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NM Coalitions Working Together

EXPANDING THE LEGAL DEFINITON OF FORCE AND COERCION IN SEXUAL VIOLENCE CASES

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FROM TERRITORIAL LAW TO THE 1963 CODE: THE RESISTANCE REQUIREMENT ERA

1846 Kearny Code Article II Section 2

If any person shall unlawfully have carnal knowledge of any woman by force and against her will, he shall on conviction thereof, be castrated or imprisoned not exceeding ten years or fined not exceeding one thousand dollars.

Mares v. Territory, 10 N.M. 770 (1901)

1. On the trial of an indictment for rape, where the accused testifies in his own behalf, and denies the accusation, there must be some corroborating evidence or circumstance, however slight, or a reasonable probability of the truth of the assault, to justify a conviction.
2. There must be a resistance on the part of the prosecutrix, and it must be forcibly overcome by the defendant. There must be the utmost reluctance and the utmost resistance. The resistance must be up to the point of being overpowered by actual force.
3. A disclosure of the assault for the first time by the prosecutrix four months after its occurrence has no value whatever as a corroborating circumstance.



WHAT WAS "RESISTANCE"

State v. Richardson, 48 N.M. 544 (1944)

Defendant raped a child under the age of 16, thankfully they affirmed the conviction on the grounds she was under the age of consent, but had some very concerning things to say regarding "force" and whether she sufficiently "resisted."

"The prosecutrix, although she resisted at first, may have finally become passive. Her claim of resistance may be entirely false. *The jury, however, were undoubtedly aware, as all men know, that a young girl, when discovered in her shame, often seeks refuge in a story of unwilling submission to force.*"

THE 1963 CODE

Force and Coercion by any other name

Prohibited sexual intercourse with a female that is not the defendant's wife, without her consent where that lack of consent was established by one of four circumstances:

1. Her resistance was forcibly overcome
2. She was unconscious or physically unable to resist
3. She was incapable of giving consent because of a mental disability
4. She had been given a substance that impaired her ability to resist

All rape with a person under the age of 16 was considered non-consensual

CASE STUDIES

State v. White, 77 N.M. 488 (1967)

Defendant argued there was insufficient evidence of rape because Victim could drive after the assault showing that her resistance hadn't been "forcibly overcome." Court rejected Defendant's argument finding that sufficient force had been used through evidence of her torn clothes, including undergarments, a scratch on the side of her head and noticeable red marks on her neck from the attempted strangulation.

State v. Ramirez, 70 N.M. 54 (1962)

Defedant argued that there was insufficient resistance because the victim's clothes werent torn and there were no injuries to her gentials. Thankfully, the Court did find sufficient resistance in the evidence that Defendant had hit Victim in the face causing a broken nose and a busted lip.

"Particularly inasmuch as the physical violence done to the prosecutrix and her resultant injuries therefrom tend to show that further resistance would have been of no avail and perhaps would have resulted in more serious injuries to her."

THE 1975 REFORM: A PARADIGM SHIFT

"FORCE" AND "COERCION" MAKE THEIR DEBUT

Force and Coercion Defined using Four Categories:

(1) the use of physical force or physical violence;
(2) the use of threats of force;
(3) knowledge that the victim is unconscious or otherwise unable to understand the nature or consequences of the act; and
(4) taking undue advantage of the victim based on a position of authority.

The Difference between CSP I, II and III narrowed down to the level of injury the victim sustained: "great bodily harm" vs. "personal injury" vs. no injury

Removed the resistance requirement and the requirement that it be a woman that is not married to the defendant

WHAT DID THAT SHIFT LOOK LIKE?

***State v. Jimenez*, 89 N.M. 652 (1976)**

Defendant argued that an element of the crime of CSP was whether or not the victim consented. The Court rejected that, understanding that the rape laws had been changed and the Legislature specifically removed the consent element from proving the crime.

THE CONTINUED SHIFT

1975	1991	2003	2018	2025–26
Reform Act	**Employer coercion**	**Undue influence**	**Subtle pressure**	**Force = nonconsent**
Consent presumption and resistance requirement abolished	Position-of-authority coercion inferred without a direct threat	Coercion as moral, social, or domestic pressure	Child coerced through subtle pressure; inferred from fear to report	Force can be minimal; all prongs correlate to lack of consent

The 1975 Act, modeled on Michigan's Criminal Sexual Conduct Act, replaced the common-law resistance requirement with a force-or-coercion element. By the most recent decisions, the courts read all five prongs as correlating to lack of consent rather than to any quantum of force.

Criminal Sexual Penetration
NMSA § 30-9-11

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.

