UNANNOTATED

CHAPTER 30
Criminal Offenses

ARTICLE 1
General Provisions

30-1-1. Name and effective date of code.

This act is called and may be cited as the "Criminal Code". It shall become effective on July 1, 1963.

History: 1953 Comp., § 40A-1-1, enacted by Laws 1963, ch. 303, § 1-1.

30-1-2. Application of code.

The Criminal Code has no application to crimes committed prior to its effective date.

A crime is committed prior to the effective date of the Criminal Code if any of the essential elements of the crime occurred before that date.

Prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

History: 1953 Comp., § 40A-1-2, enacted by Laws 1963, ch. 303, § 1-2.

30-1-3. Construction of Criminal Code.

In criminal cases where no provision of this code is applicable, the common law, as recognized by the United States and the several states of the Union, shall govern.

History: 1953 Comp., § 40A-1-3, enacted by Laws 1963, ch. 303, § 1-3.

30-1-4. Crime defined.

A crime is an act or omission forbidden by law and for which, upon conviction, a sentence of either death, imprisonment or a fine is authorized.

History: 1953 Comp., § 40A-1-4, enacted by Laws 1963, ch. 303, § 1-4.

30-1-5. Classification of crimes.

Crimes are classified as felonies, misdemeanors and petty misdemeanors.

History: 1953 Comp., § 40A-1-5, enacted by Laws 1963, ch. 303, § 1-5.

30-1-6. Classified crimes defined.

A. A crime is a felony if it is so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized.

B. A crime is a misdemeanor if it is so designated by law or if upon conviction thereof a sentence of imprisonment in excess of six months but less than one year is authorized.

C. A crime is a petty misdemeanor if it is so designated by law or if upon conviction thereof a sentence of imprisonment for six months or less is authorized.

History: 1953 Comp., § 40A-1-6, enacted by Laws 1963, ch. 303, § 1-6.

30-1-7. Degrees of felonies.

Felonies under the Criminal Code are classified as follows:

A. capital felonies;

B. first degree felonies;

C. second degree felonies;

D. third degree felonies; and

E. fourth degree felonies.

A felony is a capital, first, second, third or fourth degree felony when it is so designated under the Criminal Code. A crime declared to be a felony, without specification of degree, is a felony of the fourth degree.

History: 1953 Comp., § 40A-1-7, enacted by Laws 1963, ch. 303, § 1-7.

30-1-8. Time limitations for commencing prosecution.

A person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed within the time as provided:

A. for a second degree felony, within six years from the time the crime was committed;

B. for a third or fourth degree felony, within five years from the time the crime was committed;

C. for a misdemeanor, within two years from the time the crime was committed;

D. for a petty misdemeanor, within one year from the time the crime was committed;

E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;

F. for a felony pursuant to Section 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;

G. for an identity theft crime pursuant to Section 30-16-24.1 NMSA 1978, within five years from the time the crime was discovered;

H. for any crime not contained in the Criminal Code [30-1-1 NMSA 1978] or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and

I. for a capital felony, a first degree violent felony or second degree murder pursuant to Subsection B of Section 30-2-1 NMSA 1978, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime.

History: 1953 Comp., § 40A-1-8, enacted by Laws 1963, ch. 303, § 1-8; 1979, ch. 5, § 1; 1980, ch. 50, § 1; 1997, ch. 157, § 1; 2005, ch. 108, § 7; 2009, ch. 95, § 2; 2022, ch. 56, § 23.

30-1-9. Tolling of time limitation for prosecution for crimes.

A. If after any crime has been committed the defendant shall conceal himself, or shall flee from or go out of the state, the prosecution for such crime may be commenced within the time prescribed in Section 1-8 [30-1-8 NMSA 1978], after the defendant ceases to conceal himself or returns to the state. No period shall be included in the time of limitation when the party charged with any crime is not usually and publicly a resident within the state.

B. When

(1) an indictment, information or complaint is lost, mislaid or destroyed;

(2) the judgment is arrested;

(3) the indictment, information or complaint is quashed, for any defect or reason; or

(4) the prosecution is dismissed because of variance between the allegations of the indictment, information or complaint and the evidence; and a new indictment, information or complaint is thereafter presented, the time elapsing between the preferring of the first indictment, information or complaint and the subsequent indictment, information or complaint shall not be included in computing the period limited for the prosecution of the crime last charged; provided that the crime last charged is based upon and grows out of the same transaction upon which the original indictment, information or complaint was founded, and the subsequent indictment, information or complaint is brought within five years from the date of the alleged commission of the original crime.

History: 1953 Comp., § 40A-1-9, enacted by Laws 1963, ch. 303, § 1-9.

30-1-9.1. Offenses against children; tolling of statute of limitations.

The applicable time period for commencing prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-6-1, 30-9-11 or 30-9-13 NMSA 1978 until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

History: Laws 1987, ch. 117, § 1.

30-1-9.2. Criminal sexual penetration; tolling of statute of limitations.

A. When DNA evidence is available and a suspect has not been identified, the applicable time period for commencing a prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-9-11 NMSA 1978 until a DNA profile is matched with a suspect.

B. As used in this section, "DNA" means deoxyribonucleic acid."

History: Laws 2003, ch. 257, § 1.

30-1-10. Double jeopardy.

No person shall be twice put in jeopardy for the same crime. The defense of double jeopardy may not be waived and may be raised by the accused at any stage of a criminal prosecution, either before or after judgment. When the indictment, information or complaint charges different crimes or different degrees of the same crime and a new trial is granted the accused, he may not again be tried for a crime or degree of the crime greater than the one of which he was originally convicted.

History: 1953 Comp., § 40A-1-10, enacted by Laws 1963, ch. 303, § 1-10.

30-1-11. Criminal sentence permitted only upon conviction.

No person indicted or charged by information or complaint of any crime shall be sentenced therefor, unless he has been legally convicted of the crime in a court having competent jurisdiction of the cause and of the person. No person shall be convicted of a crime unless found guilty by the verdict of the jury, accepted and recorded by the court; or upon the defendant's confession of guilt or a plea of nolo contendere, accepted and recorded in open court; or after trial to the court without jury and the finding by the court that such defendant is guilty of the crime for which he is charged.

History: 1953 Comp., § 40A-1-11, enacted by Laws 1963, ch. 303, § 1-11.

30-1-12. Definitions.

As used in the Criminal Code:

A. "great bodily harm" means an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body;

B. "deadly weapon" means any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted;

C. "peace officer" means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes;

D. "another" or "other" means any other human being or legal entity, whether incorporated or unincorporated, including the United States, the state of New Mexico or any subdivision thereof;

E. "person" means any human being or legal entity, whether incorporated or unincorporated, including the United States, the state of New Mexico or any subdivision thereof;

F. "anything of value" means any conceivable thing of the slightest value, tangible or intangible, movable or immovable, corporeal or incorporeal, public or private. The term is not necessarily synonymous with the traditional legal term "property";

G. "official proceeding" means a proceeding heard before any legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or depositions in any proceeding;

H. "lawful custody or confinement" means the holding of any person pursuant to lawful authority, including, without limitation, actual or conseructive [constructive] custody of prisoners temporarily outside a penal institution, reformatory, jail, prison farm or ranch;

I. "public officer" means any elected or appointed officer of the state or any of its political subdivisions, and whether or not he receives remuneration for his services; and

J. "public employee" means any person receiving remuneration for regular services rendered to the state or any of its political subdivisions.

History: 1953 Comp., § 40A-1-13, enacted by Laws 1963, ch. 303, § 1-13.

30-1-13. Accessory.

A person may be charged with and convicted of the crime as an accessory if he procures, counsels, aids or abets in its commission and although he did not directly commit the crime and although the principal who directly committed such crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or has been acquitted, or is a child under the Children's Code [Chapter 32A NMSA 1978].

History: 1953 Comp., § 40A-1-14, enacted by Laws 1963, ch. 303, § 1-14; 1972, ch. 97, § 66.

30-1-14. Venue.

All trials of crime shall be had in the county in which they were committed. In the event elements of the crime were committed in different counties, the trial may be had in any county in which a material element of the crime was committed. In the event death results from the crime, trial may be had in the county in which any material element of the crime was committed, or in any county in which the death occurred. In the event that death occurs in this state as a result of criminal action in another state, trial may be had in the county in which the death occurred. In the event that death occurs in another state as a result of criminal action in this state, trial may be had in the county in which any material element of the crime was committed in this state.

History: 1953 Comp., § 40A-1-15, enacted by Laws 1963, ch. 303, § 1-15.

30-1-15. Alleged victims of domestic abuse, stalking or sexual assault; forbearance of costs.

A. An alleged victim of an offense specified in Subsection B of this section is not required to bear the cost of:

(1) the prosecution of a misdemeanor or felony domestic violence offense, including costs associated with filing a criminal charge against an alleged perpetrator of the offense;

(2) the filing, issuance or service of a warrant;

(3) the filing, issuance or service of a witness subpoena; or

(4) the filing, issuance, registration or service of a protection order.

B. The provisions of Subsection A of this section apply to:

(1) alleged victims of domestic abuse as defined in Section 40-13-2 NMSA 1978;

(2) sexual offenses described in Sections 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

(3) crimes against household members described in Sections 30-3-12 through 30-3-16 NMSA 1978;

(4) harassment, stalking and aggravated stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978; and

(5) the violation of an order of protection that is issued pursuant to the Family Violence Protection Act [Chapter 40, Article 13 NMSA 1978] or entitled to full faith and credit.

History: Laws 2002, ch. 34, § 1; 2002, ch. 35, § 1; 2008, ch. 40, § 1.

30-1-16. Defense based on victim's gender, gender identity, gender expression or sexual orientation prohibited.

A. It shall not be a defense, justification or excuse in a criminal proceeding that the defendant's conduct was a reaction to the discovery of, knowledge about or potential disclosure of a victim's or witness's actual or perceived:

(1) gender;

(2) gender expression;

(3) gender identity; or

(4) sexual orientation.

B. It shall not be a defense, justification or excuse in a criminal proceeding that the defendant was romantically propositioned in a nonviolent or non-threatening manner by a person of the same gender or a person who is transgender.

C. Nothing in this section shall prevent a defendant from raising other recognized affirmative defense.

D. As used in this section:

(1) "gender expression" means the external appearance of a person's gender identity, often expressed through the person's behavior, physical appearance or voice, which expression may or may not conform to socially defined behaviors and characteristics typically associated with masculinity or femininity;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth; and

(3) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: Laws 2022, ch. 56, § 52.

ARTICLE 2
Homicide

30-2-1. Murder.

A. Murder in the first degree is the killing of one human being by another without lawful justification or excuse, by any of the means with which death may be caused:

(1) by any kind of willful, deliberate and premeditated killing;

(2) in the commission of or attempt to commit any felony; or

(3) by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.

Whoever commits murder in the first degree is guilty of a capital felony.

B. Unless he is acting upon sufficient provocation, upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.

Murder in the second degree is a lesser included offense of the crime of murder in the first degree.

Whoever commits murder in the second degree is guilty of a second degree felony resulting in the death of a human being.

History: 1953 Comp., § 40A-2-1, enacted by Laws 1963, ch. 303, § 2-1; 1980, ch. 21, § 1; 1994, ch. 23, § 1.

30-2-2. Repealed.

30-2-3. Manslaughter.

Manslaughter is the unlawful killing of a human being without malice.

A. Voluntary manslaughter consists of manslaughter committed upon a sudden quarrel or in the heat of passion.

Whoever commits voluntary manslaughter is guilty of a third degree felony resulting in the death of a human being.

B. Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.

Whoever commits involuntary manslaughter is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-2-3, enacted by Laws 1963, ch. 303, § 2-3; 1994, ch. 23, § 2.

30-2-4. Assisting suicide.

A. Assisting suicide consists of deliberately aiding another in the taking of the person's own life, unless the person aiding another in the taking of the person's own life is a person acting in accordance with the provisions of the End-of-Life Options Act [Chapter 24, Article 7C NMSA 1978].

B. A person who commits assisting suicide is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-2-5, enacted by Laws 1963, ch. 303, § 2-5; 2021, ch. 132, § 10.

30-2-5. Excusable homicide.

Homicide is excusable in the following cases:

A. when committed by accident or misfortune in doing any lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent; or

B. when committed by accident or misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, if no undue advantage is taken, nor any dangerous weapon used and the killing is not done in a cruel or unusual manner.

History: 1953 Comp., § 40A-2-6, enacted by Laws 1963, ch. 303, § 2-6.

30-2-6. Justifiable homicide by public officer or public employee.

A. Homicide is justifiable when committed by a public officer or public employee or those acting by their command and in their aid and assistance:

(1) in obedience to any judgment of a competent court;

(2) when necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;

(3) when necessarily committed in retaking felons who have been rescued or who have escaped or when necessarily committed in arresting felons fleeing from justice; or

(4) when necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement.

B. For the purposes of this section, homicide is necessarily committed when a public officer or public employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this section. Whenever feasible, a public officer or employee should give warning prior to using deadly force.

History: 1953 Comp., § 40A-2-7, enacted by Laws 1963, ch. 303, § 2-7; 1989, ch. 222, § 1.

30-2-7. Justifiable homicide by citizen.

Homicide is justifiable when committed by any person in any of the following cases:

A. when committed in the necessary defense of his life, his family or his property, or in necessarily defending against any unlawful action directed against himself, his wife or family;

B. when committed in the lawful defense of himself or of another and when there is a reasonable ground to believe a design exists to commit a felony or to do some great personal injury against such person or another, and there is imminent danger that the design will be accomplished; or

C. when necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed in his presence, or in lawfully suppressing any riot, or in necessarily and lawfully keeping and preserving the peace.

History: 1953 Comp., § 40A-2-8, enacted by Laws 1963, ch. 303, § 2-8.

30-2-8. When homicide is excusable or justifiable defendant to be acquitted.

Whenever any person is prosecuted for a homicide, and upon his trial the killing shall be found to have been excusable or justifiable, the jury shall find such person not guilty and he shall be discharged.

History: 1953 Comp., § 40A-2-9, enacted by Laws 1963, ch. 303, § 2-9.

30-2-9. Murderer may not profit from wrongdoing; public policy.

A. The acquiring, profiting or anticipating of benefits by reason of the commission of murder where the person committing such crime is convicted of either a capital, first or second degree felony, is against the public policy of this state and is prohibited.

B. In all cases involving devises or bequests, or heirships under the laws of descent and distribution, or cotenancies, or future interests, or community estates, or contracts, whether of real, personal or mixed properties, where a person, who, by committing murder and where such person is convicted of either a capital, first or second degree felony, and might receive some benefit therefrom either directly or indirectly, the common-law maxim to the effect that one cannot take advantage of his own wrong, shall control and be applied to the interpretation, construction and application of all statutes or decisions of this state in order to deprive and prevent him from profiting from such wrongful acts.

History: 1953 Comp., § 40A-2-10, enacted by Laws 1963, ch. 303, § 2-10.

ARTICLE 3
Assault and Battery

30-3-1. Assault.

Assault consists of either:

A. an attempt to commit a battery upon the person of another;

B. any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery; or

C. the use of insulting language toward another impugning his honor, delicacy or reputation.

Whoever commits assault is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-3-1, enacted by Laws 1963, ch. 303, § 3-1.

30-3-2. Aggravated assault.

Aggravated assault consists of either:

A. unlawfully assaulting or striking at another with a deadly weapon;

B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or

C. wilfully [willfully] and intentionally assaulting another with intent to commit any felony.

Whoever commits aggravated assault is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-3-2, enacted by Laws 1963, ch. 303, § 3-2.

30-3-3. Assault with intent to commit a violent felony.

Assault with intent to commit a violent felony consists of any person assaulting another with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery or burglary.

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

History: 1953 Comp., § 40A-3-3, enacted by Laws 1963, ch. 303, § 3-3; 1977, ch. 193, § 2.

30-3-4. Battery.

Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

Whoever commits battery is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-3-4, enacted by Laws 1963, ch. 303, § 3-4.

30-3-5. Aggravated battery.

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

B. Whoever commits aggravated battery, inflicting an injury to the person which is not likely to cause death or great bodily harm, but 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 inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.

History: 1953 Comp., § 40A-3-5, enacted by Laws 1963, ch. 303, § 3-5; 1969, ch. 137, § 1.

30-3-6. Reasonable detention; assault, battery, public affray or criminal damage to property.

A. As used in this section:

(1) "licensed premises" means all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors;

(2) "proprietor" means the owner of the licensed premises or his manager or his designated representative; and

(3) "operator" means the owner or the manager of any establishment or premises open to the public.

B. Any law enforcement officer may arrest without warrant any persons he has probable cause for believing have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 NMSA 1978 or public affray or criminal damage to property. Any proprietor or operator who causes such an arrest shall not be criminally or

civilly liable if he has actual knowledge, communicated truthfully and in good faith to the law enforcement officer, that the persons so arrested have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 NMSA 1978 or public affray or criminal damage to property.

History: Laws 1981, ch. 255, § 1; 1983, ch. 268, § 1.

30-3-7. Injury to pregnant woman.

A. Injury to [a] pregnant woman consists of a person other than the woman injuring a pregnant woman in the commission of a felony causing her to suffer a miscarriage or stillbirth as a result of that injury.

B. As used in this section:

(1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception; and

(2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion; and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heart beat, pulsation of the umbilical cord or definite movement of voluntary muscles.

C. Whoever commits injury to [a] pregnant woman is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1985, ch. 239, § 1.

30-3-8. Shooting at dwelling or occupied building; shooting at or from a motor vehicle.

A. Shooting at a dwelling or occupied building consists of willfully discharging a firearm at a dwelling or occupied building. Whoever commits shooting at a dwelling or occupied building that does not result in great bodily harm to another person is guilty of a fourth degree felony. Whoever commits shooting at a dwelling or occupied building that results in injury to another person is guilty of a third degree felony. Whoever commits shooting at a dwelling or occupied building that results in great bodily harm to another person is guilty of a second degree felony.

B. Shooting at or from a motor vehicle consists of willfully discharging a firearm at or from a motor vehicle with reckless disregard for the person of another. Whoever commits shooting at or from a motor vehicle that does not result in great bodily harm to

another person is guilty of a fourth degree felony. Whoever commits shooting at or from a motor vehicle that results in injury to another person is guilty of a third degree felony. Whoever commits shooting at or from a motor vehicle that results in great bodily harm to another person is guilty of a second degree felony.

C. This section shall not apply to a law enforcement officer discharging a firearm in the lawful performance of his duties.

History: Laws 1987, ch. 213, § 1; 1993, ch. 78, § 1.

30-3-8.1. Seizure and forfeiture of motor vehicle; procedure.

A. A motor vehicle shall be subject to seizure and forfeiture when the vehicle is used or intended for use in the commission of the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978.

B. The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of a motor vehicle subject to forfeiture pursuant to Subsection A of this section.

History: Laws 1993, ch. 78, § 2; 2002, ch. 4, § 11.

30-3-8.2. Court record of conviction; revocation of driver's license.

Upon a conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978, or of a conviction for a conspiracy or attempt to commit that offense, the district court shall send a record of the conviction to the motor vehicle division of the taxation and revenue department. The division shall immediately revoke the driver's licenses or driving privileges of all persons convicted of the offense of shooting at or from a motor vehicle, or convicted of conspiring or attempting to commit that offense, pursuant to the provisions of Subsection E of Section 66-5-29 NMSA 1978.

History: Laws 1993, ch. 78, § 3.

30-3-9. Assault; battery; school personnel.

