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HOUSE BILL 128

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Thomas A. Garcia

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING THAT CRIMINAL SEXUAL
PENETRATION PERPETRATED ON A CHILD UNDER THIRTEEN YEARS OF AGE
IS PUNISHABLE BY LIFE IMPRISONMENT; PROVIDING NO TIME
LIMITATION FOR COMMENCING PROSECUTION FOR FIRST DEGREE
FELONIES.

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

SECTION 1. Section 30-1-8 NMSA 1978 (being Laws 1963,
Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A
person shall not be prosecuted, tried or punished in any court
of this state unless the indictment is found or information or
complaint is filed within the time as provided:

A. for a second degree felony, within six years
from the time the crime was committed;

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1 B. for a third or fourth degree felony, within five
2 years from the time the crime was committed;

3 C. for a misdemeanor, within two years from the
4 time the crime was committed;

5 D. for a petty misdemeanor, within one year from
6 the time the crime was committed;

7 E. for any crime against or violation of Section
8 51-1-38 NMSA 1978, within three years from the time the crime
9 was committed;

10 F. for a felony pursuant to Section 7-1-71.3,
11 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
12 crime was committed; provided that for a series of crimes
13 involving multiple filing periods within one calendar year, the
14 limitation shall begin to run on December 31 of the year in
15 which the crimes occurred;

16 G. for an identity theft crime pursuant to Section
17 30-16-24.1 NMSA 1978, within five years from the time the crime
18 was discovered;

19 H. for any crime not contained in the Criminal Code
20 or where a limitation is not otherwise provided for, within
21 three years from the time the crime was committed; and

22 I. for a capital felony or a first degree ~~[violent]~~
23 felony, no limitation period shall exist and prosecution for
24 these crimes may commence at any time after the occurrence of
25 the crime."

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

3 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

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

10 B. Criminal sexual penetration does not include
11 medically indicated procedures.

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

18 D. Criminal sexual penetration in the first degree
19 consists of all criminal sexual penetration perpetrated

20 ~~[(1) on a child under thirteen years of age;~~

21 ~~or~~

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

25 Whoever commits criminal sexual penetration in the first

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1 degree is guilty of a first degree felony.

2 E. Criminal sexual penetration in the second
3 degree consists of all criminal sexual penetration
4 perpetrated:

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

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

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

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

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

16 (6) when the perpetrator is armed with a
17 deadly weapon.

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

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1 deferred. The imposition of a minimum, mandatory term of
2 imprisonment pursuant to the provisions of this subsection
3 shall not be interpreted to preclude the imposition of
4 sentencing enhancements pursuant to the provisions of the
5 Criminal Sentencing Act.

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

10 Whoever commits criminal sexual penetration in the third
11 degree is guilty of a third degree felony.

12 G. Criminal sexual penetration in the fourth
13 degree consists of all criminal sexual penetration:

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

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

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1 for a school that the child is a student in a school.

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

4 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
5 provisions of this act is July 1, 2012.

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