D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:
(1) on a child under thirteen years of age; or
(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:
(1) by the use of force or coercion on a child thirteen to eighteen years of age;
(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;
(3) by the use of force or coercion that results in personal injury to the victim;
(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;
(5) in the commission of any other felony; or
(6) when the perpetrator is armed with a deadly weapon.

Criminal Sexual Contact
NMSA § 30-9-12

A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.

B. Criminal sexual contact does not include touching by a psychotherapist on his 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 of psychotherapy.

C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:
(1) by the use of force or coercion that results in personal injury to the victim;
(2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or
(3) when the perpetrator is armed with a deadly weapon.

Criminal Sexual Contact of a Minor
NMSA § 30-9-13

A. 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. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:
(1) on a child under thirteen years of age; or
(2) on a child thirteen to eighteen years of age when:
(a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;
(b) the perpetrator uses force or coercion that results in personal injury to the child;
(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
(d) the perpetrator is armed with a deadly weapon.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:
(1) on a child under thirteen years of age; or
(2) on a child thirteen to eighteen years of age when:
(a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;
(b) the perpetrator uses force or coercion which results in personal injury to the child;
(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
(d) the perpetrator is armed with a deadly weapon.

TODAY:

Our Five Statutory Definitions of "Force or Coercion"

Definition	What it covers
1 — Physical force or violence	Any physical force or violence used to penetrate or contact
2 — Threats of force	Threats of physical force/violence; victim believes present ability to execute
3 — Other threats	Physical punishment, kidnapping, extortion, or retaliation
4 — Incapacity	Victim unconscious, asleep, physically helpless, or unable to understand the act
5 — Psychotherapist–patient	Penetration or contact by a psychotherapist on a patient (added 2005)

State v. Calderon 2026-NMCA-026

The court explained that force or coercion includes not only "the use of physical force," but also threats of force, threats of retaliation, extortion, physical inability to consent, or use of a position of authority. Force or coercion is conduct that provides evidence of lack of consent and involuntary penetration without requiring resistance by the victim or physical violence by the defendant. Compelling or inducing a person to have sex against their will is all that is required.

"Physical Force" Does Not Require Violence

SEXUAL ABUSE

18 U.S.C. § 2242(1)

Whoever **knowingly…**

1. Causes another person to engage in a sexual **act by threatening or placing that other person in fear** (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or
2. engages in a sexual act with another person if that other person is -
    - (A) incapable of appraising the nature of the conduct; or
    - (B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual acts or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.
3. Engages in a sexual act with another person **without that other person's consent, to include doing so through coercion;** or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.

"

Note: Proving lack of consent not required for federal officers under 18 U.S.C. § 2243

NEW MEXICO

DOMESTIC VIOLENCE

§ 40-13-2

- The **Family Violence Protection Act** currently defines "domestic abuse" as an incident of physical harm, severe emotional distress, bodily injury or assault, threats causing imminent fear, trespass, property damage, repeatedly driving by, telephone harassment, harassment, strangulation, suffocation, or harm or threats to children.
- No express "coercive control" language included

VAWA

2022 Updates

- Expanded definition of DV for survivors to receieve victim services to: **“a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control… including verbal, psychological, economic, or technological abuse.”**
- Elevates sexual assualt committed under “color of law” (abuse of official power) from a misdeamor to a felony under 18 U.S.C. Sec. 250
- Established federal civil cause of action allowing victims to sue perpetrators who disclose or distribute intimate, visual images without their consent.

NEW MEXICO

HUMAN TRAFFICKING

§ 30-52-1

A. Human trafficking consists of a person knowingly:

- Recruiting, soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that **force, fraud or coercion** will be used to subject the person to labor, services or commercial sexual activity;
- Benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person **with the knowledge that force, fraud or coercion** was used to obtain the labor, services or commercial sexual activity.

NEW MEXICO

HUMAN TRAFFICKING

“Coercion” means:

Causing or threatening to cause harm to any person

Using or threatening to use physical force against any person

Abusing or threatening to abuse the law or legal process

Threatening to report the immigration status of any person to governmental authorities

Knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person

FEDERAL LAW

HUMAN TRAFFICKING

Trafficking Victims Protection Act, 18 U.S. Code § 1591

Definition of Trafficking:

"Whoever knowingly... recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person..." by means of "**force, threats of force, fraud, coercion**... or any combination of such means will be used to cause the person to engage in a commercial sex act."

HUMAN TRAFFICKING

Coercion

- **Threats** of serious harm to or physical restraint against any person;
- Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- The abuse or threatened abuse of law or the legal process

Serious Harm

Harm, whether physical or nonphysical, including **psychological, financial, or reputational harm**, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

FEDERAL LAW

HUMAN TRAFFICKING

What do the courts say?

U.S. v. Wysinger (4th Circuit 2023)

Wysinger gave drug-dependent women heroin and cocaine they couldn't afford — then told her that she had to work off the "debt" through commercial sex acts. Court said this qualified as coercion and force and physical violence not required.