A. As used in this section:

(1) "in the lawful discharge of his duties" means engaged in the performance of the duties of a school employee; and

(2) "school employee" includes a member of a local public school board and public school administrators, teachers and other employees of that board.

B. Assault upon a school employee consists of:

(1) an attempt to commit a battery upon the person of a school employee while he is in the lawful discharge of his duties; or

(2) any unlawful act, threat or menacing conduct which causes a school employee while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

Whoever commits assault upon a school employee is guilty of a misdemeanor.

C. Aggravated assault upon a school employee consists of:

(1) unlawfully assaulting or striking at a school employee with a deadly weapon while he is in the lawful discharge of his duties;

(2) committing assault by threatening or menacing a school employee who is engaged in the lawful discharge of his duties by a person wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner so as to conceal identity; or

(3) willfully and intentionally assaulting a school employee while he is in the lawful discharge of his duties with intent to commit any felony.

Whoever commits aggravated assault upon a school employee is guilty of a third degree felony.

D. Assault with intent to commit a violent felony upon a school employee consists of any person assaulting a school employee while he is in the lawful discharge of his duties with intent to kill the school employee.

Whoever commits assault with intent to commit a violent felony upon a school employee is guilty of a second degree felony.

E. Battery upon a school employee is the unlawful, intentional touching or application of force to the person of a school employee while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

Whoever commits battery upon a school employee is guilty of a fourth degree felony.

F. Aggravated battery upon a school employee consists of the unlawful touching or application of force to the person of a school employee with intent to injure that school employee while he is in the lawful discharge of his duties.

Whoever commits aggravated battery upon a school employee, inflicting an injury to the school employee which is not likely to cause death or great bodily harm but 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 fourth degree felony.

Whoever commits aggravated battery upon a school employee, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.

G. Every person who assists or is assisted by one or more other persons to commit a battery upon any school employee while he is in the lawful discharge of his duties is guilty of a fourth degree felony.

History: Laws 1989, ch. 344, § 1.

30-3-9.1. Assault; battery; sports officials.

A. As used in this section:

(1) "in the lawful discharge of his duties" means engaged in the performance of the duties of a sports official;

(2) "sports official" means a person who:

(a) serves as a referee, umpire linesman, timer or scorer, or who serves in a similar capacity, while working, supervising or administering a sports event; and

(b) is registered as a member of a local, state, regional or national organization that is engaged in providing education and training to sports officials.

B. Assault upon a sports official consists of:

(1) an attempt to commit a battery upon the person of a sports official while he is in the lawful discharge of his duties; or

(2) any unlawful act, threat or menacing conduct that causes a sports official while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

C. Whoever commits assault upon a sports official is guilty of a misdemeanor.

D. Aggravated assault upon a sports official consists of unlawfully assaulting or striking at a sports official with a deadly weapon while he is in the lawful discharge of his duties.

E. Whoever commits aggravated assault upon a sports official is guilty of a third degree felony.

F. Battery upon a sports official is the unlawful, intentional touching or application of force to the person of a sports official while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

G. Whoever commits battery upon a sports official is guilty of a misdemeanor.

H. Aggravated battery upon a sports official consists of the unlawful touching or application of force to the person of a sports official with intent to injure that sports official while he is in the lawful discharge of his duties.

I. Whoever commits aggravated battery upon a sports official, inflicting an injury to the sports official that is not likely to cause death or great bodily harm, but 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 fourth degree felony.

J. Whoever commits aggravated battery upon a sports official, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.

History: Laws 2001, ch. 92, § 1.

30-3-9.2. Assault; battery; health care personnel.

A. As used in this section:

(1) "health facility" means a public or private hospital, outpatient facility, diagnostic and treatment center, rehabilitation center or infirmary. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding, but "health facility" does not include a skilled nursing facility, a nursing facility or other long-term residential care facility;

(2) "health care worker" means an employee of a health facility or a licensed emergency medical technician; and

(3) "in the lawful discharge of the health care worker's duties" means engaged in the performance of the duties of a health care worker.

B. Assault upon a health care worker consists of:

(1) an attempt to commit a battery upon the person of a health care worker who is in the lawful discharge of the health care worker's duties; or

(2) any unlawful act, threat or menacing conduct that causes a health care worker who is in the lawful discharge of the health care worker's duties to reasonably believe that the health care worker is in danger of receiving an immediate battery.

Whoever commits assault upon a health care worker is guilty of a misdemeanor.

C. Aggravated assault upon a health care worker consists of:

(1) unlawfully assaulting or striking at a health care worker with a weapon while the health care worker is in the lawful discharge of the health care worker's duties; or

(2) willfully and intentionally assaulting a health care worker who is in the lawful discharge of the health care worker's duties with intent to commit any felony.

Whoever commits aggravated assault upon a health care worker is guilty of a third degree felony.

D. Assault with intent to commit a violent felony upon a health care worker consists of assaulting a health care worker who is in the lawful discharge of the health care worker's duties with intent to kill the health care worker.

Whoever commits assault with intent to commit a violent felony upon a health care worker is guilty of a second degree felony.

E. Battery upon a health care worker is the unlawful, intentional touching or application of force to the person of a health care worker who is in the lawful discharge of the health care worker's duties, when done in a rude, insolent or angry manner.

Whoever commits battery upon a health care worker is guilty of a fourth degree felony.

F. Aggravated battery upon a health care worker consists of the unlawful touching or application of force to the person of a health care worker with intent to injure that health care worker while the health care worker is in the lawful discharge of the health care worker's duties.

Whoever commits aggravated battery upon a health care worker, inflicting an injury to the health care worker that is not likely to cause death or great bodily harm but 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 fourth degree felony.

Whoever commits aggravated battery upon a health care worker, inflicting great bodily harm or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.

G. A person who assists or is assisted by one or more other persons to commit a battery upon a health care worker who is in the lawful discharge of the health care worker's duties is guilty of a fourth degree felony.

History: Laws 2006, ch. 27, § 1.

30-3-10. Short title.

Sections 30-3-10 through 30-3-18 NMSA 1978 may be cited as the "Crimes Against Household Members Act".

History: Laws 1995, ch. 221, § 1; 2009, ch. 255, § 1.

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;

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

C. "strangulation" means the unlawful touching or application of force to another person's neck or throat with intent to injure that person and in a manner whereby great bodily harm or death can be inflicted, the result of which impedes the person's normal breathing or blood circulation; and

D. "suffocation" means the unlawful touching or application of force that blocks the nose or mouth of another person with intent to injure that person and in a manner whereby great bodily harm or death can be inflicted, the result of which impedes the person's normal breathing or blood circulation.

History: Laws 1995, ch. 221, § 2; 2008, ch. 16, § 1; 2010, ch. 85, § 1; 2018, ch. 30, § 1.

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.

History: Laws 1995, ch. 221, § 3.

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.

History: Laws 1995, ch. 221, § 4.

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.

History: Laws 1995, ch. 221, § 5.

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.

History: Laws 1995, ch. 221, § 6; 2001, ch. 144, § 1; 2007, ch. 221, § 1; 2008, ch. 16, § 2.

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 is guilty of a misdemeanor if the aggravated battery against a household member is committed 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.

C. Whoever commits aggravated battery against a household member is guilty of a third degree felony if the aggravated battery against a household member is committed:

(1) by inflicting great bodily harm;

(2) with a deadly weapon;

(3) by strangulation or suffocation; or

(4) in any manner whereby great bodily harm or death can be inflicted.

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.

History: Laws 1995, ch. 221, § 7; 2007, ch. 221, § 2; 2008, ch. 16, § 3; 2018, ch. 30, § 2.

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.

History: Laws 2008, ch. 16, § 4.

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.

History: 1978 Comp., § 30-3-18, as enacted by Laws 2009, ch. 255, § 2.

30-3-19. Threatening a judge or an immediate family member of a judge; penalty.

A. No person shall threaten a judge or the immediate family member of a judge with the intent to:

(1) place the judge or the immediate family member of a judge in fear of great bodily harm to the judge or to an immediate family member of the judge;

(2) prevent or interrupt the ability to carry out the judge's job duties; or

(3) retaliate against a judge on account of the performance of the judge's official duties during the judge's term of service.

B. A person who violates the provisions of this section is guilty of a fourth degree felony.

C. As used in this section:

(1) "immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and "immediate family member" includes a stepparent, a stepchild, a stepsibling and an adoptive relationship;

(2) "judge" means a current or former justice, judge, magistrate, domestic violence special commissioner or hearing officer; and

(3) "retaliate" means intentionally threatening bodily injury to or damage to the property of a judge or a family member of a judge with the intent to retaliate against the judge for the judge's exercise of the judge's judicial duties and causing the judge or the family member to reasonably believe that the judge's or the family member's person or property is in danger.

History: Laws 2022, ch. 56, § 47.

30-3-20. Malicious sharing of personal information of a judge or an immediate family member of a judge; penalty.

A. No person shall share the personal information of a judge or an immediate family member of a judge with the intent to:

(1) cause harm to the judge or an immediate family member of a judge;

(2) place the judge or an immediate family member of a judge in fear of great bodily harm to the judge or to an immediate family member of the judge; or

(3) prevent or interrupt the ability to carry out the judge's job duties.

B. A person who violates the provisions of this section is guilty of a misdemeanor.

C. As used in this section:

(1) "immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and "immediate family member" includes a stepparent, a stepchild, a stepsibling and an adoptive relationship;

(2) "judge" means a current or former justice, judge, magistrate, domestic violence special commissioner or hearing officer; and

(3) "personal information" means a person's personal physical address, personal phone number or physical location.

History: Laws 2022, ch. 56, § 48.

ARTICLE 3A
Harassment and Stalking

30-3A-1. Short title.

Chapter 30, Article 3A NMSA 1978 may be cited as the "Harassment and Stalking Act".

History: 1978 Comp., § 30-3A-1, enacted by Laws 1997, ch. 10, § 1; 2009, ch. 21, § 1.

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.

History: 1978 Comp., § 30-3A-2, enacted by Laws 1997, ch. 10, § 2.

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.

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.

History: 1978 Comp., § 30-3A-3, enacted by Laws 1997, ch. 10, § 3; 2009, ch. 21, § 2.

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.

History: Laws 1997, ch. 10, § 4.

30-3A-4. Exceptions.

The provisions of the [Harassment and] Stalking Act 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.

History: 1978 Comp., § 30-3A-4, enacted by Laws 1997, ch. 10, § 5.

ARTICLE 4
Kidnapping

30-4-1. Kidnapping.

A. Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

(1) that the victim be held for ransom;

(2) that the victim be held as a hostage or shield and confined against his will;

(3) that the victim be held to service against the victim's will; or

(4) to inflict death, physical injury or a sexual offense on the victim.

B. Whoever commits kidnapping is guilty of a first degree felony, except that he is guilty of a second degree felony when he voluntarily frees the victim in a safe place and does not inflict physical injury or a sexual offense upon the victim.

History: 1953 Comp., § 40A-4-1, enacted by Laws 1963, ch. 303, § 4-1; 1973, ch. 109, § 1; 1995, ch. 84, § 1; 2003 (1st S.S.), ch. 1, § 2.

30-4-2. Criminal use of ransom.

Criminal use of ransom consists of knowingly receiving, possessing, concealing or disposing of any portion of money or other property which has at any time been delivered for the ransom of a kidnaped person.

Whoever commits criminal use of ransom is guilty of a third degree felony.

History: 1953 Comp., § 40A-4-2, enacted by Laws 1963, ch. 303, § 4-2.

30-4-3. False imprisonment.

False imprisonment consists of intentionally confining or restraining another person without his consent and with knowledge that he has no lawful authority to do so.

Whoever commits false imprisonment is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-4-3, enacted by Laws 1963, ch. 303, § 4-3.

30-4-4. Custodial interference; penalties.

A. As used in this section:

(1) "child" means an individual who has not reached his eighteenth birthday;

(2) "custody determination" means a judgment or order of a court of competent jurisdiction providing for the custody of a child, including visitation rights;

(3) "person" means any individual or legal entity, whether incorporated or unincorporated, including the United States, the state of New Mexico or any subdivision thereof;

(4) "physical custody" means actual possession and control of a child; and

(5) "right to custody" means the right to physical custody or visitation of a child arising from:

(a) a parent-child relationship between the child and a natural or adoptive parent absent a custody determination; or

(b) a custody determination.

B. Custodial interference consists of any person, having a right to custody of a child, maliciously taking, detaining, concealing or enticing away or failing to return that child without good cause and with the intent to deprive permanently or for a protracted time another person also having a right to custody of that child of his right to custody. Whoever commits custodial interference is guilty of a fourth degree felony.

C. Unlawful interference with custody consists of any person, not having a right to custody, maliciously taking, detaining, concealing or enticing away or failing to return any child with the intent to detain or conceal permanently or for a protracted time that child from any person having a right to custody of that child. Whoever commits unlawful interference with custody is guilty of a fourth degree felony.

D. Violation of Subsection B or C of this section is unlawful and is a fourth degree felony.

E. A peace officer investigating a report of a violation of this section may take a child into protective custody if it reasonably appears to the officer that any person will flee with the child in violation of Subsection B or C of this section. The child shall be placed with the person whose right to custody of the child is being enforced, if available

and appropriate, and, if not, in any of the community-based shelter care facilities as provided for in Section 32-1-25.1 NMSA 1978 [repealed].

F. Upon recovery of a child a hearing by the civil court currently having jurisdiction or the court to which the custody proceeding is assigned, shall be expeditiously held to determine continued custody.

G. A felony charge brought under this section may be dismissed if the person voluntarily returns the child within fourteen days after taking, detaining or failing to return the child in violation of this section.

H. The offenses enumerated in this section are continuous in nature and continue for so long as the child is concealed or detained.

I. Any defendant convicted of violating the provisions of this section may be assessed the following expenses and costs by the court, with payments to be assigned to the respective person or agency:

(1) any expenses and costs reasonably incurred by the person having a right to custody of the child in seeking return of that child; and

(2) any expenses and costs reasonably incurred for the care of the child while in the custody of the human services department [health care authority department].

J. Violation of the provisions of this section is punishable in New Mexico, whether the intent to commit the offense is formed within or outside the state, if the child was present in New Mexico at the time of the taking.

History: 1978 Comp., § 30-4-4, enacted by Laws 1989, ch. 206, § 1.

ARTICLE 5
Abortion (Repealed.)

30-5-1. Repealed.

History: 1953 Comp., § 40A-5-1, enacted by Laws 1969, ch. 67, § 1; 1978 Comp., § 30-5-1, repealed by Laws 2021, ch. 2, § 1.

30-5-2. Repealed.

History: 1953 Comp., § 40A-5-2, enacted by Laws 1969, ch. 67, § 2; 1978 Comp., § 30-5-2, repealed by Laws 2021, ch. 2, § 1.

30-5-3. Repealed.

History: 1953 Comp., § 40A-5-3, enacted by Laws 1969, ch. 67, § 3; 1978 Comp., § 30-5-3, repealed by Laws 2021, ch. 2, § 1.

ARTICLE 5A
Partial-Birth Abortion Ban

30-5A-1. Short title.

This act [30-5A-1 to 30-5A-5 NMSA 1978] may be cited as the "Partial-Birth Abortion Ban Act".

History: Laws 2000, ch. 55, § 1.

30-5A-2. Definitions.

As used in the Partial-Birth Abortion Ban Act [30-5A-1 to 30-5A-5 NMSA 1978]:

A. "abortion" means the intentional termination of the pregnancy of a female by a person who knows the female is pregnant;

B. "fetus" means the biological offspring of human parents;

C. "partial-birth abortion" means a procedure in which any person, including a physician or other health care professional, intentionally extracts an independently viable fetus from the uterus into the vagina and mechanically extracts the cranial contents of the fetus in order to induce death; and

D. "physician" means a person licensed to practice in the state as a licensed physician pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] or an osteopathic physician licensed pursuant to Chapter 61, Article 10 NMSA 1978.

History: Laws 2000, ch. 55, § 2.

30-5A-3. Prohibition of partial-birth abortions.

No person shall perform a partial-birth abortion except a physician who has determined that in his opinion the partial-birth abortion is necessary to save the life of a pregnant female or prevent great bodily harm to a pregnant female:

A. because her life is endangered or she is at risk of great bodily harm due to a physical disorder, illness or injury, including a condition caused by or arising from the pregnancy; and

B. no other medical procedure would suffice for the purpose of saving her life or preventing great bodily harm to her.

History: Laws 2000, ch. 55, § 3.

30-5A-4. Civil remedies.

A. Except as provided in Subsection B of this section, the following persons may bring a civil action to obtain relief pursuant to this section against a person who has violated the provisions of Section 3 [30-5A-3 NMSA 1978] of the Partial-Birth Abortion Ban Act:

(1) the person on whom a partial-birth abortion was performed;

(2) the biological father of the fetus that was the subject of the partial-birth abortion; and

(3) the parents of the person on whom the partial-birth abortion was performed if that person had not reached the age of majority at the time of the abortion.

B. The persons named as having a right of action in Subsection A of this section are barred from bringing a civil action pursuant to this section if:

(1) the pregnancy of the person on whom the partial-birth abortion was performed resulted from criminal conduct of the person seeking to bring the action; or

(2) the partial-birth abortion was consented to by the person seeking to bring the action.

C. A person authorized to bring a civil action pursuant to this section may recover compensatory damages for loss caused by violation of Section 3 of the Partial-Birth Abortion Ban Act.

History: Laws 2000, ch. 55, § 4.

30-5A-5. Criminal penalty; exception.

A. Except as provided in Subsections B, C, D and E of this section, a person who violates Section 3 [30-5A-3 NMSA 1978] of the Partial-Birth Abortion Ban Act is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

B. The provisions of the Partial-Birth Abortion Ban Act shall apply only to the exact procedure specified in that act.

C. The provisions of the Partial-Birth Abortion Ban Act are not intended to criminalize any other method of terminating a woman's pregnancy.

D. The provisions of the Partial-Birth Abortion Ban Act are not intended to subject a woman, upon whom the procedure specified in that act is performed, to criminal culpability as an accomplice, aider, abettor, solicitor or conspirator.

E. The provisions of the Partial-Birth Abortion Ban Act are not intended to subject any person to criminal culpability pursuant to laws governing attempt, solicitation or conspiracy to commit a crime.

History: Laws 2000, ch. 55, § 5.

ARTICLE 6
Crimes Against Children and Dependents

30-6-1. Abandonment or abuse of a child.

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. A person who commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case the person is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act [Chapter 24, Article 22 NMSA 1978] shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

E. A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first degree felony.

F. A person who commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. A person who commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. A person who commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

K. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital.

History: 1953 Comp., § 40A-6-1, enacted by Laws 1973, ch. 360, § 10; 1977, ch. 131, § 1; 1978, ch. 103, § 1; 1984, ch. 77, § 1; 1984, ch. 92, § 5; 1989, ch. 351, § 1; 1997, ch. 163, § 1; 2001, ch. 31, § 9; 2001, ch. 132, § 9; 2004, ch. 10, § 1; 2004, ch. 11, § 1; 2005, ch. 59, § 1; 2009, ch. 259, § 1.

30-6-2. Abandonment of dependent.

Abandonment of dependent consists of a person having the ability and means to provide for his spouse or minor child's support and abandoning or failing to provide for the support of such dependent.

Whoever commits abandonment of dependent is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-6-2, enacted by Laws 1963, ch. 303, § 6-2; 1969, ch. 182, § 4; 1973, ch. 241, § 1; 1995, ch. 123, § 1.

30-6-3. Contributing to delinquency of minor.

Contributing to the delinquency of a minor consists of any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of eighteen years.

