

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

HOUSE BILL 712

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Eric A. Youngberg

AN ACT

RELATING TO CRIMINAL LAW; ENHANCING PENALTIES FOR CERTAIN  
SEXUAL OFFENSES COMMITTED AGAINST INCAPACITATED PERSONS.

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

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:

(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;

.153529.2GR

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

underscored material = new  
[bracketed material] = delete

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

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

11 ~~(5)]~~ (4) the perpetration of criminal sexual  
12 penetration or criminal sexual contact by a psychotherapist on  
13 his patient, with or without the patient's consent, during the  
14 course of psychotherapy or within a period of one year  
15 following the termination of psychotherapy.

16 Physical or verbal resistance of the victim is not an  
17 element of force or coercion;

18 B. "great mental anguish" means psychological or  
19 emotional damage that requires psychiatric or psychological  
20 treatment or care, either on an inpatient or outpatient basis,  
21 and is characterized by extreme behavioral change or severe  
22 physical symptoms;

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

25 D. "personal injury" means bodily injury to a

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

1 lesser degree than great bodily harm and includes, but is not  
2 limited to, disfigurement, mental anguish, chronic or recurrent  
3 pain, pregnancy or disease or injury to a sexual or  
4 reproductive organ;

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

9 F. "psychotherapist" means a person who is or  
10 purports to be a:

11 (1) licensed physician who practices  
12 psychotherapy;

13 (2) licensed psychologist;

14 (3) licensed social worker;

15 (4) licensed nurse;

16 (5) counselor;

17 (6) substance abuse counselor;

18 (7) psychiatric technician;

19 (8) mental health worker;

20 (9) marriage and family therapist;

21 (10) hypnotherapist; or

22 (11) minister, priest, rabbi or other similar  
23 functionary of a religious organization acting in his role as a  
24 pastoral counselor;

25 G. "psychotherapy" means professional treatment or

.153529.2GR

underscored material = new  
[bracketed material] = delete

1 assessment of a mental or an emotional illness, symptom or  
2 condition;

3 H. "school" means any public or private school,  
4 including the New Mexico military institute, the New Mexico  
5 school for the ~~[visually handicapped]~~ blind and visually  
6 impaired, the New Mexico school for the deaf, the New Mexico  
7 boys' school, the New Mexico youth diagnostic and development  
8 center, the Los Lunas medical center, the Fort Stanton  
9 hospital, the Las Vegas medical center and the Carrie Tingley  
10 crippled children's hospital, that offers a program of  
11 instruction designed to educate a person in a particular place,  
12 manner and subject area. "School" does not include a college  
13 or university; and

14 I. "spouse" means a legal husband or wife, unless  
15 the couple is living apart or either husband or wife has filed  
16 for separate maintenance or divorce."

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

19 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

20 A. Criminal sexual penetration is the unlawful and  
21 intentional causing of a person to engage in sexual  
22 intercourse, cunnilingus, fellatio or anal intercourse or the  
23 causing of penetration, to any extent and with any object, of  
24 the genital or anal openings of another, whether or not there  
25 is any emission.

.153529.2GR

underscoring material = new  
[bracketed material] = delete

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

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

- 5                   (1) on a child under thirteen years of age; 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 degree  
12 consists of all criminal sexual penetration perpetrated:

- 13                   (1) on a child thirteen to eighteen years of  
14 age when the perpetrator is in a position of authority over the  
15 child and uses this authority to coerce the child to submit;

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

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

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

- 23                   (5) in the commission of any other felony;

24 [~~or~~]

- 25                   (6) when the perpetrator is armed with a

.153529.2GR

underscored material = new  
[bracketed material] = delete

1 deadly weapon; or

2 (7) when the perpetrator knows or has reason  
3 to know that the victim is unconscious, asleep or otherwise  
4 physically helpless or suffers from a mental condition that  
5 limits the capacity of the victim to understand the nature or  
6 consequences of the act; provided that if the criminal sexual  
7 penetration results in great bodily harm or great mental  
8 anguish to the victim, it is criminal sexual penetration in the  
9 first degree.

10 Whoever commits criminal sexual penetration in the second  
11 degree is guilty of a second degree felony. Whoever commits  
12 criminal sexual penetration in the second degree when the  
13 victim is a child who is thirteen to eighteen years of age is  
14 guilty of a second degree felony for a sexual offense against a  
15 child and, notwithstanding the provisions of  
16 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum  
17 term of imprisonment of three years, which shall not be  
18 suspended or deferred. The imposition of a minimum, mandatory  
19 term of imprisonment pursuant to the provisions of this  
20 subsection shall not be interpreted to preclude the imposition  
21 of sentencing enhancements pursuant to the provisions of  
22 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

23 E. Criminal sexual penetration in the third degree  
24 consists of all criminal sexual penetration perpetrated through  
25 the use of force or coercion.

.153529.2GR

underscored material = new  
[bracketed material] = delete

1           Whoever commits criminal sexual penetration in the third  
2 degree is guilty of a third degree felony. Whoever commits  
3 criminal sexual penetration in the third degree when the victim  
4 is a child who is thirteen to eighteen years of age is guilty  
5 of a third degree felony for a sexual offense against a child.

