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SENATE BILL 135

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CRIMINAL LAW; CHANGING THE ELEMENTS OF CERTAIN
CRIMINAL OFFENSES PERPETRATED AGAINST MINORS; AMENDING
SECTIONS OF THE NMSA 1978.

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

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1 medically indicated procedures.

2 C. Criminal sexual penetration in the first degree
3 consists of all sexual penetration perpetrated:

4 (1) on a child under thirteen years of age;
5 or

6 (2) by the use of force or coercion that
7 results in great bodily harm or great mental anguish to the
8 victim.

9 Whoever commits criminal sexual penetration in the first
10 degree is guilty of a first degree felony.

11 D. Criminal sexual penetration in the second
12 degree consists of all criminal sexual penetration
13 perpetrated:

14 (1) on a child thirteen to [~~sixteen~~] eighteen
15 years of age when the perpetrator is in a position of
16 authority over the child [~~and uses this authority to coerce~~
17 ~~the child to submit~~];

18 (2) on an inmate confined in a correctional
19 facility or jail when the perpetrator is in a position of
20 authority over the inmate;

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

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

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

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1 (6) when the perpetrator is armed with a
2 deadly weapon.

3 Whoever commits criminal sexual penetration in the second
4 degree is guilty of a second degree felony.

5 E. Criminal sexual penetration in the third degree
6 consists of all criminal sexual penetration perpetrated
7 through the use of force or coercion.

8 Whoever commits criminal sexual penetration in the third
9 degree is guilty of a third degree felony.

10 F. Criminal sexual penetration in the fourth
11 degree consists of all criminal sexual penetration not defined
12 in Subsections C through E of this section perpetrated on a
13 child thirteen to sixteen years of age when the perpetrator is
14 at least eighteen years of age and is at least four years
15 older than and not the spouse of that child.

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

18 Section 2. Section 30-9-13 NMSA 1978 (being Laws 1975,
19 Chapter 109, Section 4, as amended) is amended to read:

20 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR. --Criminal
21 sexual contact of a minor is the unlawful and intentional
22 touching of or applying force to the intimate parts of a minor
23 or the unlawful and intentional causing of a minor to touch
24 one's intimate parts. For the purposes of this section,
25 "intimate parts" means the primary genital area, groin,

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1 buttocks, anus or breast.

2 A. Criminal sexual contact of a minor in the third
3 degree consists of all criminal sexual contact of a minor
4 perpetrated:

5 (1) on a child under thirteen years of age;
6 or

7 (2) on a child thirteen to eighteen years of
8 age when:

9 (a) the perpetrator is in a position of
10 authority over the child [~~and uses this authority to coerce~~
11 ~~the child to submit~~];

12 (b) the perpetrator uses force or
13 coercion which results in personal injury to the child;

14 (c) the perpetrator uses force or
15 coercion and is aided or abetted by one or more persons; or

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

18 Whoever commits criminal sexual contact in the third
19 degree is guilty of a third degree felony.

20 B. Criminal sexual contact of a minor in the
21 fourth degree consists of all criminal sexual contact, not
22 defined in Subsection A of this section, of a child thirteen
23 to eighteen years of age perpetrated with force or coercion.

24 Whoever commits criminal sexual contact in the fourth degree
25 is guilty of a fourth degree felony. "

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FIRST SESSION, 1999

SB 135/a

February 17, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

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has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, between lines 15 and 16, insert the
following section:

"Section 1. Section 30-9-10 NMSA 1978 (being Laws 1975,
Chapter 109, Section 1, as amended) is amended to read:

"30-9-10. DEFINITIONS. -- As used in Sections 30-9-10
through 30-9-16 NMSA 1978:

A. "force or coercion" means:

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(1) the use of physical force or physical violence;

(2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;

(3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;

(4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or

(5) the perpetration of criminal sexual

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penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

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;

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

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain,

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pregnancy or disease or injury to a sexual or reproductive
organ;

~~[E. "position of authority" means that position
occupied by a parent, relative, household member, teacher,
employer or other person who, by reason of that position, is
able to exercise undue influence over a child;~~

~~F.]~~ E. "psychotherapist" means a person who is or
purports to be a:

(1) licensed physician who practices
psychotherapy;

(2) licensed psychologist;

(3) licensed social worker;

(4) licensed nurse;

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(5) counselor;

(6) substance abuse counselor;

(7) psychiatric technician;

(8) mental health worker;

(9) marriage and family therapist;

(10) hypnotherapist; or

(11) minister, priest, rabbi or other similar

functionary of a religious organization acting in his role as a
pastoral counselor;

[~~G.~~] F. "psychotherapy" means professional treatment
or assessment of a mental or an emotional illness, symptom or
condition; and

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[H-] G. "spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce. "".

2. Renumber the succeeding sections accordingly.

3. On page 2, lines 15 and 16, strike "in a position of authority over the child" and insert in lieu thereof:

"a psychotherapist, parent, relative, household member, employer, primary school teacher, secondary school teacher or person employed for the supervision or control of children and uses his authority to coerce the child to submit".

4. On page 3, line 6, after "perpetrated" insert a colon.

5. On page 3, strike line 7 in its entirety and insert in lieu thereof:

"(1) through the use of force or coercion; or

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(2) on a child thirteen to eighteen years of age when the perpetrator is a psychotherapist, parent, relative, household member, primary school teacher, secondary school teacher or person employed for the supervision or control of children. "

6. On page 4, lines 9 and 10, strike "the perpetrator is in a position of authority over the child" and insert in lieu thereof:

"the perpetrator is a psychotherapist, parent, relative, household member, employer, primary school teacher, secondary school teacher or person employed for the supervision or control of children. ". ,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

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Ci sco McSorl ey, Vi ce Chair man

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Aragon, Sanchez, Stockard

Absent: None

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February 23, 1999

Mr. Presi dent:

Your FINANCE COMMI TTEE, to whom has been referred

SENATE BILL 135, as amended

has had it under consideration and reports same with
recomm~~endation~~ that it DO PASS.

Respectfully submi tted,

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Ben D. Altami rano, Chair man

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

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Excused: Carraro, Eisenstadt, Lyons, McKibben, Rodriguez

Absent: None

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