

NMSU-Grants

Annual Security

Report

2015

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Introduction

The following report describes security practices and procedures at NMSU-Grants and provides crime statistics for the previous three calendar years. The college is required to report this information under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), formerly known as the Crime Awareness and Campus Security Act of 1990. New this year are requirements to report incidences of Sexual Assault, Harassment, and Stalking as part of Violence Against Women Act (VAWA).

This publication is intended to provide a general description of campus security procedures which encourage accurate and prompt reporting of all crimes to the Grants Police Department. Security procedures will be reviewed on an annual basis.

Emergency Telephone Contact Numbers:

Grants Fire Department	911
Cibola Ambulance Service	911
Grants Police Department	911
Police Non-Emergency	287-2984
Cibola County Sheriff	911
Sheriff Non-Emergency	287-9476
New Mexico State Police	287-4141
Cibola General Hospital (General)	287-4446
Cibola General Hospital (E.R.)	287-5261
Driving While Intoxicated (DWI)	#394 (DWI)

Public Safety on the Grants Campus

Campus Security – A Shared Responsibility

A campus community is one that relies on a peaceful, safe, and secure environment. Preserving this environment is a responsibility that everyone on campus must share. Members of the campus community are asked to be aware of and adhere to the policies described in this report and to be familiar with the nature of crime on campus. Being realistic about our risks is especially important. Believing we are safe from harm may give us peace of mind, but even communities with relatively low crime rates can experience increases in the number and seriousness of crimes. We each must make an effort to minimize opportunities for criminals and rely on ourselves and each other for our personal safety.

Do Your Part to Make Our Campus a SAFE Place!

- BE ALERT** for suspicious characters and dangerous situations.
- BE CAUTIOUS** so you won't become victim and a crime statistic.
- PROTECT YOURSELF** by being on guard all the time.
- WATCH** for suspicious characters or dangerous situations.
- BE SECURITY CONSCIOUS** by watching out for others and their property.

If You are Driving a Car

- DRIVE** with doors locked and windows rolled up.
- PARK** in well-lit areas.
 - The west parking lot (behind Martinez Hall) is reserved for faculty and staff.
 - Students attending classes in Martinez Hall must park in the main parking lot on the east side of the building.
- STORE** valuables in a locked trunk or take them with you.
- LOCK** doors and trunk when parking and **TAKE** your keys.

If You are Walking

- DON'T WALK ALONE.** Get a friend or classmate to go with you, especially at night.
- USE PUBLIC WALKWAYS.** Walk on well-lit paths. Avoid shortcuts & dark or isolated spots.
- WOMEN** should take extra precautions. **DRESS FOR FREEDOM OF MOVEMENT.**
Don't wear long confining skirts, clogs, platform shoes, easy-to grab capes, etc.
- KEEP PURSE** tucked closely under your arm. Don't overload yourself with bundles.

BE RESPONSIBLE.

Report all crimes (actual, attempted or suspected) to police or campus officials.

How to Report a Crime or an Emergency

To report a crime or an emergency on campus, call the Grants Police Department at **911**. Officers will respond to all reports of crime and emergencies. Prompt reporting of crimes greatly improves campus security and safety. Crime reports can be made at anytime. The Grants Police Department is open and police services are available 24 hours a day, 365 days a year. Priority is given to reports of incidents that threaten the life or safety of people, the security of property, and the peace of the community.

Grants Police Department

The NMSU-Grants Campus does not have a security force and, therefore, must rely on the Grants Police Department for public safety issues. Any activities which you observe that make you uncomfortable or make you question the appropriateness of the activity should be reported to the Grants PD. In addition to reporting the situation to the PD, you should also notify a staff or faculty member who can then inform the Facilities Manager of the incident.

Call the Grants Police Department if:

- Someone is injured or ill.
- You see fire or smell smoke.
- You see anything suspicious.
- Someone is hurting someone else.
- You see someone stealing something.
- You think you see an intoxicated or otherwise impaired person driving a vehicle or walking on campus.

Call quickly! Don't assume someone else has made the call. Try to provide the police dispatcher with accurate detailed information about the problem. Stay on the line until the dispatcher says it's OK to hang up. The dispatcher will relay information to emergency responders who are on the way to the scene. If you are reporting a medical emergency, ask someone to monitor the victim's conditions so you can relay this information over the phone to the dispatcher. The Grants Police Department dispatchers are certified in Emergency Medical Dispatching and can provide valuable advice about how to administer first aid to a victim. If any other emergency situation arises, i.e., injury, fire, etc. don't hesitate to call 911 immediately for assistance.

SEXUAL ASSAULT, HARASSMENT, AND STALKING

The issue of sexual assault and other sexual misconduct is at the forefront of universities nationwide. NMSU-Grants specifically prohibits sexual misconduct and will assist victims in seeking counseling (available through Student Services or several off-campus organizations), obtaining medical treatment (available through the local hospital), making academic changes, and in any other way possible, including criminal prosecution through the District Attorney's Office (if the victim so desires). Students, faculty and staff, and visitors are reminded that they can contact Student Services for assistance at any time, and do not have to file an official police report in order to be helped. If a report is filed with the Grants Police Department, it will be fully investigated with the findings being referred to the District Attorney's Office for prosecutorial decisions.

NMSU prohibits sexual misconduct by students and employees. This includes **forced sexual contact** (including harmful, insulting, or non-consensual verbal or physical contact of a sexual nature with another person, such as touching, fondling, exposure, disrobing, etc.) and **forced sexual penetration** (including intercourse, sodomy, oral copulation, or penetration with any object by the use of force, threats, coercion, or by taking advantage of a victim's helplessness). Also prohibited is any sexual harassment, such as requiring a person to engage in sexual conduct or activities in exchange for a grade, payment, or similar benefits.

