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HOUSE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO THE CODE OF MILITARY JUSTICE; AMENDING THE ELEMENTS
AND DEFINITIONS OF SEVERAL SEX CRIMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 20-12-51 NMSA 1978 (being Laws 1989,
Chapter 337, Section 50) is amended to read:

"20-12-51. RAPE AND [~~CARNAL KNOWLEDGE~~] OTHER SEX
CRIMES.--

A. Any person subject to Chapter 20 NMSA 1978 [~~who
commits an act of sexual intercourse with a female not his
wife, by force and without her consent~~] is guilty of rape and
shall be punished by death or other punishment as a court-
martial may direct if the person commits a sexual act upon
another person by:

(1) using unlawful force against that other

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1 person;

2 (2) using force causing or likely to cause
3 death or grievous bodily harm to any person;

4 (3) threatening or placing that other person
5 in fear that any person will be subjected to death, grievous
6 bodily harm or kidnapping;

7 (4) first rendering that other person
8 unconscious; or

9 (5) administering to that other person by
10 force or threat of force, or without the knowledge or consent
11 of that person, a drug, intoxicant or other similar substance
12 and thereby substantially impairing the ability of that other
13 person to appraise or control conduct.

14 B. Any person subject to Chapter 20 NMSA 1978 [~~who,~~
15 ~~under circumstances not amounting to rape, commits an act of~~
16 ~~sexual intercourse with a female not his wife who has not~~
17 ~~attained the age of sixteen years is guilty of carnal~~
18 ~~knowledge] is guilty of sexual assault and shall be punished as
19 a court-martial may direct [~~C. Penetration, however slight, is~~
20 ~~sufficient to complete either of these offenses] if the person
21 commits a sexual act upon another person:~~~~

22 (1) by threatening or placing that other
23 person in fear;

24 (2) by making a fraudulent representation that
25 the sexual act serves a professional purpose;

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- 1 (3) by inducing a belief by any artifice,
2 pretense or concealment that the person is another person;
3 (4) without the consent of the other person;
4 (5) when the person knows or reasonably should
5 know that the other person is asleep, unconscious or otherwise
6 unaware that the sexual act is occurring; or
7 (6) when the other person is incapable of
8 consenting to the sexual act due to: 1) impairment by any
9 drug, intoxicant or other similar substance, and that condition
10 is known or reasonably should be known by the person; or 2) a
11 mental disease or defect or physical disability, and that
12 condition is known or reasonably should be known by the person.

13 C. Any person subject to Chapter 20 NMSA 1978 is
14 guilty of aggravated sexual contact and shall be punished as a
15 court-martial may direct if the person commits or causes sexual
16 contact upon or by another person if to do so would violate
17 Subsection A of this section had the sexual contact been a
18 sexual act.

19 D. Any person subject to Chapter 20 NMSA 1978 is
20 guilty of abusive sexual contact and shall be punished as a
21 court-martial may direct if the person commits or causes sexual
22 contact upon or by another person if to do so would violate
23 Subsection B of this section had the sexual contact been a
24 sexual act.

25 E. In a prosecution under this section, in proving

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1 that a person made a threat, it need not be proven that the
2 person actually intended to carry out the threat or had the
3 ability to carry out the threat.

4 F. An accused may raise any applicable defenses
5 available under Chapter 20 NMSA 1978 or the rules for court-
6 martial. Marriage is not a defense for any conduct at issue in
7 any prosecution under this section.

8 G. An expression of lack of consent through words
9 or conduct means that there is no consent. Lack of verbal or
10 physical resistance does not constitute consent. Submission
11 resulting from the use of force, threat of force or placing
12 another person in fear also does not constitute consent. A
13 current or previous dating or social or sexual relationship by
14 itself or the manner of dress of the person involved with the
15 accused in the conduct at issue does not constitute consent. A
16 sleeping, unconscious or incompetent person cannot consent. A
17 person cannot consent to force causing or likely to cause death
18 or grievous bodily harm or to being rendered unconscious. A
19 person cannot consent while under threat or in fear or under
20 the circumstances described in Subsection B of this section.
21 All the surrounding circumstances are to be considered in
22 determining whether a person gave consent.

23 H. As used in this section:

24 (1) "consent" means a freely given agreement
25 to the conduct at issue by a competent person;

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(2) "force" means:

(a) the use of a weapon;

(b) the use of such physical strength or violence as is sufficient to overcome, restrain or injure a person; or

(c) inflicting physical harm sufficient to coerce or compel submission by the victim;

(3) "grievous bodily harm" means serious bodily injury. Grievous bodily harm includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose;

(4) "incapable of consenting" means the person is:

(a) incapable of appraising the nature of the conduct at issue; or

(b) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue;

(5) "sexual act" means:

(a) the penetration, however slight, of the penis into the vulva, anus or mouth;

(b) contact between the mouth and the penis, vulva, scrotum or anus; or

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1 (c) the penetration, however slight, of
2 the vulva or penis or anus of another by any part of the body
3 or any object, with an intent to abuse, humiliate, harass or
4 degrade any person or to arouse or gratify the sexual desire of
5 any person;

6 (6) "sexual contact" means touching, or
7 causing another person to touch, either directly or through the
8 clothing, the vulva, penis, scrotum, anus, groin, breast, inner
9 thigh or buttocks of any person, with an intent to abuse,
10 humiliate, harass or degrade any person or to arouse or gratify
11 the sexual desire of any person. Touching may be accomplished
12 by any part of the body or an object;

13 (7) "threatening or placing that other person
14 in fear" means a communication or action that is of sufficient
15 consequence to cause a reasonable fear that noncompliance will
16 result in the victim or another person being subjected to the
17 wrongful action contemplated by the communication or action;
18 and

19 (8) "unlawful force" means an act of force
20 done without legal justification or excuse."