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HOUSE BILL 309

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

INTRODUCED BY

Kelly K. Fajardo

AN ACT

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

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  
5 under thirteen years of age with an intent to kill or with a  
6 depraved mind regardless of human life. Whoever commits  
7 aggravated criminal sexual penetration is guilty of a first  
8 degree felony 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  
19 a deadly weapon; or

20                                   [~~(2)~~] (3) by the use of force or coercion  
21 that results in great bodily harm or great mental anguish to  
22 the victim.

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

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1 victim is a child under eighteen years of age, notwithstanding  
2 the provisions of Section 31-18-15 NMSA 1978, shall be  
3 sentenced to a minimum term of imprisonment of eighteen years,  
4 which shall not be suspended or deferred. The imposition of a  
5 minimum, mandatory term of imprisonment provided in this  
6 subsection shall not be interpreted to preclude the imposition  
7 of sentencing enhancements pursuant to the Criminal Sentencing  
8 Act.

9 E. Criminal sexual penetration in the second  
10 degree consists of all criminal sexual penetration  
11 perpetrated:

12 (1) [~~by the use of force or coercion~~] on a  
13 child thirteen to eighteen years of age not otherwise  
14 specified in this section;

15 (2) on an inmate confined in a correctional  
16 facility or jail when the perpetrator is in a position of  
17 authority over the inmate;

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

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

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

24 (6) when the perpetrator is armed with a  
25 deadly weapon.

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1           Whoever commits criminal sexual penetration in the  
2 second degree is guilty of a second degree felony. Whoever  
3 commits criminal sexual penetration in the second degree when  
4 the victim is a child who is thirteen to eighteen years of age  
5 is guilty of a second degree felony for a sexual offense  
6 against a child and, notwithstanding the provisions of Section  
7 31-18-15 NMSA 1978, shall be sentenced to a minimum term of  
8 imprisonment of [~~three~~] fifteen years, which shall not be  
9 suspended or deferred. The imposition of a minimum, mandatory  
10 term of imprisonment pursuant to the provisions of this  
11 subsection shall not be interpreted to preclude the imposition  
12 of sentencing enhancements pursuant to the provisions of the  
13 Criminal Sentencing Act.

14           F. Criminal sexual penetration in the third degree  
15 consists of all criminal sexual penetration:

16                   (1) perpetrated through the use of force or  
17 coercion not otherwise specified in this section;

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

20           ~~G. Criminal sexual penetration in the fourth~~  
21 ~~degree consists of all criminal sexual penetration:~~

22                   ~~(1)~~] (2) not defined in [~~Subsections~~]  
23 Subsection D [~~through F~~] or E of this section perpetrated on a  
24 child thirteen to sixteen years of age when the perpetrator is  
25 at least eighteen years of age and is at least four years

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

10 Whoever commits criminal sexual penetration in the  
11 [~~fourth~~] third degree as provided in Paragraph (1) of this  
12 subsection is guilty of a [~~fourth~~] third degree felony.  
13 Whoever commits criminal sexual penetration in the third  
14 degree as provided in Paragraph (2) or (3) of this subsection  
15 is guilty of a third degree felony for a sexual offense  
16 against a child and, notwithstanding the provisions of Section  
17 31-18-15 NMSA 1978, shall be sentenced to a minimum term of  
18 imprisonment of six years, which shall not be suspended or  
19 deferred. The imposition of a minimum, mandatory term of  
20 imprisonment provided in this subsection shall not be  
21 interpreted to preclude the imposition of sentencing  
22 enhancements pursuant to the Criminal Sentencing Act."

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

25 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

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

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

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

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

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

17                           (b) the perpetrator uses force or  
18 coercion that results in personal injury to the child;

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

21                           (d) the perpetrator is armed with a  
22 deadly weapon.

23           Whoever commits criminal sexual contact of a minor in  
24 the [~~second~~] first degree is guilty of a [~~second~~] first degree  
25 felony [~~for a sexual offense against a child~~] and,

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1 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
2 shall be sentenced to a minimum term of imprisonment of  
3 [~~three~~] eighteen years, which shall not be suspended or  
4 deferred. The imposition of a minimum, mandatory term of  
5 imprisonment pursuant to the provisions of this subsection  
6 shall not be interpreted to preclude the imposition of  
7 sentencing enhancements pursuant to the provisions of  
8 [~~Sections~~] Section 31-18-17, 31-18-25 [~~and~~] or 31-18-26 NMSA  
9 1978.

