

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 76

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

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

1 the victim believes that there is a present ability to execute  
2 the threats;

3 (3) the use of threats, including threats of  
4 physical punishment, kidnapping, extortion or retaliation  
5 directed against the victim or another when the victim believes  
6 that there is an ability to execute the threats;

7 (4) the perpetration of criminal sexual  
8 penetration or criminal sexual contact when the perpetrator  
9 knows or has reason to know that the victim is unconscious,  
10 asleep or otherwise physically helpless or suffers from a  
11 mental condition that renders the victim incapable of  
12 understanding the nature or consequences of the act; or

13 (5) the perpetration of criminal sexual  
14 penetration or criminal sexual contact by a psychotherapist on  
15 his patient, with or without the patient's consent, during the  
16 course of psychotherapy or within a period of one year  
17 following the termination of psychotherapy.

18 Physical or verbal resistance of the victim is not an  
19 element of force or coercion;

20 B. "great mental anguish" means psychological or  
21 emotional damage that requires psychiatric or psychological  
22 treatment or care, either on an inpatient or outpatient basis,  
23 and is characterized by extreme behavioral change or severe  
24 physical symptoms;

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1 C. "patient" means a person who seeks or obtains  
2 psychotherapy;

3 D. "personal injury" means bodily injury to a  
4 lesser degree than great bodily harm and includes, but is not  
5 limited to, disfigurement, mental anguish, chronic or recurrent  
6 pain, pregnancy or disease or injury to a sexual or  
7 reproductive organ;

8 E. "position of authority" means that position  
9 occupied by a parent, relative, household member, teacher,  
10 employer or other person who, by reason of that position, is  
11 able to exercise undue influence over a child;

12 F. "psychotherapist" means a person who is or  
13 purports to be a:

14 (1) licensed physician who practices  
15 psychotherapy;

16 (2) licensed psychologist;

17 (3) licensed social worker;

18 (4) licensed nurse;

19 (5) counselor;

20 (6) substance abuse counselor;

21 (7) psychiatric technician;

22 (8) mental health worker;

23 (9) marriage and family therapist;

24 (10) hypnotherapist; or  
25

1 (11) minister, priest, rabbi or other similar  
2 functionary of a religious organization acting in his role as a  
3 pastoral counselor;

4 G. "psychotherapy" means professional treatment or  
5 assessment of a mental or an emotional illness, symptom or  
6 condition; [~~and~~]

7 H. "school" means any public or private school,  
8 including the New Mexico military institute, the New Mexico  
9 school for the visually handicapped, the New Mexico school for  
10 the deaf, the New Mexico boys' school, the New Mexico youth  
11 diagnostic and development center, the Los Lunas medical  
12 center, the Fort Stanton hospital, the Las Vegas medical center  
13 and the Carrie Tingley crippled children's hospital, that  
14 offers a program of instruction designed to educate a person in  
15 a particular place, manner and subject area. "School" does not  
16 include a college or university; and

17 [~~H.-~~] I. "spouse" means a legal husband or wife,  
18 unless the couple is living apart or either husband or wife has  
19 filed for separate maintenance or divorce. "

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

22 "30-9-11. CRIMINAL SEXUAL PENETRATION. --

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

5 B. Criminal sexual penetration does not include  
6 medically indicated procedures.

7 C. Criminal sexual penetration in the first degree  
8 consists of all sexual penetration perpetrated:

- 9 (1) on a child under thirteen years of age; or  
10 (2) by the use of force or coercion that  
11 results in great bodily harm or great mental anguish to the  
12 victim.

13 Whoever commits criminal sexual penetration in the first  
14 degree is guilty of a first degree felony.

15 D. Criminal sexual penetration in the second degree  
16 consists of all criminal sexual penetration perpetrated:

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

- 21 (2) on a child thirteen to eighteen years of  
22 age when the perpetrator, who is a licensed school employee, an  
23 unlicensed school employee, a school contract employee, a  
24 school health service provider or a school volunteer, and who  
25

1 is at least eighteen years of age and is at least four years  
2 older than the child and not the spouse of that child, learns  
3 while performing services in or for a school that the child is  
4 a student in a school;

5 [~~2~~] (3) on an inmate confined in a  
6 correctional facility or jail when the perpetrator is in a  
7 position of authority over the inmate;

8 [~~3~~] (4) by the use of force or coercion that  
9 results in personal injury to the victim;

10 [~~4~~] (5) by the use of force or coercion when  
11 the perpetrator is aided or abetted by one or more persons;

12 [~~5~~] (6) in the commission of any other  
13 felony; or

14 [~~6~~] (7) when the perpetrator is armed with a  
15 deadly weapon.

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

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

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

23 F. Criminal sexual penetration in the fourth degree  
24 consists of all criminal sexual penetration not defined in  
25

1 Subsections C through E of this section perpetrated on a child  
 2 thirteen to sixteen years of age when the perpetrator is at  
 3 least eighteen years of age and is at least four years older  
 4 than the child and not the spouse of that child.

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

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

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

16 A. Criminal sexual contact of a minor in the third  
 17 degree consists of all criminal sexual contact of a minor  
 18 perpetrated:

19 (1) on a child under thirteen years of age; or  
 20 (2) on a child thirteen to eighteen years of  
 21 age when:

22 (a) the perpetrator is in a position of  
 23 authority over the child and uses this authority to coerce the  
 24 child to submit;

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1                                    (b) the perpetrator, who is a licensed  
2 school employee, an unlicensed school employee, a school  
3 contract employee, a school health service provider or a school  
4 volunteer, and who is at least eighteen years of age and is at  
5 least four years older than the child and not the spouse of  
6 that child, learns while performing services in or for a school  
7 that the child is a student in a school;

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

10                                   [~~(e)~~] (d) the perpetrator uses force or  
11 coercion and is aided or abetted by one or more persons; or

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

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

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

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

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

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