

1 HOUSE BILL 156

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIME; PRESCRIBING A PENALTY FOR CRIMINAL SEXUAL
12 PENETRATION BY A PEACE OFFICER ON A SUSPECT, VICTIM, WITNESS OR
13 DETAINED PERSON.

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

16 SECTION 1. Section 30-9-11 NMSA 1978 (being Laws 1975,
17 Chapter 109, Section 2, as amended) is amended to read:

18 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

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

25 B. Criminal sexual penetration does not include

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underscored material = new
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1 medically indicated procedures.

2 C. Aggravated criminal sexual penetration consists
3 of all criminal sexual penetration perpetrated on a child under
4 thirteen years of age with an intent to kill or with a depraved
5 mind regardless of human life. Whoever commits aggravated
6 criminal sexual penetration is guilty of a first degree felony
7 for aggravated criminal sexual penetration.

8 D. Criminal sexual penetration in the first degree
9 consists of all criminal sexual penetration perpetrated:

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

11 (2) by the use of force or coercion that
12 results in great bodily harm or great mental anguish to the
13 victim.

14 Whoever commits criminal sexual penetration in the first
15 degree is guilty of a first degree felony.

16 E. Criminal sexual penetration in the second degree
17 consists of all criminal sexual penetration perpetrated:

18 (1) by the use of force or coercion on a child
19 thirteen to eighteen years of age;

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

23 (3) by a peace officer on a suspect, victim,
24 witness or detained person in the care or custody of any peace
25 officer;

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

1 [~~(3)~~] (4) by the use of force or coercion that
2 results in personal injury to the victim;

3 [~~(4)~~] (5) by the use of force or coercion when
4 the perpetrator is aided or abetted by one or more persons;

5 [~~(5)~~] (6) in the commission of any other
6 felony; or

7 [~~(6)~~] (7) when the perpetrator is armed with a
8 deadly weapon.

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

22 F. Criminal sexual penetration in the third degree
23 consists of all criminal sexual penetration perpetrated through
24 the use of force or coercion not otherwise specified in this
25 section.

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underscoring material = new
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1 Whoever commits criminal sexual penetration in the third
2 degree is guilty of a third degree felony.

3 G. Criminal sexual penetration in the fourth degree
4 consists of all criminal sexual penetration:

5 (1) not defined in Subsections D through F of
6 this section perpetrated on a child thirteen to sixteen years
7 of age when the perpetrator is at least eighteen years of age
8 and is at least four years older than the child and not the
9 spouse of that child; or

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

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