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HOUSE BILL 299

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO SEXUAL OFFENSES; INCREASING THE PENALTIES FOR  
CRIMINAL SEXUAL PENETRATION PERPETRATED AGAINST A CHILD AND  
CRIMINAL SEXUAL CONTACT OF A MINOR UNDER CERTAIN CIRCUMSTANCES.

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:

(1) causing of a person to engage in sexual  
intercourse, cunnilingus, fellatio or anal intercourse; or

(2) 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.

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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 under  
5 thirteen years of age with an intent to kill or with a depraved  
6 mind regardless of human life. Whoever commits aggravated  
7 criminal sexual penetration is guilty of a first degree felony  
8 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) on a child thirteen to eighteen years of  
14 age:

15                               (a) by the use of force or coercion;

16                               (b) when the perpetrator is in a  
17 position of authority over the child; or

18                               (c) when the perpetrator is armed with a  
19 deadly weapon; or

20                               [~~(2)~~] (3) 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  
3 child thirteen to eighteen years of age not otherwise specified  
4 in Subsection D of this section;

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

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

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

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

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

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

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1 sentencing enhancements pursuant to the provisions of the  
2 Criminal Sentencing Act.

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

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

9 G. Criminal sexual penetration in the fourth degree  
10 consists of all criminal sexual penetration:

11 (1) not defined in Subsections D through F of  
12 this section perpetrated on a child thirteen to sixteen years  
13 of age when the perpetrator is at least eighteen years of age  
14 and is at least four years older than the child and not the  
15 spouse of that child; or

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

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

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

3           "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

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

10           B. Criminal sexual contact of a minor in the  
11 [~~second~~] first degree consists of all criminal sexual contact:

12                   (1) of the unclothed intimate parts of a minor  
13 perpetrated [~~(1)~~] on a child under thirteen years of age; or

14                   (2) perpetrated on a child [~~thirteen to~~] under  
15 eighteen years of age when:

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

19                           (b) the perpetrator uses force or  
20 coercion [~~that 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)~~ (c) 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     ~~[second]~~ first degree is guilty of a ~~[second]~~ first degree  
2     felony ~~[for a sexual offense against a child]~~ and,  
3     notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
4     shall be sentenced to a minimum term of imprisonment of ~~[three]~~  
5     eighteen years, which shall not be suspended or deferred. The  
6     imposition of a minimum, mandatory term of imprisonment  
7     pursuant to the provisions of this subsection shall not be  
8     interpreted to preclude the imposition of sentencing  
9     enhancements pursuant to the provisions of ~~[Sections]~~ Section  
10    31-18-17, 31-18-25 ~~[and]~~ or 31-18-26 NMSA 1978.

11           C. Criminal sexual contact of a minor in the  
12    ~~[third]~~ second degree consists of all criminal sexual contact  
13    of a minor perpetrated ~~[~~+~~]~~ on a child under thirteen years of  
14    age ~~[or~~

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

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

20                           ~~(b) the perpetrator uses force or~~  
21    ~~coercion which results in personal injury to the child;~~

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

24                           ~~(d) the perpetrator is armed with a~~  
25    ~~deadly weapon].~~

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1           Whoever commits criminal sexual contact of a minor in the  
2     ~~[third]~~ second degree is guilty of a ~~[third]~~ second degree  
3     felony for a sexual offense against a child.

4           D. Criminal sexual contact of a minor in the  
5     ~~[fourth]~~ third degree consists of all criminal sexual contact:

6                     (1) not defined in Subsection B or C of this  
7     section ~~[of a child thirteen to eighteen years of age~~  
8     ~~perpetrated with force or coercion]~~; or

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

17           Whoever commits criminal sexual contact in the ~~[fourth]~~  
18    third degree is guilty of a ~~[fourth]~~ third degree felony for a  
19    sexual offense against a child."

20           **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
21    provisions of this act is July 1, 2018.