Whoever commits contributing to the delinquency of a minor is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-6-3, enacted by Laws 1963, ch. 303, § 6-3; 1990, ch. 19, § 1.

30-6-4. Obstruction of reporting or investigation of child abuse or neglect.

Obstruction of reporting or investigation of child abuse or neglect consists of:

A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting, pursuant to Section 32A-4-3 NMSA 1978, child abuse or neglect, including child sexual abuse; or

B. knowingly obstructing, delaying, interfering with or denying access to a law enforcement officer or child protective services social worker in the investigation of a report of child abuse or sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a misdemeanor.

History: Laws 1989, ch. 287, § 1; 2014, ch. 10, § 1.

ARTICLE 6A
Sexual Exploitation of Children

30-6A-1. Short title.

Chapter 30, Article 6A NMSA 1978 may be cited as the "Sexual Exploitation of Children Act".

History: Laws 1984, ch. 92, § 1; 2015, ch. 13, § 1.

30-6A-2. Definitions.

As used in the Sexual Exploitation of Children Act:

A. "prohibited sexual act" means:

(1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;

(2) bestiality;

(3) masturbation;

(4) sadomasochistic abuse for the purpose of sexual stimulation; or

(5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

B. "visual or print medium" means:

(1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or

(2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

C. "performed publicly" means performed in a place that is open to or used by the public;

D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and

E. "obscene" means any material, when the content if taken as a whole:

(1) appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;

(2) portrays a prohibited sexual act in a patently offensive way; and

(3) lacks serious literary, artistic, political or scientific value.

History: Laws 1984, ch. 92, § 2; 1993, ch. 116, § 1; 2001, ch. 2, § 1.

30-6A-3. Sexual exploitation of children.

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony for sexual exploitation of children and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. When a separate finding of fact made by a court or jury shows beyond a reasonable doubt that a child depicted in the visual or print medium is a child under the age of thirteen, the basic sentence shall be increased by one year, and the sentence imposed by this subsection shall be the first year served and shall not be suspended or deferred; provided that when the offender is a youthful offender, the sentence imposed by this subsection may be increased by one year.

B. The provisions of Subsection A of this section shall not apply to a depiction possessed by a child under the age of eighteen in which the depicted child is between the ages of fourteen and eighteen and the depicted child knowingly and voluntarily consented to the possession, and:

(1) the depicted child knowingly and voluntarily consented to the creation of the depiction; or

(2) the depicted child knowingly and voluntarily produced the depiction without coercion.

This subsection shall not prohibit prosecution nor create an immunity from prosecution for the possession of depictions that are the result of coercion.

C. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony for sexual exploitation of children and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony for sexual exploitation of children and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978 unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony for sexual exploitation of children and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony for sexual exploitation of children and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

G. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.

H. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978.

History: Laws 1984, ch. 92, § 3; 1989, ch. 170, § 1; 1993, ch. 116, § 2; 2001, ch. 2, § 2; 2007, ch. 144, § 1; 2016, ch. 2, § 1.

30-6A-4. Sexual exploitation of children by prostitution.

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

B. Any person knowingly hiring or offering to hire a child under the age of sixteen to engage in any prohibited sexual act is guilty of a second degree felony.

C. Any parent, legal guardian or person having custody or control of a child under sixteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a third degree felony.

History: Laws 1984, ch. 92, § 4; 1989, ch. 170, § 2; 2015, ch. 13, § 2.

ARTICLE 7
Weapons and Explosives

30-7-1. "Carrying a deadly weapon".

"Carrying a deadly weapon" means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.

History: 1953 Comp., § 40A-7-1, enacted by Laws 1963, ch. 303, § 7-1.

30-7-2. Unlawful carrying of a deadly weapon.

A. Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

(1) in the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;

(2) in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property;

(3) by a peace officer in accordance with the policies of his law enforcement agency who is certified pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978];

(4) by a peace officer in accordance with the policies of his law enforcement agency who is employed on a temporary basis by that agency and who has successfully completed a course of firearms instruction prescribed by the New Mexico law enforcement academy or provided by a certified firearms instructor who is employed on a permanent basis by a law enforcement agency; or

(5) by a person in possession of a valid concealed handgun license issued to him by the department of public safety pursuant to the provisions of the Concealed Handgun Carry Act [Chapter 29, Article 19 NMSA 1978].

B. Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.

C. Whoever commits unlawful carrying of a deadly weapon is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-7-2, enacted by Laws 1963, ch. 303, § 7-2; 1975, ch. 134, § 1; 1985, ch. 174, § 1; 2001, ch. 219, § 13.

30-7-2.1. Unlawful carrying of a deadly weapon on school premises.

A. Unlawful carrying of a deadly weapon on school premises consists of carrying a deadly weapon on school premises except by:

(1) a peace officer;

(2) school security personnel;

(3) a student, instructor or other school-authorized personnel engaged in army, navy, marine corps or air force reserve officer training corps programs or state-authorized hunter safety training instruction;

(4) a person conducting or participating in a school-approved program, class or other activity involving the carrying of a deadly weapon; or

(5) a person older than nineteen years of age on school premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property.

B. As used in this section, "school premises" means:

(1) the buildings and grounds, including playgrounds, playing fields and parking areas and any school bus of any public elementary, secondary, junior high or high school in or on which school or school-related activities are being operated under the supervision of a local school board; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed.

C. Whoever commits unlawful carrying of a deadly weapon on school premises is guilty of a fourth degree felony.

History: Laws 1987, ch. 232, § 1; 1989, ch. 285, § 1; 1994, ch. 17, § 1.

30-7-2.2. Unlawful possession of a handgun by a person; exceptions; penalty.

A. Unlawful possession of a handgun by a person consists of a person knowingly having a handgun in the person's possession or knowingly transporting a handgun, except when the person is:

(1) in attendance at a hunter's safety course or handgun safety course or participating in a lawful shooting activity;

(2) engaging in the use of a handgun for target shooting at an established range authorized by the governing body of the jurisdiction in which the range is located or in an area where the discharge of a handgun without legal justification is not prohibited by law;

(3) engaging in an organized competition involving the use of a handgun;

(4) participating in or practicing for a performance by an organization that has been granted exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered;

(5) engaging in legal hunting or trapping activities;

(6) traveling, with an unloaded handgun in the person's possession, to or from an activity described in Paragraph (1), (2), (3), (4) or (5) of this subsection; or

(7) on real property under the control of the person's parent, grandparent or legal guardian and the person is being supervised by a parent, grandparent or legal guardian.

B. A person who commits unlawful possession of a handgun by a person is guilty of a misdemeanor.

C. As used in this section:

(1) "person" means an individual who is less than nineteen years old; and

(2) "handgun" means a loaded or unloaded pistol, revolver or firearm that will or is designed to or may readily be converted to expel a projectile by the action of an explosion and the barrel length of which, not including a revolving, detachable or magazine breech, does not exceed twelve inches.

History: Laws 1994, ch. 22, § 2; 2022, ch. 56, § 25.

30-7-2.3. Seizure and forfeiture of a handgun possessed or transported by a person in violation of unlawful possession of a handgun by a person.

A. A handgun is subject to seizure and forfeiture by a law enforcement agency when the handgun is possessed or transported by a person in violation of the offense of unlawful possession of a handgun by a person.

B. The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of a handgun subject to forfeiture pursuant to Subsection A of this section.

History: Laws 1994, ch. 22, § 3; 2002, ch. 4, § 12.

30-7-2.4. Unlawful carrying of a firearm on university premises; notice; penalty.

A. Unlawful carrying of a firearm on university premises consists of carrying a firearm on university premises except by:

(1) a peace officer;

(2) university security personnel;

(3) a student, instructor or other university-authorized personnel who are engaged in army, navy, marine corps or air force reserve officer training corps programs or a state-authorized hunter safety training program;

(4) a person conducting or participating in a university-approved program, class or other activity involving the carrying of a firearm; or

(5) a person older than nineteen years of age on university premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property.

B. A university shall conspicuously post notices on university premises that state that it is unlawful to carry a firearm on university premises.

C. As used in this section:

(1) "university" means a baccalaureate degree-granting post-secondary educational institution, a community college, a branch community college, a technical-vocational institute and an area vocational school; and

(2) "university premises" means:

(a) the buildings and grounds of a university, including playing fields and parking areas of a university, in or on which university or university-related activities are conducted; or

(b) any other public buildings or grounds, including playing fields and parking areas that are not university property, in or on which university-related and sanctioned activities are performed.

D. Whoever commits unlawful carrying of a firearm on university premises is guilty of a petty misdemeanor.

History: Laws 2003, ch. 253, § 1.

30-7-3. Unlawful carrying of a firearm in licensed liquor establishments.

A. Unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages consists of carrying a loaded or unloaded firearm on any premises licensed by the regulation and licensing department for the dispensing of alcoholic beverages except:

(1) by a law enforcement officer in the lawful discharge of the officer's duties;

(2) by a law enforcement officer who is certified pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978] acting in accordance with the policies of the officer's law enforcement agency;

(3) by the owner, lessee, tenant or operator of the licensed premises or the owner's, lessee's, tenant's or operator's agents, including privately employed security personnel during the performance of their duties;

(4) by a person carrying a concealed handgun who is in possession of a valid concealed handgun license for that gun pursuant to the Concealed Handgun Carry Act [Chapter 29, Article 19 NMSA 1978] on the premises of:

(a) a licensed establishment that does not sell alcoholic beverages for consumption on the premises; or

(b) a restaurant licensed to sell only beer and wine that derives no less than sixty percent of its annual gross receipts from the sale of food for consumption on the premises, unless the restaurant has a sign posted, in a conspicuous location at each public entrance, prohibiting the carrying of firearms, or the person is verbally instructed by the owner or manager that the carrying of a firearm is not permitted in the restaurant;

(5) by a person in that area of the licensed premises usually and primarily rented on a daily or short-term basis for sleeping or residential occupancy, including hotel or motel rooms;

(6) by a person on that area of a licensed premises primarily used for vehicular traffic or parking; or

(7) for the purpose of temporary display, provided that the firearm is:

(a) made completely inoperative before it is carried onto the licensed premises and remains inoperative while it is on the licensed premises; and

(b) under the control of the licensee or an agent of the licensee while the firearm is on the licensed premises.

B. Whoever commits unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-7-2.1, enacted by Laws 1975, ch. 149, § 1; 1977, ch. 160, § 1; 1999, ch. 156, § 1; 2007, ch. 158, § 1; 2010, ch. 106, § 1.

30-7-3.1. Unlawful possession of a weapon conversion device; penalty.

A. Unlawful possession of a weapon conversion device consists of a person knowingly having in that person's possession an unlawfully obtained weapon conversion device or knowingly transporting an unlawfully obtained weapon conversion device.

B. A person who commits unlawful possession of a weapon conversion device is guilty of a third degree felony.

C. As used in this section:

(1) "fully automatic weapon" means a weapon that shoots, is designed to shoot automatically or can be readily restored to fire more than one cartridge or shell, without manual reloading, by a single function of the trigger;

(2) "semiautomatic weapon" means a repeating rifle, shotgun or pistol, regardless of barrel or overall length, that uses a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round and that requires a separate function of the trigger to fire each cartridge or shell; and

(3) "weapon conversion device" means a part or combination of parts designed and intended to convert a semiautomatic weapon into a fully automatic weapon.

History: Laws 2025, ch. 4, § 10.

30-7-4. Negligent use of a deadly weapon.

A. Negligent use of a deadly weapon consists of:

(1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;

(2) carrying a firearm while under the influence of an intoxicant or narcotic;

(3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or

(4) discharging a firearm within one hundred fifty yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.

B. The provisions of Paragraphs (1), (3) and (4) of Subsection A of this section shall not apply to a peace officer or other public employee who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

C. The exceptions from criminal liability provided for in Subsection B of this section shall not preclude or affect civil liability for the same conduct.

Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-7-3, enacted by Laws 1963, ch. 303, § 7-3; 1977, ch. 266, § 1; 1979, ch. 79, § 1; 1993, ch. 139, § 1.

30-7-4.1. Negligently making a firearm accessible to a minor; negligently making a firearm accessible to a minor resulting in great bodily harm or death; penalties.

A. A person commits the crime of negligently making a firearm accessible to a minor if:

(1) the person keeps or stores a firearm in a manner that negligently disregards a minor's ability to access the firearm; and

(2) a minor accesses the firearm and displays or brandishes the firearm in a threatening manner or causes injury to the minor or another person not resulting in great bodily harm or death.

Whoever commits negligently making a firearm accessible to a minor is guilty of a misdemeanor.

B. A person commits the crime of negligently making a firearm accessible to a minor resulting in great bodily harm or death if:

(1) the person keeps or stores a firearm in a manner that negligently disregards a minor's ability to access the firearm; and

(2) a minor accesses the firearm and uses it in a manner that causes great bodily harm to or death of the minor or another person.

Whoever commits negligently making a firearm accessible to a minor resulting in great bodily harm or death is guilty of a fourth degree felony.

C. A person does not violate Subsection A or B of this section if a minor obtains a firearm:

(1) that was either kept in a locked container and was securely stored or kept in a location that a reasonable person would believe to be secure when obtained by a minor;

(2) that was carried on the person or within the person's immediate control;

(3) that was locked with a firearm safety device that rendered the firearm inoperable;

(4) in the course of self-defense or defense of another person;

(5) by illegal entry to the person's property; or

(6) with the authorization of the minor's parent or guardian for lawful hunting, lawful recreational use or any other lawful purpose.

D. As used in this section:

(1) "brandish" means to display or make a firearm known to another person while the firearm is present on the person of the minor with intent to intimidate or injure a person;

(2) "firearm" means a weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion;

(3) "firearm safety device" means a gun safe or a device that prevents a firearm from being discharged or from being used to expel a projectile by the action of an explosion or a device other than a gun safe that locks a firearm and is designed to prevent children and unauthorized users from firing a firearm, which device may be installed on a firearm, be incorporated into the design of the firearm or prevent access to the firearm; and

(4) "minor" means a person under eighteen years of age.

History: Laws 2023, ch. 5, § 1.

30-7-5. Dangerous use of explosives.

Dangerous use of explosives consists of maliciously exploding, attempting to explode or placing any explosive with the intent to injure, intimidate or terrify another, or to damage another's property.

Whoever commits dangerous use of explosives is guilty of a third degree felony.

History: 1953 Comp., § 40A-7-4, enacted by Laws 1963, ch. 303, § 7-4.

30-7-6. Negligent use of explosives.

Negligent use of explosives consists of negligently exploding, attempting to explode or placing any explosive in such a manner as to result in injury to another or to property of another, or in the probability of such injury.

Whoever commits negligent use of explosives is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-7-5, enacted by Laws 1963, ch. 303, § 7-5.

30-7-7. Unlawful sale, possession or transportation of explosives.

Unlawful sale, possession or transportation of explosives consists of:

A. knowingly selling or possessing any explosive or causing such explosive to be transported without having plainly marked in large letters in a conspicuous place on the box or package containing such explosive the name and explosive character thereof and the date of manufacture. For the purpose of this subsection, the term "explosive" is as defined in Section 2 [30-7-18 NMSA 1978] of the Explosives Act, but shall not include:

(1) explosive materials in medicine and medicinal agents in the forms prescribed by the official United States pharmacopoeia or the national formulary;

(2) small arms ammunition and components thereof;

(3) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers intended to be used solely for sporting, recreational or cultural purposes as defined in Section 921(a)(16) [§ 921(a)(4)] of Title 18 of the United States Code, or in antique devices as exempted from the term "destructive device" in Section 921(a)(4) [§ 921(a)(16)] of Title 18 of the United States Code; or

(4) explosive materials transported in compliance with the regulations of the United States department of transportation and agencies thereof; or

B. knowingly transporting or taking any explosive upon or into any vehicle belonging to a common carrier transporting passengers. For the purpose of this subsection, the term "explosives" is as defined in Section 2 of the Explosives Act, but shall not include:

(1) explosive materials in medicines and medicinal agents in the forms prescribed by the official United States pharmacopoeia or the national formulary;

(2) small arms ammunition or components thereof; or

(3) explosive materials transported in compliance with the regulations of the United States department of transportation and agencies thereof.

Whoever commits unlawful sale, possession or transportation of explosives as set forth in Subsection A of this section is guilty of a petty misdemeanor.

Whoever commits unlawful transportation of explosives as set forth in Subsection B of this section is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-7-6, enacted by Laws 1963, ch. 303, § 7-6; 1981, ch. 246, § 7.

30-7-7.1. Unlawful sale of a firearm without a background check.

A. Unlawful sale of a firearm without a background check consists of the sale of a firearm without conducting a federal instant background check, subject to the following:

(1) if the buyer of a firearm is not a natural person, then each natural person who is authorized by the buyer to possess the firearm after the sale shall undergo a federal instant background check before taking possession of the firearm;

(2) a prospective firearm seller who does not hold a current and valid federal firearms license issued pursuant to 18 U.S.C. Section 923(a) shall arrange for a person who does hold that license to conduct the federal instant background check. A federal firearms licensee shall not unreasonably refuse to perform a background check pursuant to this paragraph; and

(3) a person who holds a current and valid federal firearms license issued pursuant to 18 U.S.C. Section 923(a) may charge a fee not to exceed thirty-five dollars ($35.00) for conducting a background check pursuant to this section.

B. The provisions of Subsection A of this section do not apply to the sale of a firearm:

(1) by or to a person who holds a current and valid federal firearms license issued pursuant to 18 U.S.C. Section 923(a);

(2) to a law enforcement agency;

(3) between two law enforcement officers authorized to carry a firearm and certified pursuant to federal law or the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978]; or

(4) between immediate family members.

C. As used in this section:

(1) "consideration" means anything of value exchanged between the parties to a sale;

(2) "federal instant background check" means a background check that meets the requirements of 18 U.S.C. Section 922(t) and that does not indicate that a sale to the person receiving the firearm would violate 18 U.S.C. Section 922(g) or 18 U.S.C. Section 922(n) or state law;

(3) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; and includes any handgun, rifle or shotgun; but shall not include an antique firearm as defined in 18 U.S.C. Section 921(16), a powder-actuated tool or other device designed to be used for construction purposes, an emergency flare or a firearm in permanently inoperable condition;

(4) "immediate family member" means a spouse, parent, child, sibling, grandparent, grandchild, great-grandchild, niece, nephew, first cousin, aunt or uncle; and

(5) "sale" means the delivery or passing of ownership, possession or control of a firearm for a fee or other consideration, but does not include temporary possession or control of a firearm provided to a customer by the proprietor of a licensed business in the conduct of that business.

D. Each party to an unlawful sale in violation of this section may be separately charged for the same sale.

E. Each firearm sold contrary to the provisions of this section constitutes a separate offense under Subsection A of this section.

F. Two or more offenses may be charged in the same complaint, information or indictment and shall be punished as separate offenses.

G. Whoever violates the provisions of this section is guilty of a misdemeanor.

History: Laws 2019, ch. 45, § 1.

30-7-7.2. Unlawful purchase or transfer of a firearm for another.

A. Unlawful purchase or transfer of a firearm for another consists of a person who knowingly purchases, transfers or conspires to purchase or transfer any firearm for, on behalf of or at the request or demand of another person, knowing that the other person:

(1) is a felon; or

(2) intends to use, carry, possess, sell or otherwise transfer possession of the firearm in furtherance of any felony or misdemeanor involving a firearm.

B. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other section of the Criminal Code [30-1-1 NMSA 1978].

C. Whoever commits unlawful purchase or transfer of a firearm for another is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978].