NMSU requires all employees to complete training on an annual basis regarding sexual misconduct, and all incoming students must complete similar training prior to being allowed to enroll for classes. Additional information and training programs beyond this initial training are available through the Office of Institutional Equity, the Dean of Students, the WAVE Program, the Counseling Center, the University Health Center, and the NMSU Police Department. Contact information for each of these can be found near the end of this publication.

NMSU investigates reported sexual misconduct (including dating violence, domestic violence, sexual assault, and stalking) through the Office of Institutional Equity/Title IX Coordinator (the disciplinary investigation), as well as through the appropriate law enforcement agencies (the criminal investigation). During the NMSU disciplinary investigations, a preponderance of the evidence standard is used. During disciplinary proceedings, both the victim and the accused have the right to have another person present, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of the person's choice. The findings of Title IX disciplinary investigations will be sent to the Provost's Office to determine if violations have taken place, and if so, then referred to Student Judicial Services (for students) or Human Resources (for employees) for appropriate action to be taken based on the circumstances of the individual incident. For students, this can result in any of the following sanctions based on the severity of the offense: expulsion from university housing; mandatory completion of an education program; completion of mandatory counseling; suspension; expulsion; ban from the university. For employees, the possible sanctions are: documented counseling (for minor offenses); written reprimand (for minor offenses); suspension without pay; or termination.

More information regarding student discipline hearings can be found at: <http://studenthandbook.nmsu.edu/student-social-code-of-conduct/part-v-students-rights-and-responsibilities-student-discipline-and-appeal-hearing-processes/>

Sexual misconduct often overlaps with crimes of sexual assault, sexual harassment, stalking, dating violence and domestic violence. As a result, sexual misconduct cases may be handled both by New Mexico State University for policy violations, as well as by law enforcement for criminal violations. Each system has its own processes and standards

In an effort to reduce the risk of sexual misconduct as well as the crimes of rape, sexual assault, sexual harassment, stalking, dating violence and domestic violence occurring among its students, New Mexico State University utilizes a range of campaigns, strategies and initiatives to provide awareness, educational, risk reduction and prevention programming. Educational programs are offered to raise awareness for all incoming students and employees, and are conducted during new student and new employee orientation and throughout an incoming student's first semester. These programs and others offered throughout the year include strong messages regarding not just awareness, but also primary prevention (including normative messaging, environmental management and bystander intervention), and discuss institutional policies on sexual misconduct as well as the State of New Mexico definitions of domestic violence, sexual assault, stalking and consent in reference to sexual activity. Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, identifying allies, and/or creating distractions.

Programs also offer information on risk reduction that strives to empower victims, teaches them how to recognize warning signals and how to avoid potential attacks, and to do so without victim-blaming approaches. Throughout the year, ongoing awareness and prevention campaigns are directed to students and employees, including faculty, often taking the form of presentations in College 101 classes, information booths at community events, emails, regularly scheduled crime prevention and personal protection classes, and a variety of programs offered through WAVE.

Measures taken by NMSU

In the event that sexual misconduct, gender-based violence or the crimes of sexual assault, stalking, dating violence or domestic violence occurs, New Mexico State University takes the matter very seriously. NMSU employs interim protection measures such as interim suspension and/or no contact orders in any case where a student's behavior represents a risk of violence, threat, pattern or predation. If a student is accused of sexual misconduct, other gender-based violence or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence, he/she is subject to action in accordance with the NMSU Student Code of Conduct in the student handbook. A student wishing to officially report such an incident may do so by contacting the Title IX Coordinator, Gerard Nevarez at (575) 646-3635. The student may also report to police if they wish to pursue criminal charges. NMSU employees with knowledge about sexual misconduct or gender-based violence or the crimes of rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence are encouraged to report it immediately.

If you are the victim of sexual misconduct, gender-based violence or the crimes of rape, acquaintance rape, sexual assault, sexual harassment, stalking, dating violence or domestic violence, some or all of these safety suggestions may guide you after an incident has occurred:

1. Go to a safe place and speak with someone you trust. Tell this person what happened. If there is any immediate danger, contact the Vice President for Student Services if you are on campus or call 911 if you are off campus.
2. Consider securing immediate professional support (e.g.: counseling, victim advocacy, medical services, etc.) to assist you in the crisis.
4. For your safety and well-being, immediate medical attention is encouraged. Further, being examined as soon as possible, ideally within 24 hours, is important in the case of rape or sexual assault. The hospital will arrange for a specific medical examination at no charge. To preserve evidence, it is recommended that you do not bathe, shower, douche, eat, drink, smoke, brush your teeth, urinate, defecate or change clothes before receiving medical attention. Even if you have already taken any of these actions, you are still encouraged to have prompt medical care, and evidence may still be recoverable. Typically, if police are involved or will be involved, they will obtain evidence from the scene, and it is best to leave things undisturbed until their arrival. They will gather bedding, linens or unlaundered clothing and any other pertinent articles that may be used for evidence. It is best to allow police to secure items in evidence containers, but if you are involved in transmission of items of evidence, such as to the hospital, secure them in a clean **paper** bag or clean sheet, to avoid contamination. If you have physical injuries, photograph or have them photographed, with a date stamp on the photo. Record the names of any witnesses, and their contact information. This information may be helpful to the proof of a crime, to obtain an order of protection or to offer proof of a campus policy violation. Try to memorize details (physical description, names, license plate number, car description,) or even better, write notes to remind you of details, if you have time and the ability to do so. If you obtain external orders of protection (e.g. restraining orders, injunctions, protection from abuse), please notify the Student Services Office or the campus Title IX Coordinator so that those orders are enforceable on campus.
5. Even after the immediate crisis has passed, consider seeking support from Student Services, or a local counseling center.
6. Contact the NMSU Grants Student Services Office if you need assistance with concerns, such as no-contact orders or other protective measures. The VP for Student Services will also assist in any needed advocacy for students who wish to obtain protective or restraining orders from local authorities. NMSU is able to offer reasonable academic accommodations, changes to living arrangements, transportation accommodations, escorts, no contact orders, counseling services access and other supports and resources as needed by a victim.

