

HOUSE BILL 266

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Sharon Clahchischilliage

AN ACT

RELATING TO SEXUAL OFFENSES; EXPANDING THE SCOPE OF CRIMINAL
SEXUAL PENETRATION; MODIFYING THE SCOPE OF CRIMINAL SEXUAL
CONTACT OF A MINOR; EXPANDING THE SCOPE OF AGGRAVATED INDECENT
EXPOSURE.

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.

.195788.1SA

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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

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

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

11 (1) on a child [~~under~~] younger than thirteen
12 years of age; or

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

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

18 E. Criminal sexual penetration in the second degree
19 consists of all criminal sexual penetration perpetrated:

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

22 (2) on a child thirteen to eighteen years of
23 age when the perpetrator is in a position of authority over the
24 child and uses this authority to coerce the child to submit;

25 [~~(2)~~] (3) on an inmate confined in a

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

1 correctional facility or jail when the perpetrator is in a
2 position of authority over the inmate;

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

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

7 ~~[(5)]~~ (6) in the commission of any other
8 felony; or

9 ~~[(6)]~~ (7) when the perpetrator is armed with a
10 deadly weapon.

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

24 F. Criminal sexual penetration in the third degree
25 consists of all criminal sexual penetration perpetrated through

.195788.1SA

underscored material = new
[bracketed material] = delete

1 the use of force or coercion not otherwise specified in this
2 section.

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

5 G. Criminal sexual penetration in the fourth degree
6 consists of all criminal sexual penetration:

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

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

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

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

24 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

25 A. Criminal sexual contact of a minor is the

.195788.1SA

underscored material = new
[bracketed material] = delete

1 unlawful and intentional touching of or applying force to the
2 intimate parts of a minor or the unlawful and intentional
3 causing of a minor to touch one's intimate parts. For the
4 purposes of this section, "intimate parts" means the primary
5 genital area, groin, buttocks, anus or breast.

6 B. Criminal sexual contact of a minor in the second
7 degree consists of all criminal sexual contact of the unclothed
8 intimate parts of a minor perpetrated:

9 (1) on a child [~~under~~] younger than thirteen
10 years of age; or

11 (2) on a child thirteen to eighteen years of
12 age when:

13 (a) the perpetrator is in a position of
14 authority over the child and uses that authority to coerce the
15 child to submit;

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

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

20 (d) the perpetrator is armed with a
21 deadly weapon.

22 Whoever commits criminal sexual contact of a minor in the
23 second degree is guilty of a second degree felony for a sexual
24 offense against a child and, notwithstanding the provisions of
25 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum

.195788.1SA

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

1 term of imprisonment of three years, which shall not be
2 suspended or deferred. The imposition of a minimum, mandatory
3 term of imprisonment pursuant to the provisions of this
4 subsection shall not be interpreted to preclude the imposition
5 of sentencing enhancements pursuant to the provisions of
6 Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

7 C. Criminal sexual contact of a minor in the third
8 degree consists of all criminal sexual contact of a minor
9 perpetrated:

10 (1) on a child ~~[under]~~ younger than thirteen
11 years of age; or

12 (2) on a child thirteen to eighteen years of
13 age when:

14 (a) the perpetrator is in a position of
15 authority over the child and uses this authority to coerce the
16 child to submit;

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

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

21 (d) the perpetrator is armed with a
22 deadly weapon.

23 Whoever commits criminal sexual contact of a minor in the
24 third degree is guilty of a third degree felony for a sexual
25 offense against a child.

.195788.1SA

underscored material = new
[bracketed material] = delete

1 D. Criminal sexual contact of a minor in the fourth
2 degree consists of all criminal sexual contact [~~(1)~~] not
3 defined in Subsection C of this section, of a child thirteen to
4 [eighteen] sixteen years of age [~~perpetrated with force or~~
5 ~~coercion; or~~

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

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

18 SECTION 3. Section 30-9-14.3 NMSA 1978 (being Laws 1996,
19 Chapter 84, Section 2) is amended to read:

20 "30-9-14.3. AGGRAVATED INDECENT EXPOSURE.--

21 A. Aggravated indecent exposure consists of a
22 person knowingly and intentionally exposing [~~his~~] the person's
23 primary genital area to:

24 (1) a child younger than eighteen years of
25 age, in a lewd and lascivious manner, when the perpetrator is

.195788.1SA

underscored material = new
[bracketed material] = delete

1 eighteen years of age or older and is at least four years older
2 than the child and not the spouse of that child; or

3 (2) public view in a lewd and lascivious
4 manner, with the intent to threaten or intimidate another
5 person, while committing one or more of the following [~~acts or~~]
6 criminal offenses:

7 [~~(1) exposure to a child less than eighteen~~
8 ~~years of age;~~

9 (2)] (a) assault, as provided in Section
10 30-3-1 NMSA 1978;

11 [~~(3)~~] (b) aggravated assault, as
12 provided in Section 30-3-2 NMSA 1978;

13 [~~(4)~~] (c) assault with intent to commit
14 a violent felony, as provided in Section 30-3-3 NMSA 1978;

15 [~~(5)~~] (d) battery, as provided in
16 Section 30-3-4 NMSA 1978;

17 [~~(6)~~] (e) aggravated battery, as
18 provided in Section 30-3-5 NMSA 1978;

19 [~~(7)~~] (f) criminal sexual penetration,
20 as provided in Section 30-9-11 NMSA 1978; or

21 [~~(8)~~] (g) abuse of a child, as provided
22 in Section 30-6-1 NMSA 1978.

23 B. As used in this section, "primary genital area"
24 means the mons pubis, penis, testicles, mons veneris, vulva or
25 vagina.

.195788.1SA

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

1 C. Whoever commits aggravated indecent exposure is
2 guilty of a fourth degree felony. Whoever commits aggravated
3 indecent exposure to a child younger than eighteen years of age
4 is guilty of a third degree felony.

5 D. In addition to any punishment provided pursuant
6 to the provisions of this section, the court shall order a
7 person convicted for committing aggravated indecent exposure to
8 participate in and complete a program of professional
9 counseling at [~~his~~] the person's own expense."

10 SECTION 4. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2014.