



1 circumstances of criminal sexual penetration in the second degree. Only Section  
2 30-9-11(E)(1) makes the victim’s age an essential element of the offense. However, unless  
3 Section 30-9-11(E) (1) has been charged, under Sections 30-9-11(E)(2)-(6), whenever the  
4 victim is 13-18, the criminal sexual penetration in the second degree both triggers a statutory  
5 increase to a second-degree felony and also triggers a mandatory minimum three-year  
6 sentence not otherwise imposed for second-degree felonies. Where the State is seeking the  
7 second-degree felony statutory punishments and/or the mandatory minimum sentence  
8 prescribed by Section 30-9-11—notwithstanding the normal sentence for a second-degree  
9 felony under NMSA 1978, Section 31-18-15—because the victim is 13-18, the victim’s age  
10 becomes an essential fact that must be submitted to the jury and determined beyond a  
11 reasonable doubt. *See State v. Stevens*, 2014-NMSC-011, ¶ 40, 323 P.3d 901.  
12 [Adopted by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed  
13 on or after December 31, 2015.]