For offenses including sexual misconduct or other gender based violence, which typically include the crimes of domestic violence, dating violence, sexual harassment, sexual misconduct and stalking, sanctions against student offenders range from warnings through expulsion. Serious and violent incidents and acts of sexual offenses by employees usually result in suspension, expulsion or termination of employment.

Procedurally, when New Mexico State University receives a report of sexual misconduct, gender-based violence, or other sex or gender discrimination the campus, the Title IX Coordinator is notified. If the victim wishes to access local community agencies and/or law enforcement for support, New Mexico State University will assist the victim in making these contacts. The Title IX Coordinator will offer assistance to victims in the form of interim or long-terms measures such as opportunities for academic accommodations, changes in housing for the victim or the responding student, visa and immigration assistance, changes in working situations and other assistance as may be appropriate and available on campus or in the community (such as no contact orders, campus escorts, transportation assistance, targeted interventions, etc). If the victim so desires, they will be connected with a counselor on- or off-

campus, as well as an on-or off-campus victim's advocate. No victim is required to take advantage of these services and resources, but New Mexico State University provides them in the hopes of offering help and support without condition or qualification. A summary of rights, options, supports and procedures is provided to all victims, whether they are a student, employee, guest or visitor by the Title IX Coordinator (or designee).

When appropriate upon receipt of notice, the Title IX Coordinator will cause a prompt, fair and impartial process to be initiated, commencing with an investigation which may lead to the imposition of sanctions upon an individual found responsible, based upon a preponderance of evidence. (NOTE: Preponderance of evidence means that the hearing officer believes it is more likely than not that the incident occurred.) Procedures detailing the investigation and resolution processes of New Mexico State University can be found in the NMSU Policy Section 3.25 (contained below). The Coordinator is ultimately responsible to assure in all cases that the behavior is brought to an end, NMSU acts to reasonably prevent its recurrence and the effects on the victim and the community are remedied. The Coordinator is also responsible to assure that training is conducted annually for all advocates, investigators, hearing officers, panelists and appeals officers that encompass a hearing process that protects the safety of victims and promotes accountability. Training will focus on sexual misconduct, domestic violence, dating violence, sexual assault, stalking, sexual harassment, retaliation and other behaviors that can be forms of sex or gender discrimination covered by Title IX and Clery Act. Training will help those decision-makers in the process to protect the safety of victims and to promote accountability for those who commit offenses.

In any complaint of sexual misconduct, sexual assault, stalking, dating violence, domestic violence or other sex or gender-based discrimination covered under the federal law, Title IX, the person bringing the accusation and the responding party are entitled to the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. Once complete, the parties will be informed, in writing, of the outcome, including the finding, the sanctions (if any) and the rationale therefore. Delivery of this outcome to the parties will occur without undue delay between notifications. All parties will be informed of New Mexico State University's appeal processes, and their rights to exercise a request for appeal. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

NMSU Policies and Procedures

Below is an excerpt of the NMSU Policy and procedures related to discrimination, sexual misconduct, and harassment. The complete NMSU Policies and Procedures can be found at <http://manual.nmsu.edu/policies-and-procedures/>.

NMSU Policy 3.25 Discrimination, Harassment and Sexual Misconduct on Campus

A. New Mexico State University (NMSU) is dedicated to providing equal opportunities in areas of employment and academics without regard to age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, sexual orientation, spousal affiliation or protected veteran status as outlined in federal and state anti-discrimination statutes. As a federal contractor, NMSU's affirmative action program also supports this effort. The following is a listing of applicable federal and state laws:

1. Age Discrimination in Employment Act of 1967
2. Americans with Disabilities Act of 1990, as amended
3. Civil Rights Act of 1991
4. Title IX of the Education Amendments of 1972
5. Executive Order 11141
6. Executive Order 11246
7. Equal Pay Act of 1963
8. Pregnancy Discrimination Act
9. Section 504 of the Rehabilitation Act of 1973, as amended
10. Title VI & VII of the Civil Rights Act of 1964
11. Vietnam Era Veterans Readjustment Act
12. Genetic Information Non-discrimination Act of 2008
13. NM Human Rights Act, 1969
14. Campus SaVE Act, 2013

B. The Office of Institutional Equity (OIE) is designated as the office that receives and processes internal discrimination complaints within the NMSU system. The NMSU OIE website will include office address, location and contact information: <http://eeo.nmsu.edu/>

C. Title IX Notice:

1. NMSU does not discriminate on the basis of sex in education programs and activities; Title IX of the Education Amendments Act of 1972 is a federal law that states:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

2. Title IX prohibits:

- a. Sexual misconduct (including sexual violence)
- b. Sex discrimination (gender bias)
- c. Sexual harassment
- d. Retaliation

3. Title IX applies to students, staff and faculty. Title IX requires reporting from "responsible employees" for which purposes of policy can be defined to include:

- a. Those with authority to address and remedy sex-based discrimination and harassment; and/or
- b. Those with responsibility to report sexual misconduct to a supervisor and OIE; and/or
- c. Those who a student would responsibly believe have such authority or obligation.

