

Sex Crimes: Definitions and Penalties

New Mexico

Last Updated: March 2020

Criminal Sexual Penetration in the First Degree

Question	Answer
How is it defined?	All criminal sexual penetration perpetrated: <ul style="list-style-type: none">• on a child under thirteen years of age; or• by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.
What are the punishments for this crime?	<ul style="list-style-type: none">• If felony results in the death of a child, the penalty is life in prison and a possible fine up to \$17,500.• If the felony does not result in a death, the penalty is 18 years in prison and a possible fine up to \$15,000.• In general, if the conviction is for separate second violent sexual offense (i.e., criminal sexual penetration in the first or second degree), mandatory life sentence.
Anything else I should know?	<ul style="list-style-type: none">• “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. Criminal sexual penetration does not include medically indicated procedures.• “Force or coercion” means:<ul style="list-style-type: none">• the use of physical force or physical violence;• 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;• the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;• the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or• the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.• Physical or verbal resistance of the victim is not an element of force or coercion.• “Great mental anguish” means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms.

Statutory citation(s):	• N.M. Stat. Ann. § 30-9-11(D); see also § 30-9-10 (definitions); see also § 31-18-15 (penalties)
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Criminal Sexual Penetration in the Second Degree

Question	Answer
How is it defined?	<p>All criminal sexual penetration perpetrated:</p> <ul style="list-style-type: none"> • by the use of force or coercion on a child thirteen to eighteen years of age; • on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate; • by the use of force or coercion that results in personal injury to the victim; • by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; • in the commission of any other felony; or • when the perpetrator is armed with a deadly weapon.
What are the punishments for this crime?	<ul style="list-style-type: none"> • If felony results in the death of a human being or in a sexual offense against a child, the penalty is 15 years in prison and a possible fine up to \$12,500. • If the felony does not result in a death or in a sexual offense against a child, the penalty is 15 years in prison and a possible fine up to \$10,000. • If the victim is a child between 13 and 18 years of age, mandatory minimum sentence of 3 years. • In general, if the conviction is for separate second violent sexual offense, mandatory life sentence.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions of “criminal sexual penetration” and “force or coercion” under Criminal Sexual Penetration – 1st Degree • “Position of authority” means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child.
Statutory citation(s):	• N.M. Stat. Ann. § 30-9-11(E); see also § 30-9-10 (definitions); see also § 31-18-15 (penalties)

Criminal Sexual Penetration in the Third Degree

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> • All criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in § 30-9-11.
What are the punishments for this crime?	<ul style="list-style-type: none"> • If felony results in the death of a human being or a sexual offense against a child, the penalty is 6 years in prison and a possible fine up to \$5,000. • If the felony does not result in a death or a sexual offense against a child, the penalty is 3 years in prison and a possible fine up to \$5,000.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions of “criminal sexual penetration” and “force or coercion” under Criminal Sexual Penetration – 1st Degree.
Statutory citation(s):	<ul style="list-style-type: none"> • N.M. Stat. Ann. § N.M. Stat. Ann. § 30-9-11(F); <i>see also</i> § 30-9-10 (definitions); <i>see also</i> § 31-18-15 (penalties)

Criminal Sexual Penetration in the Fourth Degree

Question	Answer
How is it defined?	<p>All criminal sexual penetration:</p> <ul style="list-style-type: none"> • Which is not defined as Criminal Sexual Penetration in the 1st, 2nd or 3rd degree which is perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or • perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.
What are the punishments for this crime?	<ul style="list-style-type: none"> • If felony involves sexual exploitation of children, the penalty is 10 years in prison and a possible fine up to \$5,000. • Otherwise, the penalty is 18 months in prison and a possible fine up to \$5,000.
Anything else I should know?	<ul style="list-style-type: none"> • See definition of “criminal sexual penetration” under Criminal Sexual Penetration – 1st Degree.
Statutory citation(s):	<ul style="list-style-type: none"> • N.M. Stat. Ann. § 30-9-11(G); <i>see also</i> § 30-9-10 (definitions); <i>see also</i> § 31-18-15 (penalties)

Aggravated Criminal Sexual Penetration in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • All criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Life in prison and a possible fine up to \$17,500.
Anything else I should know?	<ul style="list-style-type: none"> • See definition of “sexual penetration” under Criminal Sexual Penetration – 1st Degree.
Statutory citation(s):	N.M. Stat. Ann. §§ 30-9-10, 30-9-11(C); <i>see also</i> § 30-9-10 (definitions); <i>see also</i> § 31-18-15 (penalties)

Criminal Sexual Contact in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • All criminal sexual contact that is perpetrated: <ul style="list-style-type: none"> • by the use of force or coercion that results in personal injury to the victim; • by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or • when the perpetrator is armed with a deadly weapon.
What are the punishments for this crime?	<ul style="list-style-type: none"> • 18 months in prison and a possible fine up to \$5,000.
Anything else I should know?	<ul style="list-style-type: none"> • “Criminal sexual contact” is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts (primary genital area, groin, buttocks, anus or breast) of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts. Criminal sexual contact does not include touching by a psychotherapist on a patient that is: (1) inadvertent; (2) casual social contact not intended to be sexual in nature; or (3) generally recognized by mental health professionals as being a legitimate element psychotherapy. • See definition of “force or coercion” under Criminal Sexual Penetration – 1st Degree.