D. As used in this section, "felon" means a person convicted of a felony offense by a court of the United States or any state or political subdivision, and:

(1) less than ten years have passed since the person completed serving a sentence or period of probation for the felony conviction, whichever is later;

(2) the person has not been pardoned for the felony conviction by the proper authority; and

(3) the person has not received a deferred sentence.

History: Laws 2023, ch. 195, § 1.

30-7-7.3. Unlawful sale of a firearm before required waiting period ends.

A. A waiting period of seven calendar days shall be required for the sale of a firearm and the transfer of the firearm to the buyer. The seven-calendar-day waiting period shall include the period required to conduct a federal instant background check; provided that, if the seven-calendar-day waiting period has expired without the completion of a required federal instant background check, the seller shall not transfer the firearm to the buyer until the federal instant background check is completed. If the required federal instant background check has not been completed within twenty days, the seller may transfer the firearm to the buyer.

B. The firearm shall remain in the custody of the seller or the federal firearms licensee performing the federal instant background check during the entirety of the waiting period.

C. Unlawful sale of a firearm before the required waiting period ends consists of the transfer of ownership, possession or physical control of the firearm from the seller to the buyer before the end of the required seven-calendar-day waiting period, but does not include temporary possession or control of a firearm provided to a customer by the proprietor of a licensed business in the conduct of that business.

D. Each party to an unlawful sale of a firearm before the required waiting period ends is in violation of this section and may be separately charged for the same sale.

E. Each firearm sold contrary to the provisions of this section constitutes a separate offense under Subsection C of this section.

F. Two or more offenses may be charged in the same complaint, information or indictment and shall be punished as separate offenses.

G. Whoever violates the provisions of this section is guilty of a misdemeanor.

H. The provisions of this section do not apply to the sale of a firearm:

(1) to a buyer who holds a valid federal firearms license;

(2) to a buyer who holds a valid New Mexico concealed handgun license pursuant to the Concealed Handgun Carry Act [Chapter 29, Article 19 NMSA 1978];

(3) to a law enforcement agency;

(4) between two law enforcement officers authorized to carry a firearm and certified pursuant to federal law or the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978]; or

(5) between immediate family members.

I. As used in this section:

(1) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; and includes any handgun, rifle or shotgun; but shall not include an antique firearm as defined in 18 U.S.C. Section 921(16), a powder-actuated tool or other device designed to be used for construction purposes, an emergency flare or a firearm in permanently inoperable condition; and

(2) "immediate family member" means a spouse, a parent, a child, a sibling, a grandparent, a grandchild, a great-grandchild, a niece, a nephew, a first cousin, an aunt or an uncle.

History: 1978 Comp., § 30-7-7.3, enacted by Laws 2024, ch. 46, § 1.

30-7-8. Unlawful possession of switchblades.

Unlawful possession of switchblades consists of any person, either manufacturing, causing to be manufactured, possessing, displaying, offering, selling, lending, giving away or purchasing any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade which opens or falls or is ejected into position by the force of gravity or by any outward or centrifugal thrust or movement.

Whoever commits unlawful possession of switchblades is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-7-7, enacted by Laws 1963, ch. 303, § 7-7.

30-7-9. Repealed.

History: 1953 Comp., § 40A-7-8, enacted by Laws 1969, ch. 122, § 1; repealed by Laws 2012, ch. 45, § 1.

30-7-10. Short title.

Sections 30-7-10 through 30-7-15 NMSA 1978 may be cited as the "Bus Passenger Safety Act".

History: Laws 1979, ch. 376, § 1.

30-7-11. Definitions.

As used in the Bus Passenger Safety Act [30-7-10 to 30-7-15 NMSA 1978]:

A. "bus transportation company" or "company" means any person, groups of persons or corporation providing for-hire transportation to passengers or cargo by bus upon the highways in New Mexico. The term also includes buses owned or operated by or for local public bodies, school districts, municipalities and by public corporations, boards and commissions; and

B. "bus" means any passenger bus, coach or other motor vehicle having a seating capacity of not less than fifteen passengers operated by a bus transportation company when used for the purpose of carrying passengers or cargo for hire.

History: Laws 1979, ch. 376, § 2.

30-7-12. Prohibitions; penalties.

A. It is unlawful to seize or exercise control of a bus by force or violence or by threat of force or violence. Whoever violates the provisions of this subsection is guilty of a third degree felony.

B. It is unlawful to intimidate, threaten or assault any driver, attendant, guard or passenger of a bus with the intent of seizing or exercising control of a bus. Whoever violates the provisions of this subsection is guilty of a fourth degree felony.

History: Laws 1979, ch. 376, § 3.

30-7-13. Carrying weapons prohibited.

A. It is unlawful for any person without prior approval from the company to board or attempt to board a bus while in possession of a firearm or other deadly weapon upon his person or effects and readily accessible to him while on the bus. Any person who violates the provisions of this subsection is guilty of a misdemeanor.

B. Subsection A of this section does not apply to duly elected or appointed law enforcement officers or commercial security personnel in the lawful discharge of their duties.

History: Laws 1979, ch. 376, § 4.

30-7-14. Weapon detection.

A bus transportation company may employ any reasonable means, including mechanical, electronic or x-ray devices to detect concealed weapons, explosives or other hazardous material in baggage or upon the person of a passenger. The company may take possession of any concealed weapon, explosive or other hazardous material discovered and shall turn such items over to law enforcement officers.

History: Laws 1979, ch. 376, § 5.

30-7-15. Weapons; transporting.

Any person wishing to transport a firearm or other deadly weapon on a bus may do so only in accordance with regulations established by the company; provided that any firearm or deadly weapon must be transported in a compartment which is not accessible to passengers while the bus is moving.

History: Laws 1979, ch. 376, § 6.

30-7-16. Firearms or destructive devices; receipt, transportation or possession by certain persons; penalty.

A. It is unlawful for the following persons to receive, transport or possess a firearm or destructive device in this state:

(1) a felon;

(2) a person subject to an order of protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

(3) a person convicted of any of the following crimes:

(a) battery against a household member pursuant to Section 30-3-15 NMSA 1978;

(b) criminal damage to property of a household member pursuant to Section 30-3-18 NMSA 1978;

(c) a first offense of stalking pursuant to Section 30-3A-3 NMSA 1978; or

(d) a crime listed in 18 U.S.C. 921.

B. A felon found in possession of a firearm shall be guilty of a third degree felony.

C. A serious violent felon that is found to be in possession of a firearm shall be guilty of a third degree felony, and notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a basic term of six years imprisonment.

D. Any person subject to an order of protection pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted of a crime listed in Paragraph (3) of Subsection A of this section who receives, transports or possesses a firearm or destructive device is guilty of a misdemeanor.

E. As used in this section:

(1) except as provided in Paragraph (2) of this subsection, "destructive device" means:

(a) any explosive, incendiary or poison gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge of more than four ounces; 4) missile having an explosive or incendiary charge of more than one-fourth ounce; 5) mine; or 6) similar device;

(b) any type of weapon by whatever name known that will, or that may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell that is generally recognized as particularly suitable for sporting purposes; or

(c) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in this paragraph and from which a destructive device may be readily assembled;

(2) the term "destructive device" does not include any device that is neither designed nor redesigned for use as a weapon or any device, although originally designed for use as a weapon, that is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

(3) "felon" means a person convicted of a felony offense by a court of the United States or of any state or political subdivision thereof and:

(a) less than ten years have passed since the person completed serving a sentence or period of probation for the felony conviction, whichever is later;

(b) the person has not been pardoned for the felony conviction by the proper authority; and

(c) the person has not received a deferred sentence;

(4) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon; and

(5) "serious violent felon" means a person convicted of an offense enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978; provided that:

(a) less than ten years have passed since the person completed serving a sentence or a period of probation for the felony conviction, whichever is later;

(b) the person has not been pardoned for the felony conviction by the proper authority; and

(c) the person has not received a deferred sentence and completed the total term of deferment as provided in Section 31-20-9 NMSA 1978.

History: Laws 1981, ch. 225, § 1; 1987, ch. 202, § 1; 2001, ch. 89, § 1; 2018, ch. 74, § 4; 2019, ch. 253, § 1; 2020, ch. 54, § 2; 2022, ch. 56, § 26.

30-7-17. Short title.

Sections 1 through 6 [30-7-17 to 30-7-22 NMSA 1978] of this act may be cited as the "Explosives Act".

History: Laws 1981, ch. 246, § 1.

30-7-18. Definitions.

As used in the Explosives Act [30-7-17 to 30-7-22 NMSA 1978]:

A. "explosive" means any chemical compound or mixture or device, the primary or common purpose of which is to explode and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters; and

B. "explosive device" or "incendiary device" means:

(1) any explosive bomb, grenade, missile or similar device;

(2) any device or mechanism used or created to start a fire or explosion with or without a timing mechanism except cigarette lighters and matches; or

(3) any incendiary bomb or grenade, fire bomb or similar device or any device which includes a flammable liquid or compound and a wick or igniting agent composed of any material which is capable of igniting the flammable liquid or compound.

History: Laws 1981, ch. 246, § 2; 1990, ch. 74, §1.

30-7-19. Possession of explosives.

A. Possession of explosives consists of knowingly possessing, manufacturing or transporting any explosive and either intending to use the explosive in the commission of any felony or knowing or reasonably believing that another intends to use the explosive to commit any felony.

B. Any person who commits possession of explosives is guilty of a fourth degree felony.

History: Laws 1981, ch. 246, § 3; 1990, ch. 74, §2.

30-7-19.1. Possession of explosive device or incendiary device.

A. Possession of an explosive device or incendiary device consists of knowingly possessing, manufacturing or transporting any explosive device or incendiary device or complete combination of parts thereof necessary to make an explosive device or incendiary device. This subsection shall not apply to any fireworks as defined in Section 60-2C-2 NMSA 1978 or any lawfully acquired household, commercial, industrial or sporting device or compound included in the definition of explosive device or incendiary device in Section 30-7-18 NMSA 1978 that has legitimate and lawful commercial, industrial or sporting purposes or that is lawfully possessed under Section 30-7-7 NMSA 1978.

B. Any person who commits possession of an explosive device or incendiary device is guilty of a fourth degree felony.

History: Laws 1990, ch. 74, § 3.

30-7-20. Facsimile or hoax bomb or explosive.

Any person who intentionally gives, mails, sends or causes to be sent any false or facsimile bomb or explosive to another person or places or causes to be placed at any location any false or facsimile bomb or explosive, with the intent that any other person thinks it is a real bomb or explosive, is guilty of a fourth degree felony.

History: Laws 1981, ch. 246, § 4.

30-7-21. False report.

A. False report consists of knowingly conveying or causing to be conveyed to any police agency or fire department a false report concerning a fire or explosion or the placement of any explosives or explosive or incendiary device or any other destructive substance and includes, but is not limited to, setting off a fire alarm.

B. Any person who commits false report which causes death or great bodily harm to another is guilty of a fourth degree felony, but if such death or great bodily harm is not caused, the person is guilty of a misdemeanor.

History: Laws 1981, ch. 246, § 5.

30-7-22. Interference with bomb or fire control.

A. Interference with bomb or fire control consists of:

(1) intentionally interfering with the proper functioning of a fire alarm system;

(2) intentionally interfering with the lawful efforts of a fireman or police officer to control or extinguish a fire or to secure the safety of any object reasonably believed to be a bomb, explosive or incendiary device; or

(3) intentionally interfering with the lawful efforts of a fireman or police officer to preserve for investigation or investigate the scene of a fire or explosion to determine its cause.

B. Any person who commits interference with bomb or fire control is guilty of a misdemeanor.

History: Laws 1981, ch. 246, § 6.

ARTICLE 8
Nuisances

30-8-1. Public nuisance.

A public nuisance consists of knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either:

A. injurious to public health, safety, morals or welfare; or

B. interferes with the exercise and enjoyment of public rights, including the right to use public property.

Whoever commits a public nuisance for which the act or penalty is not otherwise prescribed by law is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-8-1, enacted by Laws 1963, ch. 303, § 8-1.

30-8-2. Polluting water.

Polluting water consists of knowingly and unlawfully introducing any object or substance into any body of public water causing it to be offensive or dangerous for human or animal consumption or use. Polluting water constitutes a public nuisance.

For the purpose of this section, "body of water" means any public river or its tributary, stream, lake, pond, reservoir, acequia, canal, ditch, spring, well or declared or known ground waters.

Whoever commits polluting water for which the act or penalty is not otherwise prescribed by law is guilty of a misdemeanor.

History: 1953 Comp., § 40A-8-2, enacted by Laws 1963, ch. 303, § 8-2; 1993, ch. 291, § 19.

30-8-3. Refuse defined.

Refuse means any article or substance:

A. which is commonly discarded as waste; or

B. which, if discarded on the ground, will create or contribute to an unsanitary, offensive or unsightly condition.

Refuse includes, but is not limited to, the following items or classes of items: waste food; waste paper and paper products; cans, bottles or other containers; junked

household furnishings and equipment; junked parts or bodies of automobiles and other metallic junk or scrap; portions or carcasses of dead animals; and collections of ashes, dirt, yard trimmings or other rubbish.

History: 1953 Comp., § 40A-8-3, enacted by Laws 1963, ch. 303, § 8-3.

30-8-4. Littering.

A. Littering consists of discarding refuse:

(1) on public property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental authorities or otherwise in accordance with lawful direction; or

(2) on private property not owned or lawfully occupied or controlled by the person, except with the consent of its owner, lessee or occupant.

B. Whoever commits littering is guilty of a petty misdemeanor and, notwithstanding the provisions of Section 31-19-1 NMSA 1978, shall be punished by a fine of fifty dollars ($50.00). The use of uniform traffic citations is authorized for the enforcement of this section. The court may to the extent permitted by law, as a condition to suspension of any other penalty provided by law, require a person who commits littering to pick up and remove from any public place or any private property, with prior permission of the legal owner, any litter deposited thereon.

History: 1953 Comp., § 40A-8-4, enacted by Laws 1963, ch. 303, § 8-4; 1975, ch. 199, § 1; 1977, ch. 79, § 1; 1981, ch. 256, § 1; 2018, ch. 74, § 5.

30-8-5. Enforcement.

The state game commission may designate trained employees of the commission vested with police powers to enforce the provisions of Section 30-8-4 NMSA 1978. In addition, members of the state police, county sheriffs and their deputies, police officers and those employees of the state park and recreation commission [state parks division of the energy, minerals, and natural resources department] vested with police powers shall enforce the provisions of that section.

History: 1953 Comp., § 40A-8-4.1, enacted by Laws 1975, ch. 199, § 2.

30-8-6. Posting; notice to public.

The state highway department [department of transportation] and the state park and recreation commission [state parks division of the natural resources department] shall post in areas under their control pertinent portions of Section 30-8-4 NMSA 1978 and pleas for the public to take their refuse with them and to dispose of it properly.

History: 1953 Comp., § 40A-8-4.2, enacted by Laws 1975, ch. 199, § 3.

30-8-7. Public education.

The state game commission, the state highway department [department of transportation], the state park and recreation commission [state parks division of the natural resources department] and the environmental improvement agency [department of environment] are encouraged to institute public education programs through the news media in order to inform the public of the litter problem in New Mexico and of individual efforts that can be made to assist in the abatement of the problem. In addition, these agencies are authorized to work with industry organizations in a joint antilitter [anti-litter] campaign so that additional effect may be given to the antilitter [anti-litter] effort in New Mexico.

History: 1953 Comp., § 40A-8-4.3, enacted by Laws 1975, ch. 199, § 4.

30-8-8. Abatement of a public nuisance.

A. Except as herein provided, an action for the abatement of a public nuisance shall be governed by the general rules of civil procedure.

B. A civil action to abate a public nuisance may be brought, by verified complaint in the name of the state without cost, by any public officer or private citizen, in the district court of the county where the public nuisance exists, against any person, corporation or association of persons who shall create, perform or maintain a public nuisance.

C. When judgment is against the defendant in an action to abate a public nuisance, he shall be adjudged to pay all court costs and a reasonable fee for the complainant's attorney, when the suit is not prosecuted exclusively by the attorney general or a district attorney.

History: 1953 Comp., § 40A-8-5, enacted by Laws 1963, ch. 303, § 8-5.

30-8-8.1. Abatement of house of prostitution.

A. When the public nuisance sought to be abated under the provisions of Section 30-8-8 NMSA 1978 is a house of prostitution, as defined in Section 30-9-8 NMSA 1978, in addition to injunctive relief, the remedies and presumptions provided in this section apply.

B. For the purposes of this section and Section 30-8-8 NMSA 1978, two or more convictions of any person or persons occurring at least one week apart within a period of one year for violation of either Section 30-9-2 or 30-9-3 NMSA 1978 arising out of conduct engaged in at the place described in an abatement action creates a presumption that the place is a house of prostitution. However, this presumption shall not arise unless the person against whom the abatement action is brought is shown to

have had actual knowledge or to have received written notice from law enforcement officials of the convictions upon which the presumption is based. The knowledge must have been acquired or the notice given no more than thirty days after the date of the convictions. For the purpose of this section the "date of the convictions" is the date upon which a plea of guilty or nolo contendere or a judgment of guilty entered in the case charging the crime is final and unappealable.

C. If, in an abatement action brought under Section 30-8-8 NMSA 1978, a binding admission is made by the defendant or the court concludes that a house of prostitution exists at the location alleged, the court may, as part of its judgment:

(1) direct the removal from the house of prostitution all movable personal property used in conducting the house of prostitution and shall direct the sale of that property in the same manner as personal property is sold when seized under a writ of execution; and

(2) order the closing of the house of prostitution for a period of one year and prohibit any person entering it except under conditions specified in the order.

D. If a judgement entered under the provisions of Subsection C of this section includes the provisions of Paragraph (2) of that subsection, the court shall include in its judgment a provision for permitting the owner of the premises ordered closed to take possession of them if he files a bond with sureties to be approved by the court in an amount equal to the full value of the property conditioned upon his promise to abate the nuisance immediately and prevent the reoccurrence of the nuisance for one year thereafter.

History: Laws 1989, ch. 114, § 1.

30-8-9. Abandonment of dangerous containers.

Abandonment of dangerous containers consists of any person:

A. abandoning, discarding or keeping in any place accessible to children, any refrigerator, icebox, freezer, airtight container, cabinet or similar container, of a capacity of one and one-half cubic feet or more, which is no longer in use, without having the attached doors, hinges, lids or latches removed or without sealing the doors or other entrances so as to make it impossible for anyone to be imprisoned therein; or

B. who, being the owner, lessee or manager of any premises, knowingly permits any abandoned or discarded refrigerator, icebox, freezer, airtight container, cabinet or similar container of a capacity of one and one-half cubic feet or more, and which remains upon such premises in a condition whereby a child may be imprisoned therein.

Whoever commits abandonment of dangerous containers is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-8-6, enacted by Laws 1963, ch. 303, § 8-6.

30-8-10. Repealed.

30-8-11. Illegal prescribing of medicine.

Illegal prescribing of medicine consists of any physician or other person, while under the influence of any alcoholic beverage or narcotic, prescribing or compounding for any other person, any poison, drug or medicine.

Whoever commits illegal prescribing of medicine while under the influence of any alcoholic beverage or narcotic is guilty of a misdemeanor.

History: 1953 Comp., § 40A-8-8, enacted by Laws 1963, ch. 303, § 8-8.

30-8-12. Repealed.

History: 1953 Comp., § 40A-8-9, enacted by Laws 1963, ch. 303, § 8-9; repealed by Laws 2018, ch. 74, § 56.

30-8-13. Repealed.