4. In cases involving harassing speech, assessing Title IX applicability to off-campus behavior will require a two-prong test:

- a. Does NMSU have control over the harasser (subject to our rules) and
- b. Does NMSU have control over the context of the harassment (on our property, in our programs, on land we lease or control, or at events we sponsor)

5. NMSU will reserve the option to take off-campus jurisdiction in cases involving sexual violence, sexual assault, or rape that involve students or employees.

6. The President will designate an administrator to serve as the NMSU Title IX Coordinator, whose duties will include overseeing all Title IX complaints and identifying and addressing systemic problems that arise during the review of such complaints.

7. Inquiries concerning the application of Title IX may be referred to the NMSU Title IX Coordinator or the Office of Civil Rights of the United States Department of Education. The NMSU OIE website will include the NMSU Title IX Coordinator's name, office address, telephone number, and e-mail address as well as the link to the Office for Civil Rights.

D. Campus Violence Elimination Act (Campus SaVE Act) Notice:

NMSU does not tolerate any sexual violence to include intimate partner violence which can be defined as any physical, sexual, or psychological harm against an individual by a current or former partner or spouse of the individual. Such sexual violence covers domestic violence, dating violence and stalking. The Campus SaVE Act complements and is a companion to Title IX and assists with the response to and prevention of sexual violence in higher education. The Act provides a framework for educational institutions to address incidents of sexual violence occurring on-campus, on public property within and adjacent to campus, and at non-campus properties like off-campus student organization housing, campus sponsored events and remote classrooms.

Specifically, the Campus SaVE Act outlines provisions for the following:

- a. **Transparency:** Students or employees reporting victimization will be assisted by campus authorities in reporting a crime to law enforcement and with obtaining or enforcement of no contact directives or restraining orders. Employees and students should be aware of bystander intervention which includes taking action to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against another person. Individuals who make reports will be provided options and assistance in changing academic, living, transportation and working situations if requested and reasonably available. Further, a resource guide will be provided which includes information on counseling, health, local advocacy and legal service agencies. The range of any possible disciplinary actions or sanctions and procedures may be found in the *NMSU Student Code of Conduct* and/or the *NMSU Policy Manual*.
- b. **Accountability:** Provide a fair investigation and resolution of complaints. Additionally, both accuser and accused may be accompanied during proceedings by an advisor of their choice and both parties will receive written outcomes of disciplinary hearings at the same time.

c. Education: Conduct initial and ongoing awareness programming for students and employees that addresses issues of primary prevention, definition of consent, reporting, bystander intervention and risk reduction.

d. Inquiries concerning the application of the Campus SaVE Act may contact any of the following: Office of Institutional Equity (OIE) Executive Director; the NMSU Police Department Victim's Assistance Coordinator or the Dean of Students. The NMSU OIE website will include the most current names, office address, telephone number and e-mail address as well as the link to the Office for Civil Rights.

E. Discrimination Policy:

1. NMSU is committed to providing a place of work and learning free of discrimination and harassment on the basis of a person's age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex, protected veteran status, sexual orientation, or spousal affiliation. Where a violation of policy is found to have occurred, NMSU will act to stop the conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the *NMSU Policy Manual* and/or *NMSU Student Code of Conduct*.

2. No employee or student, either in the workplace or in the academic environment, should be subjected to discrimination which includes inappropriate conduct. Even one incident may constitute a violation of policy. It is expected that students, faculty and staff will treat one another and campus visitors with respect.

3. It is against NMSU policy to discriminate in any aspect of employment or education, which includes, but is not limited to:

- a. hiring actions and terminations;
- b. compensation, assignment, or classification of employees;
- c. transfer, promotion, layoff, or recall of employees;
- d. job advertisements;
- e. recruitment actions;
- f. testing;
- g. grading;
- h. acceptance or participation in an academic program or activity;
- i. use of university facilities;
- j. training programs;
- k. benefits;
- l. retirement plans, and paid and unpaid leave programs;
- m. housing;
- n. academic accommodation;
- o. employment accommodation;
- p. financial aid;
- q. other terms and conditions of employment

4. Determining what constitutes discrimination under this policy will be accomplished on a case by case basis and depends upon the specific facts and the context in which the conduct occurs. Some conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but would not fall under the definition of discrimination. The specific action taken, if any, relating to a particular instance depends on the nature and the seriousness of the conduct that is reported.

5. Discriminatory practices include, but are not limited to:

- a. discrimination on the basis of a person's age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, sex, protected veteran status, sexual orientation, serious medical condition or spousal affiliation;
- b. retaliation against an individual for engaging in a protected activity such as filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
- c. Use of electronic mail or computer dissemination of offensive material relating to protected categories;
- d. Denying or interfering with an employee's or student's authorized reasonable accommodation based on disability or religion;
- e. employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals based on age, ancestry, color, disability, gender identity, genetic information, national origin, protected veteran status, race, religion, serious medical condition, sex, sexual orientation, or spousal affiliation; and
- f. conduct that has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

F. Sex Discrimination/Sexual Harassment Policy:

1. NMSU is committed to providing a place of work and learning free of sexual misconduct which includes sexual harassment and sexual violence. Engaging in sexual behavior that is inappropriate, unwanted and unsolicited is a violation of NMSU policy. Where sexual harassment is found to have occurred, NMSU will act to address the reported conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the *NMSU Policy Manual* and/or *NMSU Student Code of Conduct*.
2. No employee or student, either in the workplace or in the academic environment, should be subjected to unwelcome non-verbal, verbal or physical conduct that is of a sexual nature. Even one incident may constitute a violation of NMSU policy.
3. Determining what constitutes sexual harassment under this policy is dependent upon the specific facts and the context in which the conduct occurs. Some conduct may be unprofessional and/or subject to disciplinary action, but would not fall under the definition of sexual harassment. The specific action taken, if any, depends on the nature and the seriousness of the reported conduct and may include disciplinary processes.
4. Under this policy, unwelcome sexual advances, requests for sexual favors, and other non-verbal, verbal or physical conduct of a sexual or gender bias nature, constitute a violation of policy when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status;
 - b. Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity;
 - c. The conduct has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.
5. Sexual harassment may take many forms, subtle and indirect, or blatant and overt.