	<ul style="list-style-type: none"> • Criminal sexual contact in the fourth degree is a fourth degree felony.
Statutory citation(s):	<ul style="list-style-type: none"> • N.M. Stat. Ann. § 30-9-12; see <i>also</i> § 30-9-10 (definitions); see <i>also</i> § 31-18-15 (penalties)

Criminal Sexual Contact - Misdemeanor

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Criminal sexual contact that is perpetrated with the use of force or coercion.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Not more than 1 year in the county jail, a fine of up to \$1,000, or both
Anything else I should know?	<ul style="list-style-type: none"> • See definition of “criminal sexual contact” under “Criminal Sexual Contact in the Fourth Degree” • Criminal sexual contact is a misdemeanor
Statutory citation(s):	<ul style="list-style-type: none"> • N.M. Stat. Ann. § 30-9-12 (D); see <i>also</i> § 31-18-15 (penalties)

Criminal Sexual Contact of a Minor in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Criminal sexual contact of a minor when perpetrated: <ul style="list-style-type: none"> • on a child under thirteen years of age; or • on a child thirteen to eighteen years of age when: <ul style="list-style-type: none"> • the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit; • the perpetrator uses force or coercion that results in personal injury to the child; • the perpetrator uses force or coercion and is aided or abetted by one or more persons; or • the perpetrator is armed with a deadly weapon.
What are the punishments for this crime?	<ul style="list-style-type: none"> • 15 years in prison and a possible fine up to \$12,500. Mandatory minimum sentence of 3 years.

Anything else I should know?	<ul style="list-style-type: none"> • “Criminal sexual contact of a minor” is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one’s intimate parts (that is, primary genital area, groin, buttocks, anus or breast). • See definition of “position of authority” under Criminal Sexual Penetration – 2nd Degree. • Criminal sexual contact of a minor in the second degree is a second degree felony for a sexual offense against a child. • For purposes of criminal sexual contact of a minor when the perpetrator is in a position of authority and uses that authority to coerce the child to submit, person in position of authority does not have to use threats or physical force to “coerce” a child to submit to sexual contact. <i>State v. Arvizo</i>, 417 P.3d 384, 389 (N.M. 2018).
Statutory citation(s):	N.M. Stat. Ann. § 30-9-13 (B); see also § 31-18-15 (penalties)

Criminal Sexual Contact of a Minor in the Third Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Criminal sexual contact of a minor when perpetrated: <ul style="list-style-type: none"> • on a child under thirteen years of age; or • on a child thirteen to eighteen years of age when: <ul style="list-style-type: none"> • the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit; • the perpetrator uses force or coercion that results in personal injury to the child; • the perpetrator uses force or coercion and is aided or abetted by one or more persons; or • the perpetrator is armed with a deadly weapon.
What are the punishments for this crime?	<ul style="list-style-type: none"> • 6 years in prison and a possible fine up to \$5,000.
Anything else I should know?	<ul style="list-style-type: none"> • See definition of “criminal sexual contact of a minor” under Criminal Sexual Conduct of a Minor – 2nd Degree. • See definition of “position of authority” under Criminal Sexual Penetration – 2nd Degree. • Criminal sexual contact of a minor in the third degree is a third degree felony for a sexual offense against a child. • For purposes of criminal sexual contact of a minor when the perpetrator is in a position of authority and uses that authority to coerce the child to submit, person in position of authority does not have to use threats or physical force to “coerce” a child to submit to sexual contact. <i>State v. Arvizo</i>, 417 P.3d 384, 389 (N.M. 2018).

Statutory citation(s): N.M. Stat. Ann. § 30-9-13 (C); see also § 31-18-15 (penalties)

Criminal Sexual Contact of a Minor in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none">• All criminal sexual contact:<ul style="list-style-type: none">• not defined as Criminal Sexual Contact of a Minor in the 3rd degree, perpetrated with force or coercion, on a child thirteen to eighteen years of age; or• of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.
What are the punishments for this crime?	<ul style="list-style-type: none">• 18 months in prison and a possible fine up to \$5,000.
Anything else I should know?	<ul style="list-style-type: none">• See definition of “criminal sexual contact of a minor” under Criminal Sexual Conduct of a Minor – 2nd Degree.• Criminal sexual contact in the fourth degree is guilty of a fourth degree felony.• For purposes of criminal sexual contact of a minor when the perpetrator is in a position of authority and uses that authority to coerce the child to submit, person in position of authority does not have to use threats or physical force to “coerce” a child to submit to sexual contact. <i>State v. Arvizo</i>, 417 P.3d 384, 389 (N.M. 2018).
Statutory citation(s):	N.M. Stat. Ann. § 30-9-13 (D); see also § 31-18-15 (penalties)