History: 1953 Comp., § 40A-8-10, enacted by Laws 1963, ch. 303, § 8-10; 1966, ch. 44, § 1; 1967, ch. 180, § 1; repealed by Laws 2018, ch. 74, § 56.

30-8-14. Recompiled.

History: 1953 Comp., § 40A-8-10.1, enacted by Laws 1975, ch. 283, § 1; 1978 Comp., § 30-8-14, recompiled and amended as § 66-7-363.1 by Laws 2019, ch. 155, § 2.

ARTICLE 9
Sexual Offenses

30-9-1. Enticement of child.

Enticement of child consists of:

A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code; or

B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.

Whoever commits enticement of child is guilty of a misdemeanor.

History: 1953 Comp., § 40A-9-10, enacted by Laws 1963, ch. 303, § 9-10.

30-9-2. Prostitution.

Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire.

As used in this section "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission.

Whoever commits prostitution is guilty of a petty misdemeanor, unless such crime is a second or subsequent conviction, in which case such person is guilty of a misdemeanor.

History: 1953 Comp., § 40A-9-11, enacted by Laws 1963, ch. 303, § 9-11; 1981, ch. 233, § 1; 1989, ch. 132, § 1.

30-9-3. Patronizing prostitutes.

Patronizing prostitutes consists of:

A. entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or

B. knowingly hiring or offering to hire a prostitute, or one believed by the offeror to be a prostitute, to engage in a sexual act with the actor or another.

As used in this section, "a sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or an anal opening of another whether or not there is any emission.

Whoever commits patronizing prostitutes is guilty of a petty misdemeanor, unless such crime is a second or subsequent conviction, in which case such person is guilty of a misdemeanor.

History: 1953 Comp., § 40A-9-12, enacted by Laws 1963, ch. 303, § 9-12; 1981, ch. 233, § 2; 1989, ch. 132, § 2.

30-9-4. Promoting prostitution.

Promoting prostitution consists of any person, acting other than as a prostitute or patron of a prostitute:

A. knowingly establishing, owning, maintaining or managing a house of prostitution or a place where prostitution is practiced, encouraged or allowed, or participating in the establishment, ownership, maintenance or management thereof;

B. knowingly entering into any lease or rental agreement for any premises which a person partially or wholly owns or controls, knowing that such premises are intended for use as a house of prostitution or as a place where prostitution is practiced, encouraged or allowed;

C. knowingly procuring a prostitute for a house of prostitution or for a place where prostitution is practiced, encouraged or allowed;

D. knowingly inducing another to become a prostitute;

E. knowingly soliciting a patron for a prostitute or for a house of prostitution or for any place where prostitution is practiced, encouraged or allowed;

F. knowingly procuring a prostitute for a patron and receiving compensation therefor;

G. knowingly procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of promoting that person's engaging in prostitution;

H. knowingly procuring through promises, threats, duress or fraud any person to come into the state or causing a person to leave the state for the purpose of prostitution; or

I. under pretense of marriage, knowingly detaining a person or taking a person into the state or causing a person to leave the state for the purpose of prostitution.

Whoever commits promoting prostitution is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-9-13, enacted by Laws 1963, ch. 303, § 9-13; 1981, ch. 233, § 3.

30-9-4.1. Accepting earnings of a prostitute.

Accepting the earnings of a prostitute consists of accepting, receiving, levying or appropriating money or anything of value, without consideration, from the proceeds of the earnings of a person engaged in prostitution with the knowledge that the person is engaged in prostitution and that the earnings are derived from engaging in prostitution, or knowingly owning or knowingly managing a house or other place where prostitution is

practiced or allowed and living or deriving support or maintenance, in whole or in part, from the earnings or proceeds of a person engaged in prostitution at that house or place.

Whoever commits accepting the earnings of a prostitute is guilty of a fourth degree felony.

History: Laws 1981, ch. 233, § 4.

30-9-5. Order for medical examination and treatment.

In addition to its general sentencing authority, the court may order any defendant convicted of prostitution or patronizing prostitutes to be examined for venereal disease and shall sentence any diseased defendant to submit to medical treatment until he is discharged from treatment as noninfectuous [noninfectious]. If the defendant is without funds to pay for medical treatment, it shall be provided by the state department of public health [department of health].

History: 1953 Comp., § 40A-9-14, enacted by Laws 1963, ch. 303, § 9-14.

30-9-6. Testimony of witnesses to prostitution and lewdness.

In any investigation, proceeding, preliminary hearing or trial before any court, magistrate or grand jury concerning a violation of or an attempt to commit any crime in violation of Sections 9-11, 9-12 and 9-13 [30-9-2, 30-9-3 and 30-9-4 NMSA 1978] of this article, no person shall be excused from giving testimony or producing documentary or other evidence material to such investigation, proceeding, preliminary hearing or trial on the ground that the testimony or evidence required of him is incriminating evidence; provided that, any person who is so subpoenaed and ordered to testify or produce evidence concerning such crimes shall be immune to prosecution or conviction for any violation of such crimes about which he may testify.

History: 1953 Comp., § 40A-9-15, enacted by Laws 1963, ch. 303, § 9-15.

30-9-7. Evidence.

In any proceeding under Article 9 [30-9-1 to 30-9-9 NMSA 1978] or action to abate a public nuisance under Article 8 [30-8-1 to 30-8-4, 30-8-8 to 30-8-13 NMSA 1978], testimony about the following circumstances is admissible in evidence:

A. the general reputation of the place;

B. the reputation of the persons who reside in or frequent the place;

C. the frequency, timing and length of visits by nonresidents; and

D. prior convictions of the defendant or persons who reside in or frequent the place under Sections 9-11, 9-12 and 9-13 [30-9-2, 30-9-3 and 30-9-4 NMSA 1978] of this article or Sections 40-34-1 through 40-34-5 New Mexico Statutes Annotated, 1953 Compilation, or of any other offense of like nature wherever committed.

History: 1953 Comp., § 40A-9-16, enacted by Laws 1963, ch. 303, § 9-16.

30-9-8. House of prostitution; public nuisance.

As used in this section "house of prostitution" means a building, enclosure or place that is used for the purpose of prostitution as that crime is defined in Section 30-9-2 NMSA 1978. A house of prostitution is a public nuisance per se.

History: 1953 Comp., § 40A-9-17, enacted by Laws 1963, ch. 303, § 9-17; 1989, ch. 114, § 2.

30-9-9. Remedy of lessor.

If the lessee of property has been convicted of using it as a house of prostitution, or if the property has been adjudged to constitute a public nuisance for that reason, the lease by which the property is held is voidable by the lessor. The lessor shall have the same remedies for regaining possession as in the case of a tenant holding over his term.

History: 1953 Comp., § 40A-9-18, enacted by Laws 1963, ch. 303, § 9-18.

30-9-10. Definitions.

As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

A. "force or coercion" means:

(1) the use of physical force or physical violence;

(2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;

(3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;

(4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or

(5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion;

B. "great mental anguish" means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C. "patient" means a person who seeks or obtains psychotherapy;

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. "position of authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. "psychotherapist" means a person who is or purports to be a:

(1) licensed physician who practices psychotherapy;

(2) licensed psychologist;

(3) licensed social worker;

(4) licensed nurse;

(5) counselor;

(6) substance abuse counselor;

(7) psychiatric technician;

(8) mental health worker;

(9) marriage and family therapist;

(10) hypnotherapist; or

(11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. "psychotherapy" means professional treatment or assessment of a mental or an emotional illness, symptom or condition;

H. "school" means any public or private school, including the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the New Mexico behavioral health institute at Las Vegas and the Carrie Tingley crippled children's hospital, that offers a program of instruction designed to educate a person in a particular place, manner and subject area. "School" does not include a college or university; and

I. "spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.

History: 1953 Comp., § 40A-9-20, enacted by Laws 1975, ch. 109, § 1; 1979, ch. 28, § 1; 1993, ch. 177, § 1; 2001, ch. 161, § 1; 2005, ch. 313, § 7.

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 [Chapter 31, Article 18 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.

History: 1953 Comp., § 40A-9-21, enacted by Laws 1975, ch. 109, § 2; 1987, ch. 203, § 1; 1991, ch. 26, § 1; 1993, ch. 177, § 2; 1995, ch. 159, § 1; 2001, ch. 161, § 2; 2003 (1st S.S.), ch. 1, § 3; 2007, ch. 69, § 1; 2009, ch. 56, § 1.

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.

History: 1953 Comp., § 40A-9-22, enacted by Laws 1975, ch. 109, § 3; 1981, ch. 8, § 1; 1991, ch. 26, § 2; 1993, ch. 177, § 3.

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.

History: 1953 Comp., § 40A-9-23, enacted by Laws 1975, ch. 109, § 4; 1987, ch. 203, § 2; 1991, ch. 26, § 3; 2001, ch. 161, § 3; 2003 (1st S.S.), ch. 1, § 4.

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.

History: 1953 Comp., § 40A-9-24, enacted by Laws 1975, ch. 109, § 5; 1996, ch. 84, § 1.

30-9-14.1. Indecent dancing.

Indecent dancing consists of a person knowingly and intentionally exposing his intimate parts to public view while dancing or performing in a licensed liquor establishment. "Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola, and "exposing" does not include any act in which the intimate part is covered by any nontransparent material.

Whoever commits indecent dancing is guilty of a petty misdemeanor.

A liquor licensee, his transferee or their lessee or agent who allows indecent dancing on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

History: Laws 1979, ch. 403, § 1; 1981, ch. 41, § 1.

30-9-14.2. Indecent waitering.

Indecent waitering consists of a person knowingly and intentionally exposing his intimate parts to public view while serving beverage or food in a licensed liquor establishment. "Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola and "exposing" does not include any act in which the intimate part is covered by any nontransparent material.

Whoever commits indecent waitering is guilty of a petty misdemeanor.

A liquor licensee or his lessee or agent who allows indecent waitering on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

History: Laws 1979, ch. 403, § 2; 1981, ch. 41, § 2.

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.

History: Laws 1996, ch. 84, § 2.

30-9-15. Corroboration.

The testimony of a victim need not be corroborated in prosecutions under Sections 2 through 5 [30-9-11 to 30-9-14 NMSA 1978] of this act and such testimony shall be entitled to the same weight as the testimony of victims of other crimes under the Criminal Code.

History: 1953 Comp., § 40A-9-25, enacted by Laws 1975, ch. 109, § 6.

30-9-16. Testimony; limitations; in camera hearing.

A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct, shall not be admitted unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that,

the court finds that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted.

History: 1953 Comp., § 40A-9-26, enacted by Laws 1975, ch. 109, § 7; 1993, ch. 177, § 4.

30-9-17. Videotaped depositions of alleged victims who are under sixteen years of age; procedure; use in lieu of direct testimony.

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of Rule 611 of the New Mexico Rules of Evidence [Rule 11-611 NMRA]. Any videotaped deposition taken under the provisions of this act [this section] shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.

D. The cost of such videotaping shall be paid by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: 1953 Comp., § 40A-9-27, enacted by Laws 1978, ch. 98, § 1.

30-9-17.1. Victims; polygraph examinations; prohibited actions.

A law enforcement officer, prosecuting attorney or other government official shall not ask or require an adult, youth or child victim of a sexual offense provided in Sections 30-9-11 through 30-9-13 NMSA 1978 to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation, charging or prosecution of the offense. The victim's refusal to submit to a polygraph examination or other truth-telling device shall not prevent the investigation, charging or prosecution of the offense.

History: Laws 2008, ch. 10, § 1.

30-9-18. Alleged victims who are under thirteen years of age; psychological evaluation.

In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, if the alleged victim is under thirteen years of age, the court may hold an evidentiary hearing to determine whether to order a psychological evaluation of the alleged victim on the issue of competency as a witness. If the court determines that the issue of competency is in sufficient doubt that the court requires expert assistance, then the court may order a psychological evaluation of the alleged victim, provided however, that if a psychological evaluation is ordered it shall be conducted by only one psychologist or psychiatrist selected by the court who may be utilized by either or both parties; further provided that if the alleged victim has been evaluated on the issue of competency during the course of investigation by a psychologist or psychiatrist selected in whole or in part by law enforcement officials, the psychological evaluation, if any, shall be conducted by a psychologist or psychiatrist selected by the court upon the recommendation of the defense.

History: Laws 1987, ch. 118, § 1.

30-9-19. Sexual assault; law enforcement agency policies; submission of DNA samples by law enforcement and laboratories.

A. By October 1, 2017, every law enforcement agency shall develop and implement a policy that:

(1) prescribes how the agency handles a sample of biological material collected pursuant to a medical examination of a sexual assault victim who reported the sexual assault to law enforcement that is received by the agency;

(2) provides how the agency prioritizes a sample for DNA testing by the agency's servicing laboratory; and

(3) requires the agency to send a sample of biological material collected pursuant to a medical examination of a sexual assault victim who reported the sexual assault to law enforcement to that agency's servicing laboratory for DNA testing as soon as practicable after receiving the sample and, in all cases, within thirty days of the agency's receipt of the sample.

B. Records derived from DNA testing that qualify for insertion into CODIS shall be submitted by the servicing laboratory to the administrative center.

C. By November 1 of each year, a law enforcement agency's servicing laboratory shall report to the legislature if, at the end of the immediately preceding fiscal year, the laboratory had in its possession three hundred or more untested samples of biological material collected pursuant to medical examinations of sexual assault victims.

D. As used in this section:

(1) "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system pursuant to the provisions of the DNA Identification Act;

(2) "biological material" means material that is derived from a human body and includes bodily fluids, hair and skin cells;

(3) "CODIS" means the federal bureau of investigation's "combined DNA index system", a national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

(4) "DNA" means deoxyribonucleic acid;

(5) "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples; and

(6) "sample" means a sample of biological material sufficient for DNA testing.

History: Laws 2006, ch. 104, § 10; 2017, ch. 99, § 1.

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.

History: Laws 2007, ch. 238, § 1.

30-9-21. Sexual assault survivor's bill of rights.

A. A health care provider who examines and collects a sexual assault examination kit from a survivor of sexual assault shall:

(1) obtain contact information for the survivor;

(2) provide the survivor with:

(a) a consent form by which the survivor may authorize the release of the kit to the relevant law enforcement agency and information about how the survivor may authorize the release of the kit to the agency at a later date;

(b) a copy of the provider's kit release policy;

(c) provide the survivor with contact and descriptive information regarding free and low-cost human immunodeficiency virus and sexually transmitted disease testing, prevention and treatment services including options and services provided by the department of health; and

(d) provide the survivor contact and descriptive information regarding the department of public safety statewide sexual assault examination kit tracking system;

(3) if the survivor consents, notify the relevant law enforcement agency of the sexual assault and collection of the kit;

(4) upon the survivor's request, notify the survivor when the kit is released to a law enforcement agency; and

(5) provide the survivor's contact information to the law enforcement agency when the survivor's kit is transferred to that agency.

B. No costs incurred by a health care provider for the collection of a sexual assault examination kit shall be charged directly or indirectly to the survivor of the sexual assault.

C. A law enforcement agency or crime laboratory that receives a sexual assault examination kit shall:

(1) confirm the sexual assault survivor's contact information and request that the survivor inform the agency of any changes to that information;

(2) inform the survivor of the survivor's right to have the kit tested within one hundred eighty days and have the right to the following information from the agency:

(a) whether the survivor's kit has been tested and the date on which test results are expected, which information shall be provided to the survivor; and

(b) whether the agency was able to develop a DNA profile using the samples of biological material in the kit;

(3) inform the survivor of the survivor's right to the following information from the agency:

(a) information regarding the statewide sexual assault examination kit tracking system;

(b) upon completion of the law enforcement investigation, whether a DNA profile was developed using the samples of biological material in the kit; and

(c) upon completion of the law enforcement investigation, whether a DNA profile match was identified through comparison of the DNA profile;

(4) in a case in which the alleged sexual assault offender has not been identified, notify the survivor in writing at least one hundred eighty days before destruction of a kit, if the law enforcement agency intends to destroy the survivor's kit, and provide information on how the survivor may appeal the agency's decision to destroy the kit; and

(5) with the consent of the survivor, enter designated information from the sexual assault examination kit into the department of public safety statewide sexual assault examination kit tracking system within fourteen days of obtaining consent.

D. A crime laboratory shall complete the processing of a sexual assault examination kit within one hundred eighty days of receipt of the kit.

E. Before commencing an interview of a sexual assault survivor, a law enforcement officer or prosecutor shall inform the survivor of the following:

(1) the survivor's rights pursuant to this section and other relevant law by providing the survivor with a document to be developed by the department of public safety, which document shall be signed by the survivor to confirm receipt;

(2) the survivor's right to consult with a counselor or advocate who specializes in sexual assault services or a support person designated by the survivor during any interview by a law enforcement officer, prosecutor or defense attorney, and the counselor shall be summoned by the interviewer before the commencement of the interview, unless no counselor or advocate who specializes in sexual assault services or a support person designated by the survivor can be summoned in a reasonably timely manner;

(3) the survivor's right to have a support person of the survivor's choosing present during an interview by a law enforcement officer, prosecutor or defense attorney; and

(4) for interviews by a law enforcement officer, the survivor's right to request a different officer if the survivor believes the officer to be unsupportive or inadequately trained.

F. A law enforcement officer or prosecutor shall not, for any reason, discourage a sexual assault survivor from undergoing an examination or allowing the collection of a sexual assault examination kit.

G. In a civil or criminal case relating to a sexual assault, a sexual assault survivor has the right to:

(1) be reasonably protected from the defendant and persons acting on behalf of the defendant;

(2) not be required to submit to a polygraph examination as a prerequisite to filing an accusatory pleading or participating in any part of the criminal justice system;

(3) be heard through a survivor impact statement at any proceeding relevant to the sexual assault; and

(4) provide a sentencing recommendation to the official conducting a pre-sentence investigation.

H. A sexual assault survivor retains the right to have an advocate present during all stages of any medical examination, interview, investigation or other interaction with representatives from the legal or criminal justice systems within New Mexico. Treatment of the survivor shall not be affected or altered in any way as a result of the

survivor's decision to exercise the survivor's right to have an advocate present as provided in this section.

I. A law enforcement agency may require a sexual assault survivor's requests for information pursuant to Subsection C of this section to be made in writing, and the agency shall communicate its responses to those requests in writing.

J. For the purpose of notifications and other communications provided for in this section, a sexual assault survivor may designate another person to receive notifications and information on the survivor's behalf and the survivor shall provide the designee's contact information to a medical provider or law enforcement agency required to communicate with the survivor pursuant to this section.

K. In the case of a sexual assault survivor who is deceased, the following persons shall have the right to receive notifications and information required to be communicated to a survivor pursuant to this section:

(1) a person who was the deceased sexual assault survivor's spouse at the time of the survivor's death; or

(2) the deceased sexual assault survivor's parent or sibling or child who is eighteen years of age or older.

L. A prosecutor shall not prosecute a sexual assault survivor for a criminal offense that is not a felony, including underage consumption of alcohol, drug use or prostitution, if the evidence of the commission of the offense is obtained through the examination of and collection of a sexual assault examination kit from the survivor or is obtained through the investigation of the sexual assault.

M. For the purposes of this section:

(1) "health care provider" means a sexual assault examination nurse or another health care provider authorized to examine and collect samples of biological material from a survivor of sexual assault following the assault; and

(2) "sexual assault examination kit" means samples of biological material derived from a human body, including bodily fluid, hair and skin cells, collected during a medical examination of a survivor following a sexual assault.

History: Laws 2019, ch. 102, § 1.