6. Examples of unwelcome conduct of a sexual or sex related nature that may constitute a violation of policy may include, but are not limited to:

- a. Rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, stalking, or other sexual violence;
- b. Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. Additionally, a person may be unable to give consent due to an intellectual or other disability;
- c. Sexually explicit or gender related statements, comments, questions, jokes, innuendoes, anecdotes, or gestures;
- d. Uninvited touching, patting, hugging, or purposeful brushing against a person's body or other inappropriate touching of an individual's body;
- e. Remarks of a sexual nature about a person's clothing or body;
- f. Use of technology, electronic mail or computer dissemination of sexually oriented, sex-based communications or sexually explicit images;
- g. Sexual advances, whether or not they involve physical touching;
- h. Requests for sexual favors in exchange for actual or promised job or educational benefits, such as favorable reviews, salary increases, promotions, increased benefits, continued employment, grades, favorable assignments, letters of recommendation;
- i. Displaying sexually suggestive objects, pictures, magazines, cartoons, or screen savers; or
- j. Inquiries, remarks, or discussions about an individual's sexual experiences or activities and other written or verbal references to sexual conduct.

G. Retaliation:

1. Retaliation against an individual who in good faith complains of alleged discrimination or sexual harassment or provides information in an investigation about behavior that may violate this policy is prohibited and may be grounds for discipline. Retaliation in violation of this policy may result in discipline up to and including termination and/or expulsion. Any employee or student bringing a discrimination or sexual harassment complaint in good faith or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment and/or academic standing, nor discriminated against, terminated, or expelled because of the complaint.

2. "Retaliation" may include, but is not limited to such conduct or adverse actions as:

- a. Adverse action taken to keep someone from opposing a discriminatory practice, or from participating in a discrimination proceeding;
- b. Employment actions such as termination, refusal to hire, and denial of promotion;
- c. Threats, unjustified negative evaluations, unjustified negative references, or increased surveillance;
- d. Action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights; or
- e. An unfair or unjustified grade.

Note that petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, snubbing a colleague, or negative comments that are justified by an employee's or student's poor work/academic performance or history are not considered adverse actions.

H. Applicability and Sanctions:

All students and employees are subject to this policy. Any student or employee who violates this policy is subject to discipline up to and including termination and/or expulsion in accordance

with the *NMSU Policy Manual* or in the case of students, the *NMSU Student Code of Conduct*. Complaints may also be filed against visitors, consultants, independent contractors and outside vendors whose conduct violates these policies, with the possible sanctions of limiting access to campus facilities and other measures to protect the campus community.

I. Policy Statement Distribution:

1. The President's policy statement references the University's position as contained in this policy.

All employees will be provided the President's policy statement on an annual basis. Human Resource Services (HRS) and the Office of Institutional Equity (OIE) will maintain documentation (written or electronic) that each employee received the President's policy statement. New employees will be provided a copy of the President's policy statement at the time of hire, generally at New Employee Orientation (NEO) and documentation will be maintained by HRS. Additionally, the President's policy statement will be provided to students at least annually. The distribution and receipt documentation may be accomplished electronically for either employees or students. The complete text of this policy will be maintained on the OIE website: <http://eoe.nmsu.edu/>

J. Complaints and Investigation:

1. Employees and students may file an internal discrimination complaint with OIE within fifteen (15) working days from the date of the incident(s). Individuals may use the NMSU Internal Discrimination Complaint Form to submit their complaint. The use of this form facilitates the gathering of information that is necessary to assess the complaint. The OIE Executive Director (or designee) may extend the filing date of a complaint beyond the fifteen (15) working days if there are extenuating circumstances.
2. OIE will provide the option to the complainant of pursuing their complaint through an informal (which may include mediation) or formal process (submission of the complaint). The formal internal discrimination complaint will be subject to an initial review to determine if the complaint will proceed to the investigation. If the initial review finds that the complaint will not be accepted for investigation, the OIE Executive Director (or designee) will inform the complainant in writing of the decision. The complainant may appeal the decision in writing to the Executive Vice President and Provost (or designee) within five (5) working days of receipt of the notification letter.
3. If the internal discrimination complaint is accepted, the accused individual(s) will be provided a copy of the complaint and will be extended five (5) working days to provide a written response to OIE. OIE shall initiate the process to investigate the complaint. This process includes interviewing the complainant, respondent, potential witnesses and the gathering of any related documents.
4. All individuals are required to cooperate with any investigation in response to allegations of discrimination. Refusal to cooperate in an investigation may result in disciplinary action in accordance with university policy or student code of conduct. The completion of the investigation will be within sixty (60) days of initiation unless there are extenuating circumstances. A report of inquiry will be generated by the investigator and forwarded to the Executive Vice President and Provost. Within fifteen (15) days of receipt, the Executive Vice President and Provost (or designee) will review the report and render a decision in writing to the OIE Executive Director. The standard of evidence used for internal discrimination investigations is the "preponderance of the evidence". Preponderance of the evidence means the greater weight of the evidence. The OIE Executive Director (or designee) will transmit the Executive Vice President and Provost's (or designee) decision

in writing to the complainant, the accused and appropriate administrators. The completion of the decision transmittal exhausts the internal process available under this policy for employees, students and others or may file complaints.

