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SENATE BILL 76

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Cisco McSorley

FOR THE COURTS AND CRIMINAL JUSTICE COMMITTEE

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 30-9-11 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

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1 medically indicated procedures.

2 C. Criminal sexual penetration in the first degree
3 consists of all sexual penetration perpetrated:

4 (1) on a child under thirteen years of age;
5 or

6 (2) by the use of force or coercion that
7 results in great bodily harm or great mental anguish to the
8 victim.

9 Whoever commits criminal sexual penetration in the first
10 degree is guilty of a first degree felony.

11 D. Criminal sexual penetration in the second
12 degree consists of all criminal sexual penetration
13 perpetrated:

14 (1) on a child thirteen to ~~[sixteen]~~ eighteen
15 years of age when the perpetrator is in a position of
16 authority over the child and uses this authority to coerce the
17 child to submit;

18 (2) on a child thirteen to eighteen years of
19 age when the perpetrator is a licensed school employee, an
20 unlicensed school employee, a school contract employee, a
21 school health service provider or a school volunteer, and when
22 the perpetrator is at least eighteen years of age and is at
23 least four years older than the child and not the spouse of
24 that child;

25 [~~(2)~~] (3) on an inmate confined in a

underscored material = new
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1 correctional facility or jail when the perpetrator is in a
2 position of authority over the inmate;

3 [~~(3)~~] (4) by the use of force or coercion
4 that results in personal injury to the victim;

5 [~~(4)~~] (5) by the use of force or coercion
6 when the perpetrator is aided or abetted by one or more
7 persons;

8 [~~(5)~~] (6) in the commission of any other
9 felony; or

10 [~~(6)~~] (7) when the perpetrator is armed with
11 a deadly weapon.

12 Whoever commits criminal sexual penetration in the second
13 degree is guilty of a second degree felony.

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

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

19 F. Criminal sexual penetration in the fourth
20 degree consists of all criminal sexual penetration not defined
21 in Subsections C through E of this section perpetrated on a
22 child thirteen to sixteen years of age when the perpetrator is
23 at least eighteen years of age and is at least four years
24 older than the child and not the spouse of that child.

25 Whoever commits criminal sexual penetration in the fourth

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1 degree is guilty of a fourth degree felony. "

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

4 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR. -- Criminal
5 sexual contact of a minor is the unlawful and intentional
6 touching of or applying force to the intimate parts of a minor
7 or the unlawful and intentional causing of a minor to touch
8 one's intimate parts. For the purposes of this section,
9 "intimate parts" means the primary genital area, groin,
10 buttocks, anus or breast.

11 A. Criminal sexual contact of a minor in the third
12 degree consists of all criminal sexual contact of a minor
13 perpetrated:

14 (1) on a child under thirteen years of age;
15 or

16 (2) on a child thirteen to eighteen years of
17 age when:

18 (a) the perpetrator is in a position of
19 authority over the child and uses this authority to coerce the
20 child to submit;

21 (b) the perpetrator is a licensed
22 school employee, an unlicensed school employee, a school
23 contract employee, a school health service provider or a
24 school volunteer, and when the perpetrator is at least
25 eighteen years of age and is at least four years older than

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1 the child and not the spouse of that child;

2 [~~(b)~~] (c) the perpetrator uses force or
3 coercion which results in personal injury to the child;

4 [~~(c)~~] (d) the perpetrator uses force or
5 coercion and is aided or abetted by one or more persons; or

6 [~~(d)~~] (e) the perpetrator is armed with
7 a deadly weapon.

8 Whoever commits criminal sexual contact in the third
9 degree is guilty of a third degree felony.

10 B. Criminal sexual contact of a minor in the
11 fourth degree consists of all criminal sexual contact, not
12 defined in Subsection A of this section, of a child thirteen
13 to eighteen years of age perpetrated with force or coercion.

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

16 Section 3. EFFECTIVE DATE. -- The effective date of the
17 provisions of this act is July 1, 2001.