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HOUSE BILL 880

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO SEX OFFENSES; PROVIDING THAT LACK OF CONSENT IS NOT AN ELEMENT OF FORCE OR COERCION FOR PURPOSES OF CERTAIN SEX OFFENSES.

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":

(1) means:

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

~~(2)~~ (b) the use of threats to use physical violence or physical force against the victim or

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1 another when the victim believes that there is a present
2 ability to execute the threats;

3 [~~(3)~~] (c) the use of threats, including
4 threats of physical punishment, kidnapping, extortion or
5 retaliation directed against the victim or another when the
6 victim believes that there is an ability to execute the
7 threats;

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

14 [~~(5)~~] (e) the perpetration of criminal
15 sexual penetration or criminal sexual contact by a
16 psychotherapist on [~~his~~] the psychotherapist's patient, with or
17 without the patient's consent, during the course of
18 psychotherapy or within a period of one year following the
19 termination of psychotherapy; and

20 (2) does not include the elements of lack of
21 consent by the victim or physical or verbal resistance of the
22 victim [~~is not an element of force or coercion~~];

23 B. "great mental anguish" means psychological or
24 emotional damage that requires psychiatric or psychological
25 treatment or care, either on an inpatient or outpatient basis,

.165300.2

1 and is characterized by extreme behavioral change or severe
2 physical symptoms;

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

5 D. "personal injury" means bodily injury to a
6 lesser degree than great bodily harm and includes, but is not
7 limited to, disfigurement, mental anguish, chronic or recurrent
8 pain, pregnancy or disease or injury to a sexual or
9 reproductive organ;

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

14 F. "psychotherapist" means a person who is or
15 purports to be a:

16 (1) licensed physician who practices
17 psychotherapy;

18 (2) licensed psychologist;

19 (3) licensed social worker;

20 (4) licensed nurse;

21 (5) counselor;

22 (6) substance abuse counselor;

23 (7) psychiatric technician;

24 (8) mental health worker;

25 (9) marriage and family therapist;

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1 (10) hypnotherapist; or
2 (11) minister, priest, rabbi or other similar
3 functionary of a religious organization acting in [~~his~~] that
4 person's role as a pastoral counselor;

5 G. "psychotherapy" means professional treatment or
6 assessment of a mental or an emotional illness, symptom or
7 condition;

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

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