5. Penalties: Cases for students who are found to have violated the *NMSU Student Code of Conduct* and/or *NMSU Policy Manual* will be referred to Assistant Dean of Students. Cases for employees who are found to have violated *NMSU Policy Manual* will be referred to Human Resource Services/Employee and Management Services. Sanctions for students may include action up to and including expulsion. Sanctions for employees may include employment action up to and including termination in accordance with provisions of the *NMSU Policy Manual*.

K. General Information

1. Supervisors: If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, department chair, or director of a unit, receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, that person must immediately contact OIE.

2. Employees: An employee who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged, but it is not required, particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the employee. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with OIE.

3. Students: A student who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged, but it is not required particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A student is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the student. If the student feels uncomfortable about discussing the incident with the faculty member, department head, dean or director of an administrative unit, the student should feel free to bypass the person and file a complaint with OIE.

4. When discriminatory conduct involves a crime of violence or a non-forcible sex offense, FERPA permits NMSU to disclose to the alleged victim the name of the alleged perpetrator, any violation found to have been committed and any sanction imposed). In the event a student is found to have engaged in sexual harassment of another student, NMSU will disclose to the student who was harassed, information about the sanction imposed on the student when the sanction directly relates to the harassed student.

5. Internal NMSU Units: Internal units such as the Dean of Students Office, Housing and Campus Life, Athletics and community colleges will promptly contact and consult with OIE when knowledge is obtained relating to potential discrimination or sexual harassment.

6. Non-employees and non-students: Individuals who are neither NMSU employees nor NMSU students and who believe they have been subjected to discrimination or sexual harassment by an NMSU employee during the employee's work hours or by a NMSU student on campus or at a NMSU-sponsored event may utilize the complaint process set forth above.

L. Prompt Attention:

Complaints of discrimination or sexual harassment are taken seriously and will be dealt with promptly, impartially, and equitably. Where discrimination is found to have occurred, NMSU will act to stop the reported conduct, to prevent its recurrence, to remedy its effects, if any, and to discipline those responsible.

M. Confidentiality:

NMSU recognizes that confidentiality is important. However, confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing this policy will respect the privacy of individuals reporting or accused of discrimination or sexual harassment to the extent reasonably possible and will maintain confidentiality to the extent possible. Examples of situations where confidentiality cannot be maintained include, but are not limited to, necessary disclosures during an investigation, circumstances where the NMSU is required by law to disclose information (such as in response to legal process), or when an individual is in harm's way.

To the extent provided by law and university policy, documents concerning a discrimination investigation and investigative results are not subject to public disclosure. Investigative materials and documents contain matters of opinion related to the working relationship between NMSU and its employees. Documents protected by the Family Educational Rights and Privacy Act (FERPA), Privacy Act of 1974, the New Mexico Inspection of Public Records Act, etc. are not subject to disclosure.

N. Supervisor Responsibilities:

1. Every supervisor (includes faculty in academic setting) has responsibility to take reasonable steps to prevent acts of discrimination or sexual harassment, which include, but are not limited to:
 - a. Monitoring the work and school environment for signs that discrimination or harassment may be occurring;
 - b. Refraining from participation in, or encouragement of actions that could be perceived as discrimination or harassment (verbal or otherwise);
 - c. Stopping any observed acts that may be considered discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within their line of supervision; and
 - d. Taking immediate action to minimize or eliminate the work and/or school contact among individuals where there has been a complaint of sexual harassment, pending the completion of the investigation.

If a supervisor (or faculty in academic setting) receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the supervisor (or faculty in academic setting) must immediately contact OIE.

Failure to take the above action to prevent the occurrence of or stop known discrimination or harassment may be grounds for disciplinary action in accordance with provisions of the *NMSU Policy Manual*.

O. Relationship to Freedom of Expression:

NMSU is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental rights and this policy is not intended to stifle teaching methods or freedom of expression. Discrimination or sexual harassment, however, is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of this institution, the tradition of intellectual freedom and the trust placed in the institution by its members.

Sex Offenders

In accordance to the Campus Sex Crimes Prevention Act of 2000, New Mexico State University is providing a link to the State of New Mexico Sex Offender Registry. All sex offenders are required to register in the state of New Mexico and to provide notice of each institution of higher education in New Mexico at which the person is employed, carries a vocation or is a student. The registry, maintained by the State of New Mexico can be found at <http://www.nmsexoffender.dps.state.nm.us>. In addition to other legal requirements, any convicted sex offender who is a student or employee of NMSU is required to register with the NMSU Police Department, as well as make notification to either the Registrar's Office (if a student) or the department head of their employing department (if an employee), or both (if both a student and an employee). As of September 2, 2014, no known sex offenders lived on the NMSU campus based on a search of this database or near any of the branch campuses.

In addition to the above notice to the State of New Mexico, all sex offenders are required to deliver written notice of their status as a sex offender to New Mexico State University Police Department no later than three (3) business days prior to their enrollment in, employment with, volunteering at or residence at NMSU. Such notification may be disseminated by New Mexico State University to, and for the safety and well-being of, the University community, and may be considered by New Mexico State University for enrollment and discipline purposes.

Crime Statistics:

Each year colleges across the United States are required to report to the Department of Education crime statistics for their campus. Provided here are the crime statistics for the NMSU-Grants campus for the previous three calendar years as required by the Jeanne Clery Act. NMSU will only consider removing a report as ‘unfounded’ if the person who filed the report makes a written statement acknowledging that the initial report was fictitious, or if a court convicts the person for filing a false report. In all other circumstances, a report will still be included on crime statistics regardless of the results of hearings or trials.

