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HOUSE BILL 43

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO SEXUAL OFFENSES; ADDING TO THE DEFINITION OF "FORCE OR COERCION" IN CERTAIN SEXUAL OFFENSES; EXPANDING THE SCOPE OF CRIMINAL SEXUAL PENETRATION; MODIFYING THE SCOPE OF CRIMINAL SEXUAL CONTACT OF A MINOR.

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

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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] the psychotherapist's patient, with or without the
16 patient's consent, during the course of psychotherapy or within
17 a period of one year following the termination of
18 psychotherapy; or

19 (6) the perpetration of criminal sexual
20 penetration or criminal sexual contact on a child, with or
21 without the child's consent, by a person in a position of
22 authority.

23 Physical or verbal resistance of the victim is not an
24 element of force or coercion;

25 B. "great mental anguish" means psychological or

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1 emotional damage that requires psychiatric or psychological
2 treatment or care, either on an inpatient or outpatient basis,
3 and is characterized by extreme behavioral change or severe
4 physical symptoms;

5 C. "patient" means a person who seeks or obtains
6 psychotherapy;

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

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

16 F. "psychotherapist" means a person who is or
17 purports to be a:

18 (1) licensed physician who practices
19 psychotherapy;

20 (2) licensed psychologist;

21 (3) licensed social worker;

22 (4) licensed nurse;

23 (5) counselor;

24 (6) substance abuse counselor;

25 (7) psychiatric technician;

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- 1 (8) mental health worker;
2 (9) marriage and family therapist;
3 (10) hypnotherapist; or
4 (11) minister, priest, rabbi or other similar
5 functionary of a religious organization acting in [~~his~~] that
6 person's role as a pastoral counselor;

7 G. "psychotherapy" means professional treatment or
8 assessment of a mental or an emotional illness, symptom or
9 condition;

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

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

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

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1 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

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

8 B. Criminal sexual penetration does not include
9 medically indicated procedures.

10 C. Aggravated criminal sexual penetration consists
11 of all criminal sexual penetration perpetrated on a child
12 [~~under~~] younger than thirteen years of age with an intent to
13 kill or with a depraved mind regardless of human life. Whoever
14 commits aggravated criminal sexual penetration is guilty of a
15 first degree felony for aggravated criminal sexual penetration.

16 D. Criminal sexual penetration in the first degree
17 consists of all criminal sexual penetration perpetrated:

18 (1) on a child [~~under~~] younger than thirteen
19 years of age; or

20 (2) by the use of force or coercion that
21 results in great bodily harm or great mental anguish to the
22 victim.

23 Whoever commits criminal sexual penetration in the first
24 degree is guilty of a first degree felony.

25 E. Criminal sexual penetration in the second degree

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1 consists of all criminal sexual penetration perpetrated:

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

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

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

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

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

12 (6) when the perpetrator is armed with a
13 deadly weapon.

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

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1 Sentencing Act.

2 F. Criminal sexual penetration in the third degree
3 consists of all criminal sexual penetration perpetrated through
4 the use of force or coercion not otherwise specified in this
5 section.

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

8 G. Criminal sexual penetration in the fourth degree
9 consists of all criminal sexual penetration [~~(1)~~] not defined
10 in Subsections D through F of this section perpetrated on a
11 child thirteen to sixteen years of age when the perpetrator is
12 [~~at least~~] eighteen years of age or older and is at least four
13 years older than the child and not the spouse of that child [~~or~~

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

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

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

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1 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

2 A. Criminal sexual contact of a minor is the
3 unlawful and intentional touching of or applying force to the
4 intimate parts of a minor or the unlawful and intentional
5 causing of a minor to touch one's intimate parts. For the
6 purposes of this section, "intimate parts" means the primary
7 genital area, groin, buttocks, anus or breast.

8 B. Criminal sexual contact of a minor in the second
9 degree consists of all criminal sexual contact of the unclothed
10 intimate parts of a minor perpetrated:

11 (1) on a child [~~under~~] younger than thirteen
12 years of age; or

13 (2) on a child thirteen to eighteen years of
14 age when:

15 [~~(a) the perpetrator is in a position of~~
16 ~~authority over the child and uses that authority to coerce the~~
17 ~~child to submit;~~

18 ~~(b)]~~ (a) the perpetrator uses force or
19 coercion [~~that results in personal injury to the child;~~

20 ~~(c) the perpetrator uses force or~~
21 ~~coercion and is aided or abetted by one or more persons]; or~~

22 [~~(d)]~~ (b) the perpetrator is armed with
23 a deadly weapon.

24 Whoever commits criminal sexual contact of a minor in the
25 second degree is guilty of a second degree felony for a sexual

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1 offense against a child and, notwithstanding the provisions of
2 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum
3 term of imprisonment of three years, which shall not be
4 suspended or deferred. The imposition of a minimum, mandatory
5 term of imprisonment pursuant to the provisions of this
6 subsection shall not be interpreted to preclude the imposition
7 of sentencing enhancements pursuant to the provisions of
8 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

9 C. Criminal sexual contact of a minor in the third
10 degree consists of all criminal sexual contact of a minor
11 perpetrated:

12 (1) on a child [~~under~~] younger than thirteen
13 years of age; or

14 (2) on a child thirteen to eighteen years of
15 age when:

16 [~~(a) the perpetrator is in a position of~~
17 ~~authority over the child and uses this authority to coerce the~~
18 ~~child to submit;~~

19 ~~(b)]~~ (a) the perpetrator uses force or
20 coercion [~~which results in personal injury to the child;~~

21 ~~(c) the perpetrator uses force or~~
22 ~~coercion and is aided or abetted by one or more persons]; or~~

23 [~~(d)]~~ (b) the perpetrator is armed with
24 a deadly weapon.

25 Whoever commits criminal sexual contact of a minor in the

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1 third degree is guilty of a third degree felony for a sexual
2 offense against a child.

3 D. Criminal sexual contact of a minor in the fourth
4 degree consists of all criminal sexual contact [~~(1)~~] not
5 defined in [~~Subsection~~] Subsections B and C of this section [~~of~~
6 ~~a child thirteen to eighteen years of age perpetrated with~~
7 ~~force or coercion; or~~

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

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

21 SECTION 4. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2017.