

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 734

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO SEX OFFENSES; PROVIDING THAT LACK OF CONSENT IS NOT
AN ELEMENT OF FORCE OR COERCION FOR PURPOSES OF CERTAIN SEX
OFFENSES.

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

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1 the threats;

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

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

12 (5) the perpetration of criminal sexual
13 penetration or criminal sexual contact by a psychotherapist on
14 [his] the psychotherapist's patient, with or without the
15 patient's consent, during the course of psychotherapy or within
16 a period of one year following the termination of psychotherapy
17 ~~[Physical or verbal resistance of the victim is not an element~~
18 ~~of force or coercion];~~

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

24 C. "patient" means a person who seeks or obtains
25 psychotherapy;

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

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

10 F. "psychotherapist" means a person who is or
11 purports to be a:

12 (1) licensed physician who practices
13 psychotherapy;

14 (2) licensed psychologist;

15 (3) licensed social worker;

16 (4) licensed nurse;

17 (5) counselor;

18 (6) substance abuse counselor;

19 (7) psychiatric technician;

20 (8) mental health worker;

21 (9) marriage and family therapist;

22 (10) hypnotherapist; or

23 (11) minister, priest, rabbi or other similar
24 functionary of a religious organization acting in [~~his~~] that
25 person's role as a pastoral counselor;

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1 G. "psychotherapy" means professional treatment or
2 assessment of a mental or an emotional illness, symptom or
3 condition;

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

15 I. "spouse" means a legal husband or wife, unless
16 the couple is living apart or either husband or wife has filed
17 for separate maintenance or divorce."

18 Section 2. A new section of Chapter 30, Article 9 NMSA
19 1978 is enacted to read:

20 "NEW MATERIAL] FORCE OR COERCION--UNLAWFULNESS--
21 ELEMENTS.--For the purposes of Sections 30-9-10 through 30-9-16
22 NMSA 1978:

23 A. physical or verbal resistance by the victim or
24 lack of consent by the victim is not an element of force or
25 coercion; and

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1 B. proof of force or coercion beyond a reasonable
2 doubt is sufficient to prove unlawfulness."

3 Section 3. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2007.

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