<u>Crimes</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Murder/Non-negligent manslaughter	0	0	0
Negligent manslaughter	0	0	0
Sex offenses – Forcible	0	0	1*
Sex offenses – Non-forcible	0	0	0
Incest	0	0	0
Statutory rape	0	0	0
Robbery	0	0	0
Aggravated assault	0	0	0
Burglary	4	2	0
Motor Vehicle Theft	0	1	0
Arson	0	1	0

*Incident of Forcible Rape occurred on campus property (parking lot) when campus was closed over Christmas Holiday and persons involved were not students.

<u>Crimes</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Hate Crimes:			
Murder/Non-negligent manslaughter	0	0	0
Negligent manslaughter	0	0	0
Sex offenses – Forcible	0	0	0
Sex offenses – Non-forcible	0	0	0
Incest	0	0	0
Statutory rape	0	0	0
Robbery	0	0	0
Aggravated assault	0	0	0
Burglary	0	0	0
Motor Vehicle Theft	0	0	0
Arson	0	0	0
Simple Assault	1	0	0
Larceny-theft	0	0	0
Intimidation	0	0	0
Destruction/damage/vandalism of property	0	0	0
Arrests for:			
Weapons: carrying, possessing, etc	0	0	0
Drug abuse violations	0	0	0
Liquor law violations	0	0	0

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Disciplinary Action Taken for:			
Weapons: carrying, possessing, etc	0	0	0
Drug abuse violations	0	0	0
Liquor law violations	0	0	2

Incidences Reported as Required by Violence Against Women Act (VAWA).

	<u>2013</u>	<u>2014</u>
Domestic Violence *	2	0
Sexual Harassment	1	1
Stalking	0	0

*Pursuant to the 34 CFR 668.46(a) Definitions, and the Federal Register, volume 79, No. 202, page 62757, Column 3, NMSU includes all cases of ‘dating violence’ in the statistics for ‘domestic violence’ as New Mexico State Statutes already include dating violence in domestic violence violations and prosecutions. As a result there are no cases of ‘dating violence’ listed individually.

Definitions of Reported Crimes Under Jeanne Clery Act

The Jeanne Clery Act requires that universities report those crimes that are classified by the FBI Uniformed Crime Report as murder and non-negligent manslaughter, negligent manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, liquor law violations, drug law violations and illegal weapons possession. The UCR definitions for these crimes are given below.

Murder/non-negligent manslaughter:

The willful (non-negligent) killing of one human being by another.

Negligent manslaughter:

The killing of another person through gross negligence.

Sex Offenses – Forcible:

Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

Forcible Rape – the carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

Forcible Sodomy – Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With an Object – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

New Mexico does not specifically define consent during a sexual assault, but clearly indicates through the statutory language that it does not involve any amount of force or coercion, and that a person who is incapacitated by alcohol or drugs or who is too young cannot give consent.

Sex Offenses – Non-forcible:

Unlawful, non-forcible sexual intercourse.

Incest – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape -- Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Robbery:

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Aggravated Assault:

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm.

Burglary:

The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

Motor Vehicle Theft:

The theft or attempted theft of a motor vehicle (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned, including joyriding).

Arson:

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Hate Crimes:

Hate crimes are not separate, distinct crimes, but are traditional offenses motivated, in whole or in part, by the offender's bias. The objective of reporting data on hate crimes is to indicate whether an offender was motivated, in whole or in part, to commit an offense because of a bias against a race, religion, disability, sexual orientation, or ethnic or national origin group. Because of the difficulty of determining an offender's subjective motivation, only report a hate crime if sufficient objective facts lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias.

Illegal Weapons Possession:

The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices or other deadly weapons. This classification encompasses weapons offenses that are regulatory in nature. Include in this classification: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using, manufacturing, etc., of silencers; furnishing deadly weapons to minors; aliens possessing deadly weapons; and attempts to commit any of the above.

Drug Law Violations:

The violation of laws prohibiting the production, distribution and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation or importation of any controlled drug or narcotic substance. Arrests for violations of state and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics – manufactured narcotics which can cause true addiction (Demerol, methadone); and dangerous non-narcotic drugs (barbiturates, Benzedrine).

Liquor Law Violations:

The violation of state or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness. Include in this classification: the manufacture, sale, transporting, furnishing, possessing, etc., of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating still; furnishing liquor to a minor or intemperate person; underage possession; using a vehicle for illegal transportation of liquor; drinking on train or public conveyance; and attempts to commit any of the above.

New Mexico Legal Definition of Reportable Offenses as Part of Violence Against Women Act (VAWA)

Rape is generally defined as forced sexual penetration of the body of another. It may also include situations where the victim is incapable of giving consent due to incapacitation by means of disability or alcohol or other drugs. In New Mexico, the term “rape” is not used in statute. Instead, the term is “criminal sexual penetration”. Many rapes are committed by someone the victim knows, such as a date or friend. Under New Mexico Law, criminal sexual penetration is defined as follows:

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.

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

C. Aggravated criminal sexual penetration consists of 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. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.

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.

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

E. 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.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony.

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

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

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

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

(1) not defined in Subsections D through F of this section 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

(2) 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.

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

Other Sexual Offenses

Besides Criminal sexual penetration, other sexual offenses include the following:

30-9-12 . Criminal sexual contact.

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.

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

D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.

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

30-9-13 . Criminal sexual contact of a minor.

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.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

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.

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

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

- (1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or
- (2) 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.

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

30-9-14 . Indecent exposure.

A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.

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

C. Whoever commits indecent exposure is guilty of a misdemeanor.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.

30-9-14.3 . Aggravated indecent exposure.