ARTICLE 9A
Animal Sexual Abuse

30-9A-1. Short title.

Chapter 30, Article 9A NMSA 1978 may be cited as the "Animal Sexual Abuse Act".

History: 1978 Comp., § 30-9A-1, enacted by Laws 2023, ch. 42, § 1.

30-9A-2. Definitions.

As used in the Animal Sexual Abuse Act:

A. "animal" means any wild or domestic fauna, including livestock, alive or dead, in any setting, that is not a human being;

B. "coerce" means the use of threat, physical force or violence against another person to commit an act of bestiality;

C. "manipulate" means the use of persuasion, extortion, retaliation, deceit or other acts not involving force or coercion to cause another person to commit an act of bestiality;

D. "orifice" means the mouth, vulva or anus;

E. "sexual contact with an animal" means:

(1) the intentional insertion of the genitals or mouth of an animal into an orifice of a human's body;

(2) the intentional insertion of the genitals or mouth of a human into an orifice of an animal's body;

(3) the intentional insertion of an object into the genitals or anus of an animal; and

(4) contact, handling or stimulation of the genitals or anus of an animal by a human.

"Sexual contact with an animal" does not include accepted veterinary medical practices; accepted animal husbandry, care and grooming practices in the caretaking of animals; accepted practices related to the insemination of animals for the purpose of procreation; or accepted practices related to conformation judging; and

F. "solicit" means to entice, induce, encourage or attempt to persuade another person to commit an act of bestiality.

History: 1978 Comp., § 30-9A-2, enacted by Laws 2023, ch. 42, § 2.

30-9A-3. Bestiality; aggravated bestiality; penalties.

A. Bestiality consists of a person engaging in sexual contact with an animal. A person who commits bestiality is guilty of a fourth degree felony.

B. Promoting bestiality consists of a person:

(1) coercing, soliciting or manipulating a human to commit bestiality; or

(2) selling or transferring, offering to sell or transfer, advertising for sale or transfer, purchasing or offering to purchase, possessing or otherwise obtaining an animal with the intent that the animal be used for bestiality.

A person who commits promoting bestiality is guilty of a fourth degree felony.

C. Aggravated bestiality consists of a person:

(1) committing bestiality or promoting bestiality in the presence of a minor; or

(2) committing bestiality or promoting bestiality in which a minor is a participant.

A person who commits aggravated bestiality is guilty of a third degree felony.

D. Emission by a human or animal is not required to prove sexual contact with an animal.

E. If a person has been convicted of a crime pursuant to this section, in addition to any other penalties, the sentencing court shall include in the judgment and sentence all of the following:

(1) that all animals under the direct care and control of the convicted person be seized and turned over to an agent of the New Mexico livestock board or to an animal control agency operated by the state or a local government or an animal shelter or other animal welfare organization designated by the animal control agency. The receiver of seized animals has the authority to determine the disposition of seized animals, but shall not return the animals to the convicted person; and

(2) that the convicted person shall not be allowed to own, possess, reside with or exercise control over any animal or engage in any occupation or profession, whether paid or unpaid, at any place where animals are kept or cared for, for a definite period not less than three years and not more than fifteen years; provided that the time the person spent in actual confinement serving a criminal sentence shall be excluded from the calculation of the definite period.

F. If a person has been convicted of a crime pursuant to this section, in addition to criminal penalties and other penalties specified in Subsection E of this section, the sentencing court may order:

(1) that the convicted person submit to a psychological assessment and participate in appropriate counseling; and

(2) that the convicted person pay restitution for incurred costs of veterinary care, boarding, food and other reasonable costs of care for an animal as a result of the crime.

G. A person shall not be convicted of a crime specified in this section if the person's sexual contact with an animal was coerced or manipulated.

History: 1978 Comp., § 30-9A-3, enacted by Laws 2023, ch. 42, § 3.

ARTICLE 10
Marital and Familial Offenses

30-10-1. Bigamy.

Bigamy consists of knowingly entering into a marriage by or with a person who has previously contracted one or more marriages which have not been dissolved by death, divorce or annulment. Both parties may be principals.

Whoever commits bigamy is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-10-1, enacted by Laws 1963, ch. 303, § 10-1.

30-10-2. Repealed.

30-10-3. Incest.

Incest consists of knowingly intermarrying or having sexual intercourse with persons within the following degrees of consanguinity: parents and children including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews.

Whoever commits incest is guilty of a third degree felony.

History: 1953 Comp., § 40A-10-3, enacted by Laws 1963, ch. 303, § 10-3.

ARTICLE 11
Crimes Against Reputation

30-11-1. Libel.

Libel consists of making, writing, publishing, selling or circulating without good motives and justifiable ends, any false and malicious statement affecting the reputation, business or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace.

Whoever commits libel is guilty of a misdemeanor.

The word "malicious," as used in this article, signifies an act done with evil or mischievous design and it is not necessary to prove any special facts showing ill-feeling on the part of the person who is concerned in making, printing, publishing or circulating a libelous statement against the person injured thereby.

A. A person is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated, caused or procured it to be done by others.

B. A person is the publisher of a libel who either of his own will or by the persuasion or dictation, or at the solicitation or employment for hire of another, executes the same in any of the modes pointed out as constituting a libel; but if anyone by force or threats is compelled to execute such libel he is guilty of no crime.

C. A person is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.

D. The written, printed or published statement to come within the definition of libel must falsely convey the idea either:

(1) that the person to whom it refers has been guilty of some penal offenses;

(2) that he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons;

(3) that he has some moral vice or physical defect or disease which renders him unfit for intercourse with respectable society, and as such should cause him to be generally avoided;

(4) that he is notoriously of bad or infamous character; or

(5) that any person in office or a candidate therefor is dishonest and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

E. It shall be sufficient to constitute the crime of libel if the natural consequence of the publication of the same is to injure the person defamed although no actual injury to his reputation need be proven.

F. No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and for malicious purposes, comes within the definition of libel.

History: 1953 Comp., § 40A-11-1, enacted by Laws 1963, ch. 303, § 11-1.

ARTICLE 12
Abuse of Privacy

30-12-1. Interference with communications; exception.

Interference with communications consists of knowingly and without lawful authority:

A. displacing, removing, injuring or destroying any radio station, television tower, antenna or cable, telegraph or telephone line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto;

B. cutting, breaking, tapping or making any connection with any telegraph or telephone line, wire, cable or instrument belonging to or in the lawful possession or control of another, without the consent of such person owning, possessing or controlling such property;

C. reading, interrupting, taking or copying any message, communication or report intended for another by telegraph or telephone without the consent of a sender or intended recipient thereof;

D. preventing, obstructing or delaying the sending, transmitting, conveying or delivering in this state of any message, communication or report by or through telegraph or telephone; or

E. using any apparatus to do or cause to be done any of the acts hereinbefore mentioned or to aid, agree with, comply or conspire with any person to do or permit or cause to be done any of the acts hereinbefore mentioned.

Whoever commits interference with communications is guilty of a misdemeanor, unless such interference with communications is done:

(1) under a court order as provided in Sections 30-12-2 through 30-12-11 NMSA 1978; or

(2) by an operator of a switchboard or an officer, employee or agent of any communication common carrier in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his services or to the protection of rights or property of the carrier of such communication; or

(3) by a person acting under color of law in the investigation of a crime, where such person is a party to the communication, or one of the parties to the communication has given prior consent to such interception, monitoring or recording of such communication.

History: 1953 Comp., § 40A-12-1, enacted by Laws 1963, ch. 303, § 12-1; 1973, ch. 369, § 1; 1979, ch. 191, § 1.

30-12-2. Grounds for order of interception.

An ex parte order for wiretapping, eavesdropping or the interception of any wire or oral communication may be issued by any judge of a district court upon application of the attorney general or a district attorney, stating that there is probable cause to believe that:

A. evidence may be obtained of the commission of:

(1) the crime of murder, kidnapping, extortion, robbery, trafficking or distribution of controlled substances or bribery of a witness;

(2) the crime of burglary, aggravated burglary, criminal sexual penetration, arson, mayhem, receiving stolen property or commercial gambling, if punishable by imprisonment for more than one year; or

(3) an organized criminal conspiracy to commit any of the aforementioned crimes; or

B. the communication, conversation or discussion is itself an element of any of the above specified crimes.

History: 1953 Comp., § 40A-12-1.1, enacted by Laws 1973, ch. 369, § 2; 1979, ch. 191, § 2.

30-12-3. Form of application.

Each application for wiretapping, eavesdropping or the interception of any wire or oral communication shall be made in writing upon oath or affirmation to a judge of a district court and shall state the applicant's authority to make such application. Each application shall include:

A. the identity of the investigative or law enforcement officer making the application and the officer authorizing the application;

B. a complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(1) details as to the particular offense that has been, is being or is about to be committed;

(2) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(3) a particular description of the type of communication sought to be intercepted; and

(4) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

C. a complete statement as to whether other investigative procedures have been tried and failed, or reasonably appear unlikely to succeed if tried, or appear to be too dangerous;

D. a statement of the period of time for which the interception is required to be maintained; if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter shall be required;

E. a complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, which were made to any judge for authorization to intercept or for approval of interceptions of wire or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the judge on each such application; and

F. where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

History: 1953 Comp., § 40A-12-1.2, enacted by Laws 1973, ch. 369, § 3.

30-12-4. Entry of order; determination.

Upon application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving wiretapping, eavesdropping or the interception of wire or oral communications within the district in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:

A. there is probable cause for belief that a person is committing, has committed or is about to commit a particular offense enumerated in 30-12-2 NMSA 1978;

B. there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

C. normal investigative procedures have been tried and failed, or reasonably appear unlikely to succeed if tried, or appear to be too dangerous; and

D. there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted is being used or is about to be used in connection with the commission of such offense, or is leased to, listed in the name of or commonly used by the person alleged to be involved in the commission of the offense.

History: 1953 Comp., § 40A-12-1.3, enacted by Laws 1973, ch. 369, § 4.

30-12-5. Contents of order.

A. Each order authorizing or approving wiretapping, eavesdropping or interception of wire or oral communications shall specify:

(1) the identity, if known, of the person whose communications are to be intercepted;

(2) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(3) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(5) the period of time during which such interception is authorized, including a statement as to whether the interception automatically terminates when the described communication has been first obtained.

B. An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such

facilities or technical assistance shall be compensated therefor by the applicant at the prevailing rates.

History: 1953 Comp., § 40A-12-1.4, enacted by Laws 1973, ch. 369, § 5.

30-12-6. Order; extension; requirements.

No order entered under this act [30-12-1 to 30-12-11 NMSA 1978] may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension, made in accordance with Section 30-12-3 NMSA 1978, and if the court makes the findings required by Section 30-12-4 NMSA 1978. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purpose for which it was granted, and in no event longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception under this act and shall terminate upon attainment of the authorized objective, or in any event within thirty days. Whenever an order authorizing interception is entered pursuant to this act, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at such times as the judge may require.

History: 1953 Comp., § 40A-12-1.5, enacted by Laws 1973, ch. 369, § 6.

30-12-7. Method of recording communication; custody.

A. The contents of any wire or oral communication intercepted by any means authorized by this act [30-12-1 to 30-12-11 NMSA 1978] shall, if possible, be recorded on tape, wire or other comparable device. The recording shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon expiration of the period of the order or extension thereof, such recording shall be made available to the judge issuing the order and sealed under his directions. Custody of the recording shall be wherever the judge orders. A recording shall not be destroyed except upon the order of the judge, and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of this act. The presence of the seal, or a satisfactory explanation for the absence thereof, shall be prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived under this act.

B. Applications made and orders granted under this act shall be sealed by the judge and custody of them shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and shall not be destroyed except on order of the judge to whom presented, and in any event shall be kept for ten years.

C. Any violation of the provisions of this section may be punished as a contempt of court.

D. Within a reasonable time, but not later than ninety days after the filing of an application for an order of approval which is denied, or after the termination of the period of an order or extensions thereof, the judge to whom the application was presented shall cause to be served on the persons named in the order or the applications and on such other parties to intercepted communications as the judge may determine is in the interest of justice, notice of:

(1) the fact of the entry of the order or application;

(2) the date of the entry and the period of authorized, approved or disapproved interception or the denial of the application; and

(3) the fact that during the period wire or oral communications were or were not intercepted. The judge, upon the filing of a motion, may, in his discretion, make available to any such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge the serving of the matter required by this subsection may be postponed.

History: 1953 Comp., § 40A-12-1.6, enacted by Laws 1973, ch. 369, § 7.

30-12-8. Use of contents as evidence; disclosure; motion to suppress.

A. The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in a state court unless each party, not less than ten days before the trial, hearing or proceeding has been furnished with a copy of the court order and accompanying application, under which interception was authorized or approved. This ten-day period may be waived by the court if it finds that it was not possible to furnish the party with such information ten days before the trial, hearing or proceeding, and that the party will not be prejudiced by the delay in receiving such information.

B. Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the state or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication on the grounds that:

(1) the communication was unlawfully intercepted;

(2) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(3) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing or proceeding unless there has been no opportunity to make such motion, or the person has not been aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall not be received as evidence. In addition to any other right of appeal, the state shall have the right to appeal from an order granting a motion to suppress made under this subsection, or to appeal the denial of an application for an order of approval, if the person making or authorizing the application shall certify to the judge granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order is entered and shall be diligently prosecuted.

History: 1953 Comp., § 40A-12-1.7, enacted by Laws 1973, ch. 369, § 8.

30-12-9. Disclosure; when and by whom allowed.

A. Any investigative or law enforcement officer who, by any means authorized by this act [30-12-1 to 30-12-11 NMSA 1978], has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may:

(1) disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure; or

(2) use such contents to the extent such use is appropriate in the official performance of his official duties.

B. Any person who has received, by any means authorized by this act, any information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of this act, may disclose the contents of that communication or such derivative evidence while giving testimony in any criminal proceeding in any court of this state or in any grand jury proceeding.

History: 1953 Comp., § 40A-12-1.8, enacted by Laws 1973, ch. 369, § 9.

30-12-10. Interception of privileged or unauthorized communications.

A. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this act [30-12-1 to 30-12-11 NMSA 1978] shall lose its privileged character.

B. When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized in this act, intercepts wire or oral

communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof and evidence derived therefrom may be disclosed or used as provided in Subsection A of Section 30-12-9 NMSA 1978. Such contents and evidence derived therefrom may be used under Subsection B of Section 30-12-9 NMSA 1978 when authorized or approved by a judge of competent jurisdiction, when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this act. Such application shall be made as soon as practicable.

History: 1953 Comp., § 40A-12-1.9, enacted by Laws 1973, ch. 369, § 10.

30-12-11. Right of privacy; damages.

A. Any person whose wire or oral communication is intercepted, disclosed or used in violation of this act [30-12-1 to 30-12-11 NMSA 1978] shall:

(1) have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose or use such communications; and

(2) be entitled to recover from any such person actual damages, but not less than liquidated damages computed at the rate of one hundred dollars ($100) for each day of violation or one thousand dollars ($1,000), whichever is higher; punitive damages; and a reasonable attorney's fee and other litigation costs reasonably incurred.

B. A good faith reliance on a court order or on the provisions of this act shall constitute a complete defense to any civil or criminal action.

C. Any communications common carrier which in good faith acts in reliance upon a court order or in compliance with any of the provisions of this act shall not be liable for any civil or criminal action.

History: 1953 Comp., § 40A-12-1.10, enacted by Laws 1973, ch. 369, § 11.

30-12-12. Disturbing a marked burial ground.

Disturbing a marked burial ground consists of knowingly and willfully disturbing or removing the remains, or any part of them, or any funerary object, material object or associated artifact of any person interred in any church, churchyard, cemetery or marked burial ground or knowingly and willfully procuring or employing any other person to disturb or remove the remains, or any part of them, or any funerary object, material object or artifact associated with any person interred in any church, churchyard, cemetery or marked burial ground, other than pursuant to an order of the district court, the provisions of Section 24-14-23 NMSA 1978 or as otherwise specifically permitted by

law. As used in this section "marked burial ground" means any interment visibly marked according to traditional or customary practice.

Whoever commits disturbing a marked burial ground is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars ($5,000) or by imprisonment for a definite term of eighteen months or both.

History: 1953 Comp., § 40A-12-2, enacted by Laws 1963, ch. 303, § 12-2; 1989, ch. 267, § 3.

30-12-13. Defacing tombs.

Defacing tombs consists of either:

A. intentionally defacing, breaking, destroying or removing any tomb, monument or gravestone erected to any deceased person or any memento, memorial or marker upon any place of burial of any human being or any ornamental plant, tree or shrub appertaining to the place of burial of any human being; or

B. intentionally marking, defacing, injuring, destroying or removing any fence, post, rail or wall of any cemetery or graveyard or erected within any cemetery or graveyard or any marker, memorial or funerary object upon any place of burial of any human being.

Whoever commits defacing a tomb is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year or both.

History: 1953 Comp., § 40A-12-3, enacted by Laws 1963, ch. 303, § 12-3; 1989, ch. 267, § 4.

30-12-14. Unlawful burial.

Unlawful burial consists of the using of any land or lands as a burial place of interment within fifty yards from either side of the bank or border of any stream, river or any body of water, by a person or persons, society of persons, order, corporation or corporations.

Whoever commits unlawful burial is guilty of a misdemeanor.

History: 1953 Comp., § 40A-12-4, enacted by Laws 1963, ch. 303, § 12-4.

ARTICLE 13
Violation of Civil Rights

30-13-1. Disturbing lawful assembly.

Disturbing lawful assembly consists of:

A. disturbing any religious society or any member thereof when assembled or collected together in public worship; or

B. disturbing any meeting of the people assembled for any legal object.

Whoever commits disturbing lawful assembly is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-13-1, enacted by Laws 1963, ch. 303, § 13-1.

30-13-2. Denial of service by a utility.

Denial of service by a utility consists of any utility refusing to furnish service to another in the area served by such utility. Utility as used in this section is defined as any person furnishing to the public: water, power, telephone or gas. Provided such utility may lawfully refuse its services if:

A. the person to be served has not tendered an amount of money required for the expense of construction, if construction is necessary for furnishing the utilities; or

B. the person has not tendered the amount of money due for the use of such utilities.

Whoever commits denial of services [service] by a utility is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-13-2, enacted by Laws 1963, ch. 303, § 13-2.

30-13-3. Blacklisting.

Blacklisting consists of an employer or his agent preventing or attempting to prevent a former employee from obtaining other employment.

Whoever commits blacklisting is guilty of a misdemeanor.

Upon request, an employer may give an accurate report or honest opinion of the qualifications and the performance of a former employee. An employer is defined as any person employing labor or the agent of such person.

History: 1953 Comp., § 40A-13-3, enacted by Laws 1963, ch. 303, § 13-3.

30-13-4. Unlawful payment of wages in script.

Unlawful payment of wages in script consists of any person selling, giving or delivering, or in any manner issuing, directly or indirectly, to any person employed by

him, and in payment for wages due, any script, draft, order or other evidence of indebtedness payable or redeemable otherwise than in lawful money of the United States.

Whoever commits unlawful payment of wages in script is guilty of a misdemeanor.

History: 1953 Comp., § 40A-13-4, enacted by Laws 1963, ch. 303, § 13-4.

30-13-5. Unlawful coercion of employees.

Unlawful coercion of employees consists of any person employing labor, or any agent of such employer, compelling or coercing, directly or indirectly, any employee to buy goods or trade with any particular store, business or person.

Whoever commits unlawful coercion of employees is guilty of a misdemeanor.