U.S. v. Bell (8th Cir. 2014)

Bell convinced vulnerable women he loved them and would make them financially and emotionally secure while lying about his marital status.The court treated these false promises as fraud.

U.S. v. Walker (11th Cir. 2023)

Coercion established when trafficker, he stranded her hundreds of miles from home, rationed her food, and lied that trains ran only once a month. A jury could find she reasonably believed sex work was the only way to avoid going hungry and being stuck far from home.

U.S. v. Raniere (NXIVM, N.Y. 2019)

Court found that threat of sharing sexually explicit images, rights to financial assets, or threats to damage reputation could be “threat of serious harm” to show coercion/force. Defendant was convicted.

PAST SEXUAL BEHAVIOR

Federal Rules of Evidence

Rule 412:

Known as the “Rape Shield” and it bars evidence of victims other sexual behavior to show consent. Only admissable if value substantially outweighs the harm to victim in civil cases and acts with the defendant in criminal cases to show consent.

Rule 413:

In criminal sexual assault cases, evidence that the defendant committed other sexual assaults is admissible and may be considered "on any matter to which it is relevant," including propensity to commit the crime.



POSITIVE LAWS

For Survivors in Other States

DEFINE WHAT “CONSENT” MEANS. (AND WHAT IT DOES NOT).



Minnesota Statutes Section 609.341, subdivision 4:

(a) "Consent" means **words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act** with the actor. **Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.**

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) **Corroboration of the victim's testimony is not required to show lack of consent.**

MODERNIZE DEFINITIONS AND CAUSES OF ACTION SO LAW MATCHES THE HARM.

- New York's "Rape is Rape" law (signed Jan. 30, 2024; effective Sept. 1, 2024) replaces the narrow penile-vaginal penetration requirement with an expanded definition covering nonconsensual vaginal, oral, and anal sexual contact (including fingers or objects).
- California gave survivors a civil claim for non-consensual condom removal ("stealthing") in 2021.



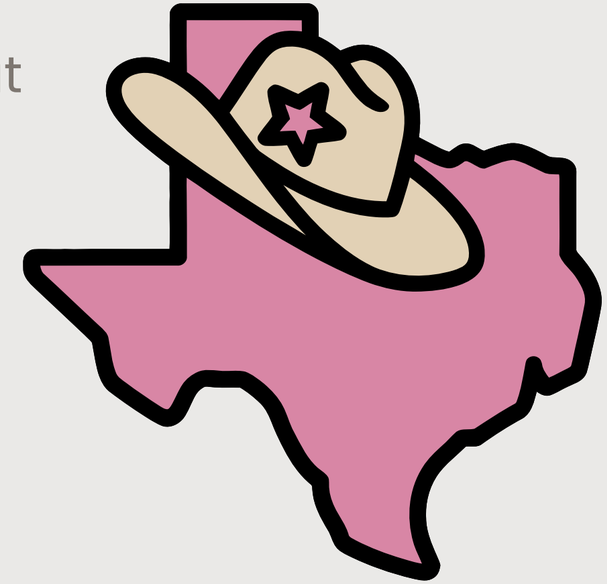
COERCIVE CONTROL AS GROUNDS FOR PROTECTIVE ORDERS.

- Hawaii (2020) was the first state to add coercive control to the protective-order definition of abuse.
- California SB 1141 (2020): coercive control counts as domestic violence for restraining orders, and triggers the custody presumption against the abuser.
- Connecticut, "Jennifer's Law" (2021): coercive control is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.
- Massachusetts (2024): a pattern intended to threaten, isolate, control or compel compliance that causes reasonable fear or a reduced sense of safety or autonomy.

LIST THE RELATIONSHIPS WITH POWER IMBALANCES.

Texas Penal Code § 22.011(b) defines sexual assault as "without consent" when, among other circumstances:

- a public servant coerces the person to submit;
- a mental health or health care provider exploits a patient's emotional dependency;
- a clergy member exploits emotional dependency as spiritual adviser;
- an employee of a facility has sex with a resident;
- a caregiver who assists with daily living exploits the person's dependency;
- a fertility provider uses donor material without consent.



NEXT STEPS FOR NM!

1. **Sexual Assault:** Look to other states and statutory definitions of consent, control, and force to broaden what consent or lack thereof actually means. Include specific carve out for situations where there is a power imbalance.

2. **Trafficking:** Adopt the federal “serious harm” definition, including psychological, financial, and reputation harm and include forced drug addiction an example of coercion/control.

3. **Domestic Violence:** Update the Family Violence Protection Act through a bill like Senate Bill 80 to expand the definition of “abuse” and one that adds coercive control.

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THANK YOU

Gracias!

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