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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 OTHER SEX CRIMES.--

A. Any person subject to Chapter 20 NMSA 1978 is
guilty of rape and shall be punished 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

1 person to appraise or control conduct.

2 B. Any person subject to Chapter 20 NMSA 1978 is
3 guilty of sexual assault and shall be punished as a court-
4 martial may direct if the person commits a sexual act upon
5 another person:

6 (1) by threatening or placing that other
7 person in fear;

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

10 (3) by inducing a belief by any artifice,
11 pretense or concealment that the person is another person;

12 (4) without the consent of the other person;

13 (5) when the person knows or reasonably
14 should know that the other person is asleep, unconscious or
15 otherwise unaware that the sexual act is occurring; or

16 (6) when the other person is incapable of
17 consenting to the sexual act due to: 1) impairment by any
18 drug, intoxicant or other similar substance, and that
19 condition is known or reasonably should be known by the
20 person; or 2) a mental disease or defect or physical
21 disability, and that condition is known or reasonably should
22 be known by the person.

23 C. Any person subject to Chapter 20 NMSA 1978 is
24 guilty of aggravated sexual contact and shall be punished as
25 a court-martial may direct if the person commits or causes

1 sexual contact upon or by another person if to do so would
2 violate Subsection A of this section had the sexual contact
3 been a sexual act.

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

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

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

18 G. An expression of lack of consent through words
19 or conduct means that there is no consent. Lack of verbal or
20 physical resistance does not constitute consent. Submission
21 resulting from the use of force, threat of force or placing
22 another person in fear also does not constitute consent. A
23 current or previous dating or social or sexual relationship
24 by itself or the manner of dress of the person involved with
25 the accused in the conduct at issue does not constitute

1 consent. A sleeping, unconscious or incompetent person
2 cannot consent. A person cannot consent to force causing or
3 likely to cause death or grievous bodily harm or to being
4 rendered unconscious. A person cannot consent while under
5 threat or in fear or under the circumstances described in
6 Subsection B of this section. All the surrounding
7 circumstances are to be considered in determining whether a
8 person gave consent.

9 H. As used in this section:

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

12 (2) "force" means:

13 (a) the use of a weapon;

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

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

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

25 (4) "incapable of consenting" means the

1 person is:

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

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

7 (5) "sexual act" means:

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

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

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

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

24 (7) "threatening or placing that other
25 person in fear" means a communication or action that is of

