

SEXUAL MISCONDUCT HANDOUT

Sexual misconduct by county employees has dire consequences for county agencies, staff, and members of the public. In New Mexico, sexual misconduct has resulted in:

- Numerous officers/deputies losing their jobs
- Criminal prosecution of officers/deputies
- Millions of dollars in civil liability



LEGAL BASIS

Pursuant to NMSA 1978 § 30-9-11 D(2) it is a felony for any person in a position of authority over an inmate confined in a correctional facility or jail to engage in sexual relations with that inmate. All detention staff are in a position of authority over the inmates detained in their facility regardless of the staff member's position in the facility hierarchy. Similarly, all deputies are in a position of authority over prisoners. When the inmate or prisoner is a juvenile, state law requires the court to sentence the perpetrator to **at least** a 3 year term of imprisonment which cannot be suspended or deferred. NMSA 1978 § 30-9-13 B (2)(d).

The law gives special protection to juveniles even when they are not in custody. It is a crime for a person to engage in sexual contact or relations with a child when the person is in a position of authority over the child and uses this authority to coerce the child to submit. In this context, "position of authority" means any person who, by reason of their position is able to exercise undue influence over the child. NMSA 1978 §30-9-10.E.



Officers/deputies who engage in sexual contact or relations in the course of their employment are subject to criminal liability. Consent is no defense when an officer has sexual relations with an inmate. If you are in a position of authority over the inmate it doesn't matter whether the relationship is consensual, forced, or coerced. It is a violation of state law.

Victims of sexual misconduct perpetrated by law enforcement employees can and do sue the individual perpetrators as well as their county employees for money damages. Such suits are costly for everyone involved and the individual perpetrator may be held financially responsible for paying their attorney as well as the victim.

County policies uniformly prohibit sexual misconduct—even if it does not result in prosecution or rise to the level of criminal conduct. Employees are subject to discipline and termination from employment for any act of sexual misconduct.