6           F. Criminal sexual penetration in the fourth degree  
7 consists of all criminal sexual penetration:

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

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

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

23           Section 3. Section 30-9-12 NMSA 1978 (being Laws 1975,  
24 Chapter 109, Section 3, as amended) is amended to read:

25           "30-9-12. CRIMINAL SEXUAL CONTACT.--

.153529.2GR

underscored material = new  
[bracketed material] = delete

1           A. Criminal sexual contact is the unlawful and  
2 intentional touching of or application of force, without  
3 consent, to the unclothed intimate parts of another who [~~has~~  
4 ~~reached his eighteenth birthday~~] is at least eighteen years of  
5 age, or intentionally causing another who [~~has reached his~~  
6 ~~eighteenth birthday~~] is at least eighteen years of age to touch  
7 one's intimate parts.

8           B. Criminal sexual contact does not include  
9 touching by a psychotherapist on [~~his~~] the psychotherapist's  
10 patient that is:

- 11                       (1) inadvertent;  
12                       (2) casual social contact not intended to be  
13 sexual in nature; or  
14                       (3) generally recognized by mental health  
15 professionals as being a legitimate element of psychotherapy.

16           C. Criminal sexual contact in the fourth degree  
17 consists of all criminal sexual contact perpetrated:

- 18                       (1) by the use of force or coercion that  
19 results in personal injury to the victim;  
20                       (2) by the use of force or coercion when the  
21 perpetrator is aided or abetted by one or more persons; [~~or~~]  
22                       (3) when the perpetrator is armed with a  
23 deadly weapon; or  
24                       (4) when the perpetrator knows or has reason  
25 to know that the victim is unconscious, asleep or otherwise

underscored material = new  
[bracketed material] = delete

1 physically helpless or suffers from a mental condition that  
2 limits the capacity of the victim to understand the nature or  
3 consequences of the act.

4           Whoever commits criminal sexual contact in the fourth  
5 degree is guilty of a fourth degree felony.

6           D. Criminal sexual contact is a misdemeanor when  
7 perpetrated with the use of force or coercion.

8           E. For the purposes of this section, "intimate  
9 parts" means the primary genital area, groin, buttocks, anus or  
10 breast."

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

13           "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

14           A. Criminal sexual contact of a minor is the  
15 unlawful and intentional touching of or applying force to the  
16 intimate parts of a minor or the unlawful and intentional  
17 causing of a minor to touch one's intimate parts. For the  
18 purposes of this section, "intimate parts" means the primary  
19 genital area, groin, buttocks, anus or breast.

20           B. Criminal sexual contact of a minor in the second  
21 degree consists of all criminal sexual contact of the unclothed  
22 intimate parts of a minor perpetrated:

- 23                   (1) on a child under thirteen years of age; or  
24                   (2) on a child thirteen to eighteen years of  
25 age when:

.153529.2GR

underscoring material = new  
[bracketed material] = delete

1 (a) the perpetrator is in a position of  
2 authority over the child and uses that authority to coerce the  
3 child to submit;

4 (b) the perpetrator uses force or  
5 coercion that results in personal injury to the child;

6 (c) the perpetrator uses force or  
7 coercion and is aided or abetted by one or more persons; ~~[or]~~

8 (d) the perpetrator is armed with a  
9 deadly weapon; or

10 (e) when the perpetrator knows or has  
11 reason to know that the victim is unconscious, asleep or  
12 otherwise physically helpless or suffers from a mental  
13 condition that limits the capacity of the victim to understand  
14 the nature or consequences of the act.

15 Whoever commits criminal sexual contact of a minor in the  
16 second degree is guilty of a second degree felony for a sexual  
17 offense against a child and, notwithstanding the provisions of  
18 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum  
19 term of imprisonment of three years, which shall not be  
20 suspended or deferred. The imposition of a minimum, mandatory  
21 term of imprisonment pursuant to the provisions of this  
22 subsection shall not be interpreted to preclude the imposition  
23 of sentencing enhancements pursuant to the provisions of  
24 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

25 C. Criminal sexual contact of a minor in the third

.153529.2GR

underscored material = new  
[bracketed material] = delete

1 degree consists of all criminal sexual contact of a minor  
2 perpetrated:

3 (1) on a child under thirteen years of age; or  
4 (2) on a child thirteen to eighteen years of  
5 age when:

6 (a) the perpetrator is in a position of  
7 authority over the child and uses this authority to coerce the  
8 child to submit;

9 (b) the perpetrator uses force or  
10 coercion [~~which~~] that results in personal injury to the child;

11 (c) the perpetrator uses force or  
12 coercion and is aided or abetted by one or more persons; [~~or~~]

13 (d) the perpetrator is armed with a  
14 deadly weapon; or

15 (e) when the perpetrator knows or has  
16 reason to know that the victim is unconscious, asleep or  
17 otherwise physically helpless or suffers from a mental  
18 condition that limits the capacity of the victim to understand  
19 the nature or consequences of the act.

20 Whoever commits criminal sexual contact of a minor in the  
21 third degree is guilty of a third degree felony for a sexual  
22 offense against a child.

23 D. Criminal sexual contact of a minor in the fourth  
24 degree consists of all criminal sexual contact:

25 (1) not defined in Subsection C of this

.153529.2GR

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

1 section, of a child thirteen to eighteen years of age  
2 perpetrated with force or coercion; or

3 (2) of a minor perpetrated on a child thirteen  
4 to eighteen years of age when the perpetrator, who is a  
5 licensed school employee, an unlicensed school employee, a  
6 school contract employee, a school health service provider or a  
7 school volunteer, and who is at least eighteen years of age and  
8 is at least four years older than the child and not the spouse  
9 of that child, learns while performing services in or for a  
10 school that the child is a student in a school.

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