History: 1953 Comp., § 40A-13-5, enacted by Laws 1963, ch. 303, § 13-5.

ARTICLE 14
Trespass

30-14-1. Criminal trespass.

A. Criminal trespass consists of knowingly entering or remaining upon posted private property without possessing written permission from the owner or person in control of the land. The provisions of this subsection do not apply if:

(1) the owner or person in control of the land has entered into an agreement with the department of game and fish granting access to the land to the general public for the purpose of taking any game animals, birds or fish by hunting or fishing; or

(2) a person is in possession of a landowner license given to him by the owner or person in control of the land that grants access to that particular private land for the purpose of taking any game animals, birds or fish by hunting or fishing.

B. Criminal trespass also consists of knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof. Notice of no consent to enter shall be deemed sufficient notice to the public and evidence to the courts, by the posting of the property at all vehicular access entry ways.

C. Criminal trespass also consists of knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

D. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor, and he shall be liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

E. Whoever commits criminal trespass is guilty of a misdemeanor. Additionally, any person who violates the provisions of Subsection A, B or C of this section, when in connection with hunting, fishing or trapping activity, shall have his hunting or fishing license revoked by the state game commission for a period of not less than three years, pursuant to the provisions of Section 17-3-34 NMSA 1978.

F. Whoever knowingly removes, tampers with or destroys any "no trespass" sign is guilty of a petty misdemeanor; except when the damage to the sign amounts to more than one thousand dollars ($1,000), he or she is guilty of a misdemeanor and shall be subject to imprisonment in the county jail for a definite term less than one year or a fine not more than one thousand dollars ($1,000) or to both such imprisonment and fine in the discretion of the judge.

G. This section, as amended, shall be published in all issues of "Big Game Hunt Proclamation" as published by the department of game and fish.

History: 1953 Comp., § 40A-14-1, enacted by Laws 1963, ch. 303, § 14-1; 1975, ch. 52, § 1; 1979, ch. 186, § 1; 1981, ch. 34, § 1; 1983, ch. 27, § 2; 1991, ch. 58, § 1; 1995, ch. 164, § 1.

30-14-1.1. Types of trespass; injury to realty; civil damages.

A. Any person who enters and remains on the lands of another after having been requested to leave is guilty of a misdemeanor.

B. Any person who enters upon the lands of another when such lands are posted against trespass at every roadway or apparent way of access is guilty of a misdemeanor.

C. Any person who drives a vehicle upon the lands of another except through a roadway or other apparent way of access, when such lands are fenced in any manner, is guilty of a misdemeanor.

D. In the event any person enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, he shall be liable to the owner, lessee or person in lawful possession for damages in an amount equal to double the amount of the appraised value of the damage of the property injured or destroyed.

History: Laws 1979, ch. 186, § 2; 1983, ch. 27, § 3.

30-14-2. Consent required for key duplication [of educational institutions].

No person shall knowingly make or cause to be made any key or duplicate key for any building, laboratory, facility, room, dormitory, hall or any other structure, or part thereof, owned or leased by the state, any political subdivision, or by the board of regents or other governing body of any college or university, which is supported wholly or in part by the state, without the prior written consent of the state, political subdivision, board of regents or other governing body.

History: 1953 Comp., § 40A-14-3, enacted by Laws 1965, ch. 115, § 1.

30-14-3. Penalty.

Any person who violates Section 1 [30-14-2 NMSA 1978] of this act is guilty of a misdemeanor.

History: 1953 Comp., § 40A-14-4, enacted by Laws 1965, ch. 115, § 2.

30-14-4. Wrongful use of public property; permit; penalties.

A. Wrongful use of public property consists of:

(1) knowingly entering any public property without permission of the lawful custodian or his representative when the public property is not open to the public;

(2) remaining in or occupying any public property after having been requested to leave by the lawful custodian, or his representative, who has determined that the public property is being used or occupied contrary to its intended or customary use or that the public property may be damaged or destroyed by the use; or

(3) depriving the general public of the intended or customary use of public property without a permit.

B. Permits to occupy or use public property may be obtained from the lawful custodian or his representative upon written application which:

(1) describes the public property to be occupied or used; and

(2) states the period of time during which the public property will be occupied or used. The applicant shall pay in advance a reasonable fee or charge for the use of the public property. The fee or charge shall be prescribed by the lawful custodian or his representative.

C. The lawful custodian or his representative may issue the permit if he believes that the use or occupation of the public property will not unreasonably interfere with the intended or customary use of the public property by the general public and that the use will not damage or destroy the public property.

D. Any person occupying or using public property under the authority of a permit shall submit to a search for firearms or other weapons and surrender any firearms or other weapons to any peace officer, who has jurisdiction, upon request.

E. As used in this section, "public property" means any public building, facility, structure or enclosure used for a public purpose or as a place of public gathering, owned or under the control of the state or one of its political subdivisions or a religious, charitable, educational or recreational association.

F. Any person who commits wrongful use of public property is guilty of a petty misdemeanor.

G. Any person who commits wrongful use of public property after having been requested to leave by the lawful custodian or his representative or any peace officer, who has jurisdiction, is guilty of a misdemeanor.

History: 1953 Comp., § 40A-14-5, enacted by Laws 1969, ch. 61, § 1.

30-14-5. Repealed.

30-14-6. No trespassing notice; sign contents; posting; requirement; prescribing a penalty for wrongful posting of public lands.

A. The owner, lessee or person lawfully in possession of real property in New Mexico, except property owned by the state or federal government, desiring to prevent trespass or entry onto the real property shall post notices parallel to and along the exterior boundaries of the property to be posted, at each roadway or other way of access in conspicuous places, and if the property is not fenced, such notices shall be posted every five hundred feet along the exterior boundaries of such land.

B. The notices posted shall prohibit all persons from trespassing or entering upon the property, without permission of the owner, lessee, person in lawful possession or his agent. The notices shall:

(1) be printed legibly in English;

(2) be at least one hundred forty-four square inches in size;

(3) contain the name and address of the person under whose authority the property is posted or the name and address of the person who is authorized to grant permission to enter the property;

(4) be placed at each roadway or apparent way of access onto the property, in addition to the posting of the boundaries; and

(5) where applicable, state any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging" or any other specific prohibition.

C. Any person who posts public lands contrary to state or federal law or regualtion [regulation] is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-14-7, enacted by Laws 1969, ch. 195, § 2; 1979, ch. 186, § 3.

30-14-7. Repealed.

30-14-8. Breaking and entering.

A. Breaking and entering consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, where entry is obtained by fraud or deception, or by the breaking or dismantling of any part of the vehicle, watercraft, aircraft, dwelling or other structure, or by the breaking or dismantling of any device used to secure the vehicle, watercraft, aircraft, dwelling or other structure.

B. Whoever commits breaking and entering is guilty of a fourth degree felony.

History: Laws 1981, ch. 34, § 2.

ARTICLE 15
Property Damage

30-15-1. Criminal damage to property.

Criminal damage to property consists of intentionally damaging any real or personal property of another without the consent of the owner of the property.

Whoever commits criminal damage to property is guilty of a petty misdemeanor, except that when the damage to the property amounts to more than one thousand dollars ($1,000) he is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-15-1, enacted by Laws 1963, ch. 303, § 15-1.

30-15-1.1. Unauthorized graffiti on personal or real property.

A. Graffiti consists of intentionally and maliciously defacing any real or personal property of another with graffiti or other inscribed material inscribed with ink, paint, spray paint, crayon, charcoal or the use of any object without the consent or reasonable ground to believe there is consent of the owner of the property.

B. Whoever commits graffiti to real or personal property when the damage to the property is one thousand dollars ($1,000) or less is guilty of a petty misdemeanor and shall be required to perform a mandatory one hundred hours of community service within a continuous six-month period immediately following his conviction and shall be required to make restitution to the property owner for the cost of damages and restoration.

C. Whoever commits graffiti to real or personal property when the damage to the property is greater than one thousand dollars ($1,000) is guilty of a fourth degree felony and shall be required to perform a mandatory one hundred sixty hours of community service within a continuous eight-month period immediately following his conviction and shall be required to provide restitution to the property owner for the cost of damages and restoration as a condition of probation or following any term of incarceration as a condition of parole.

D. When a single occurrence of graffiti is committed by more than one individual, the court may apportion the amount of restitution owed by each offender in accordance with each offender's degree of culpability.

History: Laws 1990, ch. 36, § 1; 1995, ch. 204, § 1.

30-15-2. [Rocks, protected plants or trees within four hundred yards of highway.]

It is a petty misdemeanor to deface, without the written consent of the landowner, any rock, any plant defined in Section 76-8-1 NMSA 1978, or any dead or living tree within four hundred yards of any public highway.

History: 1953 Comp., § 40A-15-1.1, enacted by Laws 1971, ch. 3, § 1.

30-15-3. Damaging insured property.

Damaging insured property consists of intentionally damaging property which is insured with intent to defraud the insurance company into paying himself or another for such damage.

Whoever commits damaging insured property is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-15-2, enacted by Laws 1963, ch. 303, § 15-2.

30-15-4. Desecration of a church.

Desecration of a church consists of willfully, maliciously and intentionally defacing a church or any portion thereof.

Whoever commits desecration of a church is guilty of a misdemeanor, except that when the damage to the church amounts to more than one thousand dollars ($1,000) he is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-15-3, enacted by Laws 1963, ch. 303, § 15-3; 1965, ch. 173, § 1.

30-15-5. Damaging caves or caverns unlawful.

It shall be unlawful for any person, without prior permission of the federal, state or private land owner, to willfully or knowingly break, break off, crack, carve upon, write or otherwise mark upon, or in any manner destroy, mutilate, injure, deface, remove, displace, mar or harm any natural material found in any cave or cavern, such as stalactites, stalagmites, helictites, anthodites, gypsum flowers or needles, flowstone, draperies, columns, tufa dams, clay or mud formations or concretions, or other similar crystalline mineral formations or otherwise; to kill, harm or in any manner or degree disturb any plant or animal life found therein; to otherwise disturb or alter the natural conditions of such cave or cavern through the disposal therein of any solid or liquid materials such as refuse, food, containers or fuel of any nature, whether or not malice is intended; to disturb, excavate, remove, displace, mar or harm any archaeological artifacts found within a cave or cavern including petroglyphs, projectile points, human remains, rock or wood carvings or otherwise, pottery, basketry or any handwoven articles of any nature, or any pieces, fragments or parts of any of the such articles; or to break, force, tamper with, remove or otherwise disturb a lock, gate, door or other structure or obstruction designed to prevent entrance to a cave or cavern, without the permission of the owner thereof, whether or not entrance is gained. For purposes of this section, "cave" means any natural geologically formed void or cavity beneath the surface of the earth, not including any mine, tunnel, aqueduct or other manmade excavation, which is large enough to permit a person to enter.

History: Laws 1981, ch. 236, § 1.

30-15-6. Penalty.

Anyone violating the provisions of Section 1 [30-15-5 NMSA 1978] of this act shall be guilty of a misdemeanor.

History: Laws 1981, ch. 236, § 2.

30-15-7. Desecration of roadside memorials; penalty.

A. A person shall not knowingly or willfully deface or destroy, in whole or in part, a descanso, also known as a memorial, placed alongside a public road right of way to memorialize the death of one or more persons.

B. A person who violates the provisions of Subsection A of this section is:

(1) for a first offense, guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(2) for a second and subsequent offense, guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. The provisions of this section shall not apply to law enforcement officials or other employees of the state or a political subdivision of the state who in the course of the lawful discharge of their duties move or remove a descanso that obstructs or damages any public road in this state or to an owner of private property upon which a descanso is located.

History: Laws 2007, ch. 35, § 1 and Laws 2007, ch. 242, § 1.

30-15-8. Criminal damage to property by theft or attempted theft of regulated material; penalty.

A. Criminal damage to property by theft or attempted theft of regulated material consists of the unlawful taking or attempted taking of any regulated material from another that results in any damage to real or personal property. Whoever commits criminal damage to property by theft or attempted theft of regulated material resulting in property damage or property loss, based on the fair market value of that damage or loss, in an amount of:

(1) less than one thousand dollars ($1,000) is guilty of a petty misdemeanor;

(2) one thousand dollars ($1,000) or more but less than two thousand five hundred dollars ($2,500) is guilty of a misdemeanor; or

(3) two thousand five hundred dollars ($2,500) or more is guilty of a fourth degree felony.

B. For the purposes of this section:

(1) "aluminum material" means wire or coil products made from aluminum, an aluminum alloy or an aluminum byproduct;

(2) "copper or brass material" means:

(a) insulated or noninsulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or

(b) a copper or brass item of a type commonly used in construction or by a public utility, commercial mobile radio service carrier or common carrier;

(3) "regulated material" means:

(a) aluminum material;

(b) copper or brass material;

(c) steel material;

(d) a utility access cover;

(e) a water meter cover;

(f) a road or bridge guard rail;

(g) a highway or street sign;

(h) a traffic directional or control sign or signal; or

(i) a catalytic converter that is not part of an entire motor vehicle; and

(4) "steel material" means infrastructure-grade or construction products made from an alloy of iron, chromium, nickel or manganese.

C. Nothing in this section shall be construed to preclude a claim made pursuant to any other section of law.

History: Laws 2022, ch. 56, § 50.

ARTICLE 16
Larceny

30-16-1. Larceny.

A. Larceny consists of the stealing of anything of value that belongs to another.

B. Whoever commits larceny when the value of the property stolen is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits larceny when the value of the property stolen is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits larceny when the value of the property stolen is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits larceny when the value of the property stolen is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits larceny when the value of the property stolen is over twenty thousand dollars ($20,000) is guilty of a second degree felony.

G. Whoever commits larceny when the property of value stolen is livestock is guilty of a third degree felony regardless of its value.

H. Whoever commits larceny when the property of value stolen is a firearm is guilty of a fourth degree felony when its value is less than two thousand five hundred dollars ($2,500).

History: 1953 Comp., § 40A-16-1, enacted by Laws 1963, ch. 303, § 16-1; 1969, ch. 171, § 1; 1979, ch. 118, § 1; 1987, ch. 121, § 1; 2006, ch. 29, § 2.

30-16-2. Robbery.

Robbery consists of the theft of anything of value from the person of another or from the immediate control of another, by use or threatened use of force or violence.

Whoever commits robbery is guilty of a third degree felony.

Whoever commits robbery while armed with a deadly weapon is, for the first offense, guilty of a second degree felony and, for second and subsequent offenses, is guilty of a first degree felony.

History: 1953 Comp., § 40A-16-2, enacted by Laws 1963, ch. 303, § 16-2; 1973, ch. 178, § 1.

30-16-3. Burglary.

Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.

A. Any person who, without authorization, enters a dwelling house with intent to commit any felony or theft therein is guilty of a third degree felony.

B. Any person who, without authorization, enters any vehicle, watercraft, aircraft or other structure, movable or immovable, with intent to commit any felony or theft therein is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-3, enacted by Laws 1963, ch. 303, § 16-3; 1971, ch. 58, § 1.

30-16-4. Aggravated burglary.

Aggravated burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with intent to commit any felony or theft therein and the person either:

A. is armed with a deadly weapon;

B. after entering, arms himself with a deadly weapon;

C. commits a battery upon any person while in such place, or in entering or leaving such place.

Whoever commits aggravated burglary is guilty of a second degree felony.

History: 1953 Comp., § 40A-16-4, enacted by Laws 1963, ch. 303, § 16-4.

30-16-5. Possession of burglary tools.

Possession of burglary tools consists of having in the person's possession a device or instrumentality designed or commonly used for the commission of burglary and under circumstances evincing an intent to use the same in the commission of burglary.

Whoever commits possession of burglary tools is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-5, enacted by Laws 1963, ch. 303, § 16-5.

30-16-6. Fraud.

A. Fraud consists of the intentional misappropriation or taking of anything of value that belongs to another by means of fraudulent conduct, practices or representations.

B. Whoever commits fraud when the value of the property misappropriated or taken is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits fraud when the value of the property misappropriated or taken is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits fraud when the value of the property misappropriated or taken is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits fraud when the value of the property misappropriated or taken is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits fraud when the value of the property misappropriated or taken exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

G. Whoever commits fraud when the property misappropriated or taken is a firearm that is valued at less than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-6, enacted by Laws 1963, ch. 303, § 16-6; 1979, ch. 119, § 1; 1987, ch. 121, § 2; 2006, ch. 29, § 3.

30-16-7. Unlawful dealing in federal food coupons or WIC checks.

A. Unlawful dealing in federal food coupons or WIC checks consists of a person buying, selling, trading, bartering or possessing food coupons or WIC checks issued by the United States department of agriculture with the intent to obtain an economic benefit to which the person is not entitled under the rules of the human services department [health care authority department] pertaining to the food stamp program or of the department of health pertaining to the special supplemental food program for women, infants and children.

B. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is over five hundred dollars

($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits unlawful dealing in federal food coupons or WIC checks when the value of the food coupons or WIC checks involved exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

G. For the purposes of this section, "federal food coupons or WIC checks" includes electronic benefit transfer cards or any other method through which food stamps or WIC benefits may be obtained.

History: 1953 Comp., § 40A-16-6.1, enacted by Laws 1971, ch. 282, § 1; 1987, ch. 121, § 3; 2003, ch. 251, § 1; 2006, ch. 29, § 4.

30-16-8. Embezzlement.

A. Embezzlement consists of a person embezzling or converting to the person's own use anything of value, with which the person has been entrusted, with fraudulent intent to deprive the owner thereof.

B. Whoever commits embezzlement when the value of the thing embezzled or converted is two hundred fifty dollars ($250) or less against any one victim in any consecutive twelve-month period is guilty of a petty misdemeanor.

C. Whoever commits embezzlement when the value of the thing embezzled or converted is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) against any one victim in any consecutive twelve-month period is guilty of a misdemeanor.

D. Whoever commits embezzlement when the value of the thing embezzled or converted is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) against any one victim in any consecutive twelve-month period is guilty of a fourth degree felony.

E. Whoever commits embezzlement when the value of the thing embezzled or converted is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) against any one victim in any consecutive twelve-month period is guilty of a third degree felony.

F. Whoever commits embezzlement when the value of the thing embezzled or converted exceeds twenty thousand dollars ($20,000) against any one victim in any consecutive twelve-month period is guilty of a second degree felony.

History: 1953 Comp., § 40A-16-7, enacted by Laws 1963, ch. 303, § 16-7; 1987, ch. 121, § 4; 1995, ch. 131, § 1; 2006, ch. 29, § 5; 2007, ch. 256, § 1; 2025, ch. 69, § 1.

30-16-9. Extortion.

Extortion consists of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compell [compel] the person threatened to do or refrain from doing any act against his will.

Any of the following acts shall be sufficient to constitute a threat under this section:

A. a threat to do an unlawful injury to the person or property of the person threatened or of another;

B. a threat to accuse the person threatened, or another, of any crime;

C. a threat to expose, or impute to the person threatened, or another, any deformity or disgrace;

D. a threat to expose any secret affecting the person threatened, or another; or

E. a threat to kidnap the person threatened or another.

Whoever commits extortion is guilty of a third degree felony.

History: 1953 Comp., § 40A-16-8, enacted by Laws 1963, ch. 303, § 16-8.

30-16-10. Forgery.

A. Forgery consists of:

(1) falsely making or altering any signature to, or any part of, any writing purporting to have any legal efficacy with intent to injure or defraud; or

(2) knowingly issuing or transferring a forged writing with intent to injure or defraud.

B. Whoever commits forgery when there is no quantifiable damage or when the damage is two thousand five hundred dollars ($2,500) or less is guilty of a fourth degree felony.

