the
2 purposes of this section, "intimate parts" means the primary
3 genital area, groin, buttocks, anus or breast.

4 B. Criminal sexual contact of a minor in the
5 second degree consists of all criminal sexual contact of the
6 unclothed intimate parts of a minor perpetrated:

7 (1) on a child under thirteen years of age;
8 or

9 (2) on a child thirteen to eighteen years of
10 age when:

11 (a) the perpetrator is in a position of
12 authority over the child and uses that authority to coerce the
13 child to submit;

14 (b) the perpetrator uses force or
15 coercion that results in personal injury to the child;

16 (c) the perpetrator uses force or
17 coercion and is aided or abetted by one or more persons; or

18 (d) the perpetrator is armed with a
19 deadly weapon.

20 Whoever commits criminal sexual contact of a minor in
21 the second degree is guilty of a second degree felony for a
22 sexual offense against a child and, notwithstanding the
23 provisions of Section 31-18-15 NMSA 1978, shall be sentenced
24 to a minimum term of imprisonment of [~~three~~] five years, which
25 shall not be suspended or deferred. The imposition of a

.219768.1

underscored material = new
[bracketed material] = delete

1 minimum, mandatory term of imprisonment pursuant to the
2 provisions of this subsection shall not be interpreted to
3 preclude the imposition of sentencing enhancements pursuant to
4 the provisions of Sections 31-18-17, 31-18-25 and 31-18-26
5 NMSA 1978.

6 C. Criminal sexual contact of a minor in the third
7 degree consists of all criminal sexual contact of a minor
8 perpetrated:

9 (1) on a child under thirteen years of age;
10 or

11 (2) on a child thirteen to eighteen years of
12 age when:

13 (a) the perpetrator is in a position of
14 authority over the child and uses this authority to coerce the
15 child to submit;

16 (b) the perpetrator uses force or
17 coercion [~~which~~] that results in personal injury to the child;

18 (c) the perpetrator uses force or
19 coercion and is aided or abetted by one or more persons; or

20 (d) the perpetrator is armed with a
21 deadly weapon.

22 Whoever commits criminal sexual contact of a minor in
23 the third degree is guilty of a third degree felony for a
24 sexual offense against a child.

25 D. Criminal sexual contact of a minor in the

.219768.1

underscoring material = new
[bracketed material] = delete

1 fourth degree consists of all criminal sexual contact:

2 (1) not defined in Subsection C of this
3 section, of a child thirteen to eighteen years of age
4 perpetrated with force or coercion; or

5 (2) of a minor perpetrated on a child
6 thirteen to eighteen years of age when the perpetrator, who is
7 a licensed school employee, an unlicensed school employee, a
8 school contract employee, a school health service provider or
9 a school volunteer, and who is at least eighteen years of age
10 and is at least four years older than the child and not the
11 spouse of that child, learns while performing services in or
12 for a school that the child is a student in a school.

13 Whoever commits criminal sexual contact in the fourth
14 degree is guilty of a fourth degree felony."

15 SECTION 3. Section 31-18-17 NMSA 1978 (being Laws 1977,
16 Chapter 216, Section 6, as amended) is amended to read:

17 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC
18 SENTENCE.--

19 A. A person convicted of a noncapital felony in
20 this state whether within the Criminal Code or the Controlled
21 Substances Act or not who has incurred one prior felony
22 conviction that was part of a separate transaction or
23 occurrence or conditional discharge under Section 31-20-13
24 NMSA 1978 is a habitual offender and ~~[his]~~ the habitual
25 offender's basic sentence shall be increased by ~~[one year]~~ two

.219768.1

underscoring material = new
~~[bracketed material] = delete~~

1 years. The sentence imposed pursuant to this subsection shall
2 not be suspended or deferred, unless the court makes a
3 specific finding that the prior felony conviction and the
4 instant felony conviction are both for nonviolent felony
5 offenses and that justice will not be served by imposing a
6 mandatory sentence of imprisonment and that there are
7 substantial and compelling reasons, stated on the record, for
8 departing from the sentence imposed pursuant to this
9 subsection.

10 B. A person convicted of a noncapital felony in
11 this state whether within the Criminal Code or the Controlled
12 Substances Act or not who has incurred two prior felony
13 convictions that were parts of separate transactions or
14 occurrences or conditional discharge under Section 31-20-13
15 NMSA 1978 is a habitual offender and ~~[his]~~ the habitual
16 offender's basic sentence shall be increased by ~~[four]~~ five
17 years. The sentence imposed by this subsection shall not be
18 suspended or deferred.

19 C. A person convicted of a noncapital felony in
20 this state whether within the Criminal Code or the Controlled
21 Substances Act or not who has incurred three or more prior
22 felony convictions that were parts of separate transactions or
23 occurrences or conditional discharge under Section 31-20-13
24 NMSA 1978 is a habitual offender and ~~[his]~~ the habitual
25 offender's basic sentence shall be increased by ~~[eight]~~ nine

.219768.1

underscoring material = new
~~[bracketed material] = delete~~

1 years. The sentence imposed by this subsection shall not be
2 suspended or deferred.

3 D. As used in this section, "prior felony
4 conviction" means:

5 (1) a conviction, when less than ten years
6 have passed prior to the instant felony conviction since the
7 person completed serving ~~[his]~~ the sentence or period of
8 probation or parole for the prior felony, whichever is later,
9 for a prior felony committed within New Mexico whether within
10 the Criminal Code or not, but not including a conviction for a
11 felony pursuant to the provisions of Section 66-8-102 NMSA
12 1978; or

13 (2) a prior felony, when less than ten years
14 have passed prior to the instant felony conviction since the
15 person completed serving ~~[his]~~ the sentence or period of
16 probation or parole for the prior felony, whichever is later,
17 for which the person was convicted other than an offense
18 triable by court martial if:

19 (a) the conviction was rendered by a
20 court of another state, the United States, a territory of the
21 United States or the commonwealth of Puerto Rico;

22 (b) the offense was punishable, at the
23 time of conviction, by death or a maximum term of imprisonment
24 of more than one year; or

25 (c) the offense would have been

underscoring material = new
~~[bracketed material] = delete~~

1 classified as a felony in this state at the time of
2 conviction.

3 E. As used in this section, "nonviolent felony
4 offense" means application of force, threatened use of force
5 or a deadly weapon was not used by the offender in the
6 commission of the offense."

7 - 10 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25