1	SENATE BILL 734			
2	48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007			
3	INTRODUCED BY			
4	Linda M. Lopez			
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10	AN ACT			
11	RELATING TO SEX OFFENSES; PROVIDING THAT LACK OF CONSENT IS			
12	NOT AN ELEMENT OF FORCE OR COERCION FOR PURPOSES OF CERTAIN			
13	SEX OFFENSES.			
14				
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:			
16	Section 1. Section 30-9-10 NMSA 1978 (being Laws 1975,			
17	Chapter 109, Section 1, as amended) is amended to read:			
18	"30-9-10. DEFINITIONSAs used in Sections 30-9-10			
19	through 30-9-16 NMSA 1978:			
20	A. "force or coercion" means:			
21	(1) the use of physical force or physical			
22	vi ol ence;			
23	(2) the use of threats to use physical			
24	violence or physical force against the victim or another when			
25	the victim believes that there is a present ability to execu			
	. 166484. 1			

<u>underscored mterial = new</u> [<del>bracketed mterial</del>] = delete the threats;

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the use of threats, including threats of 2 (3) physical punishment, kidnapping, extortion or retaliation 3 4 directed against the victim or another when the victim believes that there is an ability to execute the threats; 5 (4) the perpetration of criminal sexual 6 penetration or criminal sexual contact when the perpetrator 7 knows or has reason to know that the victim is unconscious, 8 asleep or otherwise physically helpless or suffers from a 9 10 mental condition that renders the victim incapable of understanding the nature or consequences of the act; or 11 the perpetration of criminal sexual 12 (5) penetration or criminal sexual contact by a psychotherapist on 13 [his] the psychotherapist's patient, with or without the 14 patient's consent, during the course of psychotherapy or 15 within a period of one year following the termination of 16 psychotherapy. 17

Lack of consent by the victim or physical or verbal resistance of the victim is not an element of force or coercion;

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

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"patient" means a person who seeks or obtains 1 **C**. 2 psychotherapy;

"personal injury" means bodily injury to a 3 D. lesser degree than great bodily harm and includes, but is not 4 5 limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or 6 7 reproductive organ;

"position of authority" means that position Ε. 8 occupied by a parent, relative, household member, teacher, 9 10 employer or other person who, by reason of that position, is able to exercise undue influence over a child; 11

F. "psychotherapist" means a person who is or 12 purports to be a: 13

licensed physician who practices 14 (1) psychotherapy; 15

	16	(2)	licensed psychologist;
bracketed mterial] = delete	17	(3)	licensed social worker;
	18	(4)	licensed nurse;
	19	(5)	counselor;
	20	(6)	substance abuse counselor;
	21	(7)	psychiatric technician;
	22	(8)	mental health worker;
	23	(9)	marriage and family therapist;
	24	(10	) hypnotherapist; or
	25	(11	) minister, priest, rabbi or other similar
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functionary of a religious organization acting in [his] that person's role as a pastoral counselor; 2

"psychotherapy" means professional treatment or 3 G. 4 assessment of a mental or an emotional illness, symptom or 5 condition:

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

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

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