

CITY of ALBUQUERQUE

TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-48 ENACTMENT NO. _____

SPONSORED BY: Klarissa J. Peña

1 **ORDINANCE**

2 **AMENDING ROA 1994, CHAPTER 12, ARTICLE 1, SECTION 4 “DEFINITIONS”**
3 **TO ALIGN WITH STATE STATUTE.**

4 **WHEREAS, pursuant to NMSA 1978, section 30-9-11(A), “criminal sexual**
5 **penetration” is defined as “the unlawful and intentional causing of a person to**
6 **engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the**
7 **causing of penetration, to any extent and with any object, of the genital or anal**
8 **openings of another, whether or not there is any emission”; and**

9 **WHEREAS, pursuant to NMSA 1978, section 30-9-13, “criminal sexual**
10 **contact of a minor” is defined as “the unlawful and intentional touching of or**
11 **applying force to the intimate parts of a minor or the unlawful and intentional**
12 **causing of a minor to touch one’s intimate parts. For the purposes of this**
13 **section, “intimate parts” means the primary genital area, groin, buttocks, anus**
14 **or breast”; and**

15 **WHEREAS, the City’s criminal code definitions of “criminal sexual**
16 **penetration” and “criminal sexual contact of a minor” are based off previous**
17 **definitions of these offenses and exclude criminal contact for an offender’s**
18 **spouse; and**

19 **WHEREAS, the state statute definitions of “criminal sexual penetration”**
20 **and “criminal sexual contact of a minor” have not included this previous**
21 **definition that exclude criminal contact for an offender’s spouse since they**
22 **were amended in 1991; and**

23 **WHEREAS, preemption principles forbid the City’s criminal code from**
24 **providing a different definition of criminal acts.**

25 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
26 **ALBUQUERQUE:**

1 SECTION 1. ROA 1994, Section 12-1-4 is hereby amended as follows:

2 § 12-1-4 DEFINITIONS.

3 For the purpose of this chapter, the following definitions shall apply unless
4 the context clearly indicates or requires a different meaning.

5 . . .

6 **CRIMINAL SEXUAL CONTACT OF A MINOR.** Unlawfully and intentionally
7 touching or applying force to the intimate parts of a minor [~~other than one's~~
8 ~~spouse~~] or unlawfully and intentionally causing a minor [~~other than one's~~
9 ~~spouse~~] to touch one's intimate parts. For purposes of this section, INTIMATE
10 PARTS means the primary genital area, groin, buttock, anus, or breast.

11 **CRIMINAL SEXUAL PENETRATION.** The unlawful and intentional causing
12 of a person [~~other than one's spouse,~~] to engage in sexual intercourse,
13 cunnilingus, fellatio or anal intercourse, or the causing of penetration, to any
14 extent and with any object, of the genital or anal openings of another, whether
15 or not there is any emission.

16 . . .

17 **SECTION 2. SEVERABILITY.** If any section, paragraph, sentence, clause,
18 word or phrase of this Ordinance is for any reason held to be invalid or
19 unenforceable by any court of competent jurisdiction, such decision shall not
20 affect the validity of the remaining provisions of this Ordinance. The Council
21 hereby declares that it would have passed this Ordinance and each section,
22 paragraph, sentence, clause, word or phrase thereof irrespective of any
23 provision being declared unconstitutional or otherwise invalid.

24 **SECTION 3. COMPILATION.** SECTION 1 of this Ordinance amends, is
25 incorporated in, and is to be compiled as part of the Revised Ordinances of
26 Albuquerque, New Mexico, 1994.

27 **SECTION 4. EFFECTIVE DATE.** This Ordinance takes effect five days after
28 publication by title and general summary.

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