10 C. Criminal sexual contact of a minor in the  
11 [~~third~~] second degree consists of all criminal sexual contact  
12 of a minor perpetrated [~~(1)~~] on a child under thirteen years  
13 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) 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) the perpetrator is armed with a~~  
24 ~~deadly weapon].~~

25 Whoever commits criminal sexual contact of a minor in

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1 the [~~third~~] second degree is guilty of a [~~third~~] second 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  
5 fifteen 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 Section 31-18-17,  
10 31-18-25 or 31-18-26 NMSA 1978.

11 D. Criminal sexual contact of a minor in the  
12 [~~fourth~~] third degree consists of all criminal sexual contact

13 [~~(1) not defined in Subsection C of this~~  
14 ~~section, of a child thirteen to eighteen years of age~~  
15 ~~perpetrated with force or coercion; or~~

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

24 Whoever commits criminal sexual contact in the [~~fourth~~]  
25 third degree is guilty of a [~~fourth~~] third degree felony for a

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1 sexual offense against a child and, notwithstanding the  
2 provisions of Section 31-18-15 NMSA 1978, shall be sentenced  
3 to a minimum term of imprisonment of six years, which shall  
4 not be suspended or deferred. The imposition of a minimum,  
5 mandatory term of imprisonment provided in this subsection  
6 shall not be interpreted to preclude the imposition of  
7 sentencing enhancements pursuant to the Criminal Sentencing  
8 Act."

9 SECTION 3. Section 31-18-25 NMSA 1978 (being Laws 1996,  
10 Chapter 79, Section 1, as amended) is amended to read:

11 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--  
12 MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

13 A. When a defendant is convicted of a second  
14 violent sexual offense, and each violent sexual offense  
15 conviction is part of a separate transaction or occurrence,  
16 and at least the second violent sexual offense conviction is  
17 in New Mexico, the defendant shall, in addition to the  
18 punishment imposed for the second violent sexual offense  
19 conviction, be punished by a sentence of life imprisonment.  
20 The life imprisonment sentence shall be subject to parole  
21 pursuant to the provisions of Section 31-21-10 NMSA 1978.

22 B. Notwithstanding the provisions of Subsection A  
23 of this section, when a defendant is convicted of a second  
24 violent sexual offense, and each violent sexual offense  
25 conviction is part of a separate transaction or occurrence,

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1 and the victim of each violent sexual offense was less than  
2 thirteen years of age at the time of the offense, and at least  
3 the second violent sexual offense conviction is in New Mexico,  
4 the defendant shall be punished by a sentence of life  
5 imprisonment without the possibility of parole.

6 C. The sentence of life imprisonment shall be  
7 imposed after a sentencing hearing, separate from the trial or  
8 guilty plea proceeding resulting in the second violent sexual  
9 offense conviction, pursuant to the provisions of Section  
10 31-18-26 NMSA 1978.

11 D. For the purposes of this section, a violent  
12 sexual offense conviction incurred by a defendant before the  
13 defendant reaches the age of eighteen shall not count as a  
14 violent sexual offense conviction.

15 E. When a defendant has a felony conviction from  
16 another state, the felony conviction shall be considered a  
17 violent sexual offense for the purposes of the Criminal  
18 Sentencing Act if the crime would be considered a violent  
19 sexual offense in New Mexico.

20 F. As used in the Criminal Sentencing Act,  
21 "violent sexual offense" means:

22 (1) criminal sexual penetration in the first  
23 degree, as provided in Subsection D of Section 30-9-11 NMSA  
24 1978; or

25 (2) criminal sexual penetration in the

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1 second degree or criminal sexual penetration in the second  
2 degree when the victim is a child who is thirteen to eighteen  
3 years of age, as provided in Subsection E of Section 30-9-11  
4 NMSA 1978."

5 SECTION 4. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2018.

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