

HOUSE BILL 31

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

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

FOR THE MILITARY AND VETERANS' AFFAIRS COMMITTEE

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.--

.218198.1AIC February 17, 2021 (11:03am)

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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 HJC→~~by death or other punishment~~←HJC as a court-martial may direct if the person commits a sexual act upon another person by:

(1) using unlawful force against that other person;

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

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

(4) first rendering that other person unconscious; or

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

B. Any person subject to Chapter 20 NMSA 1978 [~~who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years is guilty of carnal knowledge~~] is guilty of sexual assault and shall be punished as

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a court-martial may direct [~~C. Penetration, however slight, is sufficient to complete either of these offenses~~] if the person commits a sexual act upon another person:

- (1) by threatening or placing that other person in fear;
- (2) by making a fraudulent representation that the sexual act serves a professional purpose;
- (3) by inducing a belief by any artifice, pretense or concealment that the person is another person;
- (4) without the consent of the other person;
- (5) when the person knows or reasonably should know that the other person is asleep, unconscious or otherwise unaware that the sexual act is occurring; or
- (6) when the other person is incapable of consenting to the sexual act due to: 1) impairment by any drug, intoxicant or other similar substance, and that condition is known or reasonably should be known by the person; or 2) a mental disease or defect or physical disability, and that condition is known or reasonably should be known by the person.

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

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

E. In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

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

G. An expression of lack of consent through words or conduct means that there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent. A sleeping, unconscious or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A

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person cannot consent while under threat or in fear or under the circumstances described in Subsection B of this section. All the surrounding circumstances are to be considered in determining whether a person gave consent.

H. As used in this section:

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

(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

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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

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

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

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

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

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