A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:

- (1) exposure to a child less than eighteen years of age;
- (2) assault, as provided in Section 30-3-1 NMSA 1978;
- (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
- (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (5) battery, as provided in Section 30-3-4 NMSA 1978;
- (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or
- (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.

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

C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

30-9-20 . Voyeurism prohibited; penalties.

A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:

- (1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or
- (2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.

C. As used in this section:

- (1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and
- (2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

30-37-2 . Offenses; books; pictures.

It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or

B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

30-37-3.2 . Child solicitation by electronic communication device.

A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.

B. Whoever commits child solicitation by electronic communication device is guilty of a:

- (1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or
- (2) third degree felony if the child is under thirteen years of age.

C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:

- (1) third degree felony if the child is at least thirteen but under sixteen years of age; or
- (2) second degree felony if the child is under thirteen years of age.

D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.

E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.

F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

History: Laws 1998, ch. 64, § 1; 2005, ch. 295, § 1; 2007, ch. 68, § 3.

30-37-1 . Definitions.

As used in this act:

A. "minor" means any unmarried person who has not reached his eighteenth birthday;

B. "nudity" means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state;

C. "sexual conduct" means act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;

D. "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

E. "sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;

F. "harmful to minors" means that quality of any description of representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:

- (1) predominantly appeals to the prurient, shameful or morbid interest of minors; and
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) is utterly without redeeming social importance for minors; and

G. "knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of:

- (1) the character and content of any material described herein, which is reasonably susceptible of examination by the defendant;
- (2) the age of the minor.

The complete State of New Mexico rape and sexual assault offenses, definitions and penalties can be found in New Mexico State Statutes 30-9-1 through 20. Additionally, New Mexico State Statute 30-6A-1 through 4 provides definitions of the crime of Sexual Exploitation of Children.

Domestic Violence, Dating Violence and stalking

The New Mexico State Statutes relating to domestic violence, dating violence and stalking are as follows;

30-3-11 . Definitions.

As used in the Crimes Against Household Members Act:

A. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent in-law, grandparent, grandparent-in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of the Crimes Against Household Members Act; and

B. "continuing personal relationship" means a dating or intimate relationship.

30-3-12 . Assault against a household member.

A. Assault against a household member consists of:

- (1) an attempt to commit a battery against a household member; or
- (2) any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.

B. Whoever commits assault against a household member is guilty of a petty misdemeanor.

30-3-13 . Aggravated assault against a household member.

A. Aggravated assault against a household member consists of:

- (1) unlawfully assaulting or striking at a household member with a deadly weapon; or
- (2) willfully and intentionally assaulting a household member with intent to commit any felony.

B. Whoever commits aggravated assault against a household member is guilty of a fourth degree felony.

30-3-14 . Assault against a household member with intent to commit a violent felony.

A. Assault against a household member with intent to commit a violent felony consists of any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.

B. Whoever commits assault against a household member with intent to commit a violent felony is guilty of a third degree felony.

30-3-15 . Battery against a household member.

A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.

B. Whoever commits battery against a household member is guilty of a misdemeanor.

C. Upon conviction pursuant to this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.

D. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

30-3-16 . Aggravated battery against a household member.

A. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.

B. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.

C. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.

D. Upon conviction pursuant to Subsection B of this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.

E. Notwithstanding any provision of law to the contrary, if a sentence imposed pursuant to the provisions of Subsection B of this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

30-3-17 . Multiple convictions of battery or aggravated battery.

A. Whoever commits three offenses of battery against a household member as provided in Section 30-3-15 NMSA 1978 or aggravated battery against a household member as provided in Subsection B of Section 30-3-16 NMSA 1978, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a fourth degree felony.

B. Whoever commits four or more offenses of battery against a household member as provided in Section 30-3-15 NMSA 1978 or aggravated battery against a household member as provided in Subsection B of Section 30-3-16 NMSA 1978, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a third degree felony.

C. For the purpose of determining the number of offenses committed, each offense must have been committed after conviction for the preceding offense.

30-3-18 . Criminal damage to property of household member; deprivation of property of household member.

A. Criminal damage to the property of a household member consists of intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member.

B. Whoever commits criminal damage to the property of a household member is guilty of a misdemeanor, except that when the damage to the household member's interest in the property amounts to more than one thousand dollars (\$1,000), the offender is guilty of a fourth degree felony.

C. Deprivation of the property of a household member consists of intentionally depriving a household member of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member.

D. Whoever commits deprivation of the property of a household member is guilty of a misdemeanor.

30-3A-2 . Harassment; penalties.

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

B. Whoever commits harassment is guilty of a misdemeanor.

30-3A-3 . Stalking; penalties.

A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual. It is considered stalking when the behavior would cause a reasonable person to be in fear of their own or another's safety or that would create substantial emotional distress. Harassment that continues to occur might become stalking.

B. As used in this section:

- (1) "lawful authority" means within the scope of lawful employment or constitutionally protected activity; and
- (2) "pattern of conduct" means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.

C. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program.

30-3A-3.1 . Aggravated stalking; penalties.

A. Aggravated stalking consists of stalking perpetrated by a person:

- (1) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
- (2) in violation of a court order setting conditions of release and bond;
- (3) when the person is in possession of a deadly weapon; or
- (4) when the victim is less than sixteen years of age.

B. Whoever commits aggravated stalking is guilty of a fourth degree felony. Upon a second or subsequent conviction, the offender is guilty of a third degree felony.

C. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense.

30-3A-4 . Exceptions.

The provisions of the [Harassment and] Stalking Act [30-3A-1 NMSA 1978] do not apply to:

- A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute; or
- B. a peace officer in the performance of his duties.

