

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 58

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

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO CRIMINAL LAW; INCREASING THE PENALTY FOR CRIMINAL  
SEXUAL PENETRATION OF A CHILD UNDER FIVE YEARS OF AGE.

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 causing of a person to engage in sexual  
intercourse, cunnilingus, fellatio or anal intercourse or 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.

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

.188232.1

underscored material = new  
[bracketed material] = delete

1 C. Aggravated criminal sexual penetration consists  
2 of all criminal sexual penetration perpetrated on:

- 3 (1) a child under five years of age; or  
4 (2) a child under thirteen years of age with  
5 an intent to kill or with a depraved mind regardless of human  
6 life.

7 Whoever commits aggravated criminal sexual penetration  
8 is guilty of a first degree felony for aggravated criminal  
9 sexual penetration.

10 D. Criminal sexual penetration in the first degree  
11 consists of all criminal sexual penetration perpetrated:

- 12 (1) on a child [~~under~~] five to thirteen  
13 years of age; or  
14 (2) by the use of force or coercion that  
15 results in great bodily harm or great mental anguish to the  
16 victim.

17 Whoever commits criminal sexual penetration in the first  
18 degree is guilty of a first degree felony.

19 E. Criminal sexual penetration in the second  
20 degree consists of all criminal sexual penetration  
21 perpetrated:

- 22 (1) by the use of force or coercion on a  
23 child thirteen to eighteen years of age;  
24 (2) on an inmate confined in a correctional  
25 facility or jail when the perpetrator is in a position of

.188232.1

underscoring material = new  
~~[bracketed material] = delete~~

1 authority over the inmate;

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

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

6 (5) in the commission of any other felony;

7 or

8 (6) when the perpetrator is armed with a  
9 deadly weapon.

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

23 F. Criminal sexual penetration in the third degree  
24 consists of all criminal sexual penetration perpetrated  
25 through the use of force or coercion not otherwise specified

.188232.1

underscored material = new  
[bracketed material] = delete

1 in this section.

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

4 G. Criminal sexual penetration in the fourth  
5 degree consists of all criminal sexual penetration:

6 (1) not defined in Subsections D through F  
7 of this section perpetrated on a child thirteen to sixteen  
8 years of age when the perpetrator is at least eighteen years  
9 of age and is at least four years older than the child and not  
10 the spouse of that child; or

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

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

21 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
22 provisions of this act is July 1, 2012.

23 - 4 -

24

25