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HOUSE BILL 38

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Alonzo Baldonado

AN ACT

RELATING TO CRIMINAL SEXUAL PENETRATION; REMOVING CUSTODY,  
VISITATION AND INHERITANCE RIGHTS FROM A PERSON CONVICTED OF  
CRIMINAL SEXUAL PENETRATION WHEN THE CRIMINAL SEXUAL  
PENETRATION RESULTED IN THE CONCEPTION OF A CHILD.

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.

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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 thirteen years of age with an intent to kill or with a  
6 depraved mind regardless of human life. Whoever commits  
7 aggravated criminal sexual penetration is guilty of a first  
8 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 thirteen years of age;  
12 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  
19 degree consists of all criminal sexual penetration  
20 perpetrated:

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

23                   (2) on an inmate confined in a correctional  
24 facility or jail when the perpetrator is in a position of  
25 authority over the inmate;

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

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

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

6 or

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

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

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

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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  
4 degree consists of all criminal sexual penetration:

5                   (1) not defined in Subsections D through F  
6 of this section perpetrated on a child thirteen to sixteen  
7 years of age when the perpetrator is at least eighteen years  
8 of age and is at least four years older than the child and not  
9 the 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  
14 school volunteer, and who is at least eighteen years of age  
15 and is at least four years older than the child and not the  
16 spouse of that child, learns while performing services in or  
17 for a school that the child is a student in a school.

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

20           H. Upon conviction, a person convicted of criminal  
21 sexual penetration as defined in this section has no rights to  
22 custody of, visitation with or rights of inheritance from any  
23 child born as a result of the commission of the criminal  
24 sexual penetration. A conviction for rape or criminal sexual  
25 penetration or like offense in a jurisdiction, territory or

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1 possession of the United States or of a tribe, when that law  
2 is equivalent to New Mexico law for criminal sexual  
3 penetration, shall be deemed to be a conviction pursuant to  
4 this section for purposes of custody, visitation or  
5 inheritance.

6 I. If criminal charges alleging an act of criminal  
7 sexual penetration are brought against the putative parent of  
8 a child conceived as the result of that act of criminal sexual  
9 penetration, the court shall issue an automatic stay of any  
10 paternity proceeding involving both the child and the alleged  
11 putative parent. The stay shall not be lifted until there is  
12 a final disposition of such criminal charges."

13 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
14 provisions of this act is July 1, 2013.