C. Whoever commits forgery when the damage is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

D. Regardless of value, whoever commits forgery of a will, codicil, trust instrument, deed, mortgage, lien or any other instrument affecting title to real property is guilty of a third degree felony.

E. Whoever commits forgery when the damage is over twenty thousand dollars ($20,000) is guilty of a second degree felony.

History: 1953 Comp., § 40A-16-9, enacted by Laws 1963, ch. 303, § 16-9; 2006, ch. 29, § 6.

30-16-11. Receiving stolen property; penalties.

A. Receiving stolen property means intentionally to receive, retain or dispose of stolen property knowing that it has been stolen or believing it has been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.

B. The requisite knowledge or belief that property has been stolen is presumed in the case of a dealer who:

(1) is found in possession or control of property stolen from two or more persons on separate occasions;

(2) acquires stolen property for a consideration that the dealer knows is far below the property's reasonable value. A dealer shall be presumed to know the fair market value of the property in which the dealer deals; or

(3) is found in possession or control of five or more items of property stolen within one year prior to the time of the incident charged pursuant to this section.

C. For the purposes of this section:

(1) "dealer" means a person in the business of buying or selling goods or commercial merchandise; and

(2) "stolen property" means any property acquired by theft, larceny, fraud, embezzlement, robbery or armed robbery.

D. Whoever commits receiving stolen property when the value of the property is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

E. Whoever commits receiving stolen property when the value of the property is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

F. Whoever commits receiving stolen property when the value of the property is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

G. Whoever commits receiving stolen property when the value of the property is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

H. Whoever commits receiving stolen property when the value of the property exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

I. Whoever commits receiving stolen property when the property is a firearm is guilty of a fourth degree felony when its value is less than two thousand five hundred dollars ($2,500).

History: 1953 Comp., § 40A-16-11, enacted by Laws 1963, ch. 303, § 16-11; 1969, ch. 171, § 2; 1972, ch. 77, § 1; 1975, ch. 232, § 1; 1983, ch. 253, § 1; 1987, ch. 121, § 5; 2006, ch. 29, § 7.

30-16-12. Falsely representing oneself as incapacitated.

Falsely representing oneself as disabled consists of a person falsely representing the person's own self to be blind, visually impaired, deaf or having a physical disability for the purpose of obtaining money or other thing of value.

Whoever commits falsely representing oneself as disabled is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-16-12, enacted by Laws 1963, ch. 303, § 16-12; 2007, ch. 46, § 36.

30-16-13. Cheating machine or device.

Cheating machine or device consists of any person, with intent to defraud, attempting to operate or causing to be operated any automatic vending machine, parking meter, coin-box telephone, or any machine or receptable [receptacle] designed to receive lawful money of the United States in connection with the sale, use or enjoyment of property or service, by means of any slug, or by any false, counterfeited, mutilated, sweated or foreign coin, or by any means, method, trick or device.

Whoever commits cheating machine or device is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-16-13, enacted by Laws 1963, ch. 303, § 16-13.

30-16-14. Failing to label secondhand watches.

Failing to label secondhand watches consists of any person or jeweler failing to identify or specify in any advertising or merchandise display of watches that the watches offered for sale have had any portion of their movements or cases repaired or replaced. Watches which have had the brand name, the name of the maker, the serial number, movement number or any other distinguishing number or identifying mark erased, defaced, removed, altered or covered shall for the purpose of this section be deemed to be secondhand.

For the purpose of this section, sufficient labeling shall consist of any notice affixed to the outside of a watch which clearly and legibly indicates the word "secondhand" printed thereon so that it can be read by a person of normal vision.

Whoever commits failing to label secondhand watches is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-16-14, enacted by Laws 1963, ch. 303, § 16-14; 1965, ch. 71, § 1.

30-16-15. Coercing the purchase of insurance from particular broker.

Coercing the purchase of insurance from particular broker consists of any person engaged in selling real or personal property, or the lending of money, requiring as a condition precedent to the sale, financing the purchase of such property or the lending of money, or the renewal of extension of any loan or mortgage, that the purchaser of such property, or recipient of the financial assistance negotiate any policy of insurance or renewal thereof through a particular insurance company, agent, solicitor or broker.

Nothing in this section shall be construed to prevent the exercise by any person [of] the right to designate minimum standards as to the company, the terms and provisions of the policy and the adequacy of the coverage with respect to insurance on property pledged or mortgaged to such person.

Whoever commits coercing the purchase of insurance from particular broker is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-16-15, enacted by Laws 1963, ch. 303, § 16-15.

30-16-16. Falsely obtaining services or accommodations; probable cause; immunity; penalty.

A. Falsely obtaining services or accommodations consists of a person obtaining service, food, entertainment or accommodations without paying with the intent to cheat or defraud the owner or person supplying the service, food, entertainment or accommodations.

B. A law enforcement officer may arrest without warrant a person the officer has probable cause to believe has committed the crime of falsely obtaining services or accommodations. A merchant, owner or proprietor who causes such an arrest shall not be criminally or civilly liable if the merchant, owner or proprietor has actual knowledge that the person arrested has committed the crime of falsely obtaining services or accommodations.

C. Whoever commits falsely obtaining services or accommodations when the value of the service, food, entertainment or accommodations furnished is:

(1) less than two hundred fifty dollars ($250) is guilty of a petty misdemeanor;

(2) more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor;

(3) more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony;

(4) more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony; and

(5) more than twenty thousand dollars ($20,000) is guilty of a second degree felony.

History: 1953 Comp., § 40A-16-16, enacted by Laws 1963, ch. 303, § 16-16; 1981, ch. 254, § 1; 1987, ch. 121, § 6; 2006, ch. 29, § 8.

30-16-17. Unlawful removal of effects.

Unlawful removal of effects consists of any person removing or causing to be removed any baggage or effects from any hotel, motel, trailer park, inn, rented dwelling or boarding house while there is a lien existing thereon for the proper charges due for fare or board furnished from such hotel, motel, trailer park, inn, rented dwelling or boarding house, and where the owner or person in possession of such baggage or effects is given actual notice of the fact of such lien, or where a notice of such lien has been conspicuously posted upon the premises adjacent to such baggage or effects, giving notice of the fact of such lien and the amount thereof.

Whoever commits unlawful removal of effects is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-16-17, enacted by Laws 1963, ch. 303, § 16-17.

30-16-18. Improper sale, disposal, removal or concealing of encumbered property.

A. Improper sale, disposal, removal or concealing of encumbered property consists of a person knowingly, and with intent to defraud, selling, transferring, removing or concealing, or in any manner disposing of, any personal property upon which a security interest, chattel mortgage or other lien or encumbrance has attached or been retained, without the written consent of the holder of the security interest, chattel mortgage, conditional sales contract, lien or encumbrance.

B. A broker, dealer or an agent, buyer or seller who receives any remuneration whatsoever for transfer of equity or arranges the assumption of any loan on a mobile home or recreational vehicle that has a lien filed upon the vehicle with the motor vehicle division of the taxation and revenue department shall obtain written consent from the lien holder approving transferee's assumption of transferor's obligation to the lien holder within ten days of the transaction before the transaction is entered into, provided that the lien holder's written consent shall not unreasonably be withheld. Failure to do so constitutes an improper sale, disposal, removal or concealing of encumbered property, which is punishable as a petty misdemeanor.

C. Whoever commits improper sale, disposal, removal or concealing of encumbered property when the value of the property is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

D. Whoever commits improper sale, disposal, removal or concealing of encumbered property when the value of the property is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

E. Whoever commits improper sale, disposal, removal or concealing of encumbered property when the value of the property is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

F. Whoever commits improper sale, disposal, removal or concealing of encumbered property when the value of the property is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

G. Whoever commits improper sale, disposal, removal or concealing of encumbered property when the value of the property exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

History: 1953 Comp., § 40A-16-18, enacted by Laws 1963, ch. 303, § 16-18; 1977, ch. 281, § 1; 1987, ch. 121, § 7; 2006, ch. 29, § 9.

30-16-19. [Shoplifting;] definitions.

As used in Sections 40A-16-19 through 40A-16-23 [40A-16-22] New Mexico Statutes Annotated, 1953 Compilation [30-16-19 to 30-16-23 NMSA 1978]:

A. "store" means a place where merchandise is sold or offered to the public for sale at retail;

B. "merchandise" means chattels of any type or description regardless of the value offered for sale in or about a store; and

C. "merchant" means any owner or proprietor of any store, or any agent, servant or employee of the owner or proprietor.

History: 1953 Comp., § 40A-16-19, enacted by Laws 1965, ch. 5, § 1.

30-16-20. Shoplifting; aggravated shoplifting.

A. Shoplifting consists of one or more of the following acts:

(1) willfully taking possession of merchandise with the intention of converting it without paying for it;

(2) willfully concealing merchandise with the intention of converting it without paying for it;

(3) willfully altering a label, price tag or marking upon merchandise with the intention of depriving the retailer of all or some part of the value of it; or

(4) willfully transferring merchandise from the container in or on which it is displayed to another container with the intention of depriving the retailer of all or some part of the value of it.

B. Whoever commits shoplifting when the value of the merchandise shoplifted:

(1) is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor;

(2) is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor;

(3) is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony;

(4) is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony; or

(5) is more than twenty thousand dollars ($20,000) is guilty of a second degree felony.

C. Charges under this section shall be based on the aggregated retail market value of merchandise shoplifted from a single retailer at a single location in an amount specified in Subsection B of this section. Conduct that may form the basis for a charge under this section may be used or considered for an organized retail crime offense pursuant to Section 2 [30-16-20.1 NMSA 1978] of this 2023 act; provided that an individual charged with both a violation of this section and organized retail crime shall not be punished for both offenses.

D. When an individual has engaged in shoplifting more than once over a ninety-day period, whether committed at one or more retailers, the prosecution may charge the individual under this section based on either the aggregated retail market value of merchandise shoplifted from a single retailer at a single location or in a single charge based on the aggregated retail market value of merchandise shoplifted. Venue for prosecutions based on an aggregated retail market value of merchandise stolen shall be proper in any county in which merchandise was shoplifted.

E. Aggravated shoplifting consists of unlawfully assaulting or striking at another with a deadly weapon immediately after an act of shoplifting in order to retain possession of stolen property or to effect an escape from the scene of an act of shoplifting. Whoever commits aggravated shoplifting is guilty of a third degree felony.

F. As used in this section:

(1) "aggregated retail market value" means the total combined value of all merchandise involved at the price at which the merchandise would ordinarily be sold by the retailer with the legitimate sale or distribution of the item; and

(2) "retailer" means a person or business that sells or facilitates the sale of merchandise to the public for use or consumption rather than for resale.

History: 1953 Comp., § 40A-16-20, enacted by Laws 1965, ch. 5, § 2; 1969, ch. 24, § 1; 1987, ch. 121, § 8; 2006, ch. 29, § 10; 2023, ch. 194, § 1.

30-16-20.1. Organized retail crime; penalties.

A. A person who commits any of the following acts is guilty of organized retail crime:

(1) acts in concert with one or more persons to steal merchandise with an aggregated retail market value of two thousand five hundred dollars ($2,500) or more from one or more retailers over the span of one year with the intent to sell, exchange or return the merchandise for value;

(2) acts in concert with one or more persons to receive, purchase or possess merchandise with an aggregated retail market value of two thousand five hundred dollars ($2,500) or more over the span of one year, knowing or believing it to have been stolen;

(3) acts as an agent of another individual or group of individuals to steal merchandise with an aggregated retail market value of two thousand five hundred dollars ($2,500) or more from one or more retailers over the span of one year as part of an organized plan to commit theft; or

(4) recruits, coordinates, organizes, supervises, directs, manages or finances another to undertake any of the acts described in this section or any other statute defining theft of merchandise.

B. Venue shall be proper in any county in which merchandise is stolen.

C. Whoever commits organized retail crime is guilty of a second degree felony.

D. As used in this section:

(1) "aggregated retail market value" means the total combined value of all merchandise involved at the price at which the merchandise would ordinarily be sold by the retailer with the legitimate sale or distribution of the item; and

(2) "retailer" means a person or business that sells or facilitates the sale of merchandise to the public for use or consumption rather than for resale.

History: Laws 2023, ch. 194, § 2.

30-16-21. Civil liability of adult shoplifter; penalty.

Any person who has reached the age of majority and who has been convicted of shoplifting under Section 30-16-20 NMSA 1978, may be civilly liable for the retail value of the merchandise, punitive damages of not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250), costs of the suit and reasonable attorney's fees. However, the merchant shall not be entitled to recover damages for the retail value of any recovered undamaged merchandise.

History: 1953 Comp., § 40A-16-20.1, enacted by Laws 1977, ch. 104, § 1.

30-16-22. Presumptions created.

Any person who willfully conceals merchandise on his person or on the person of another or among his belongings or the belongings of another or on or outside the premises of the store shall be prima facie presumed to have concealed the merchandise with the intention of converting it without paying for it. If any merchandise is found concealed upon any person or among his belongings it shall be prima facie evidence of willful concealment.

History: 1953 Comp., § 40A-16-21, enacted by Laws 1965, ch. 5, § 3.

30-16-23. Reasonable detention.

If any law enforcement officer, special officer or merchant has probable cause for believing that a person has willfully taken possession of any merchandise with the intention of converting it without paying for it, or has willfully concealed merchandise, and that he can recover the merchandise by detaining the person or taking him into custody, the law enforcement officer, special officer or merchant may, for the purpose of attempting to affect [effect] a recovery of the merchandise, take the person into custody and detain him in a reasonable manner for a reasonable time. Such taking into custody or detention shall not subject the officer or merchant to any criminal or civil liability.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the crime of shoplifting. Any merchant who causes such an arrest shall not be criminally or civilly liable if he has probable cause for believing the person so arrested has committed the crime of shoplifting.

History: 1953 Comp., § 40A-16-22, enacted by Laws 1965, ch. 5, § 4.

30-16-24. Repealed.

30-16-24.1. Theft of identity; obtaining identity by electronic fraud.

A. Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another or with the intent to sell or distribute the information to another for an illegal purpose.

B. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

C. As used in this section:

(1) "fraudulent electronic communication" means a communication by a person that is an electronic mail message, web site or any other use of the internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or state agency, to which the person has no legitimate claim of right;

(2) "personal identifying information" means information that alone or in conjunction with other information identifies a person, including the person's name, address, telephone number, driver's license number, social security number, date of birth, biometric data, place of employment, mother's maiden name, demand deposit account number, checking or savings account number, credit card or debit card number, personal identification number, electronic identification code, automated or electronic

signature, passwords or any other numbers or information that can be used to obtain access to a person's financial resources, obtain identification, act as identification or obtain goods or services; and

(3) "biometric data" means data, such as finger, voice, retina or iris prints or deoxyribonucleic acid, that capture, represent or enable the reproduction of unique physical attributes of a person.

D. Whoever commits theft of identity is guilty of a fourth degree felony.

E. Whoever commits obtaining identity by electronic fraud is guilty of a fourth degree felony.

F. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

G. In a prosecution brought pursuant to this section, the theft of identity or obtaining identity by electronic fraud shall be considered to have been committed in the county:

(1) where the person whose identifying information was appropriated, obtained or sought resided at the time of the offense; or

(2) in which any part of the offense took place, regardless of whether the defendant was ever actually present in the county.

H. A person found guilty of theft of identity or of obtaining identity by electronic fraud shall, in addition to any other punishment, be ordered to make restitution for any financial loss sustained by a person injured as the direct result of the offense. In addition to out-of-pocket costs, restitution may include payment for costs, including attorney fees, incurred by that person in clearing the person's credit history, credit rating, criminal history or criminal charges or costs incurred in connection with a legal proceeding to satisfy a debt, lien, judgment or other obligation of that person arising as a result of the offense.

I. The sentencing court shall issue written findings of fact and may issue orders as are necessary to correct public records and errors in credit reports and identifying information that contain false information as a result of the theft of identity or of obtaining identity by electronic fraud.

History: Laws 2001, ch. 138, § 1; 2005, ch. 296, § 1; 2009, ch. 95, § 3.

30-16-25. Credit cards; definitions.

As used in Sections 30-16-25 through 30-16-38 NMSA 1978:

A. "cardholder" means the person or organization identified on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer;

B. "credit card" means:

(1) any instrument or device, whether known as a credit card, credit plate, charge card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in consideration of an undertaking or guarantee by the issuer of the payment of a check drawn by the cardholder; or

(2) a credit card account number;

C. "expired credit card" means a credit card which shows on its face that it is outdated;

D. "issuer" means the business organization or financial institution, or its duly authorized agent, which issues a credit card;

E. "participating party" means a business organization, or financial institution, other than the issuer, which acquires for value a sales slip or agreement;

F. "sales slip or agreement" means any writing evidencing a credit card transaction;

G. "merchant" means every person who is authorized by an issuer or a participating party to furnish money, goods, services or anything else of value upon presentation of a credit card by a cardholder;

H. "incomplete credit card" means a credit card upon which a part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder, has not been stamped, embossed, imprinted or written on it;

I. "revoked credit card" means a credit card for which the permission to use has been suspended or terminated by the issuer, and notice thereof has been given to the cardholder; and

J. "anything of value" includes money, goods and services.

History: 1953 Comp., § 40A-16-24, enacted by Laws 1971, ch. 239, § 1; 1999, ch. 17, § 1.

30-16-26. Theft of a credit card by taking or retaining possession of card taken.

A person who takes a credit card from the person, possession, custody or control of another without the cardholder's consent, or who with knowledge that it has been so taken, acquires or possesses a credit card with the intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder, is guilty of a fourth degree felony. Taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick, embezzlement or obtaining property by false pretense, false promise or extortion.

History: 1953 Comp., § 40A-16-25, enacted by Laws 1971, ch. 239, § 2.

30-16-27. Possession of a credit card stolen, lost, mislaid or delivered by mistake.

A person other than the issuer who receives or possesses a credit card that he knows or has reason to know to have been stolen, lost, mislaid or delivered under a mistake as to the identity or address of the cardholder, and who retains possession thereof with the intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder, is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-16-26, enacted by Laws 1971, ch. 239, § 3.

30-16-28. Fraudulent transfer or receipt of a credit card.

A person other than the issuer, or his authorized agent, who, with intent to defraud, transfers possession of a credit card to a person other than the person whose name appears thereon, or a person who with intent to defraud receives possession of a credit card issued in the name of a person other than himself from a person other than the issuer, or his authorized agent, is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-27, enacted by Laws 1971, ch. 239, § 4.

30-16-29. Fraudulent taking, receiving or transferring credit cards.

Any person who, with intent to defraud, receives, sells or transfers a credit card by making, directly or indirectly, any false statement of a material fact, either orally or in writing, respecting his identity or financial condition or that of any other person, firm or corporation, is guilty of a misdemeanor.

History: 1953 Comp., § 40A-16-29, enacted by Laws 1971, ch. 239, § 5.

30-16-30. Dealing in credit cards of another.

Any person, other than the issuer, who possesses, receives, sells or transfers four or more credit cards, issued in a name or names other than his own in violation of Sections

[Section] 30-16-26 or 30-16-27 or 30-16-28 or 30-16-29 NMSA 1978 is guilty of a third degree felony.

History: 1953 Comp., § 40A-16-30, enacted by Laws 1971, ch. 239, § 6.

30-16-31. Forgery of a credit card.

A person who, with intent to defraud a purported issuer, or a person or organization providing money, goods, services or anything else of value, or any other person, makes or embosses a purported credit card, or alters such a credit card, without the consent of the issuer, is guilty of a fourth degree felony. A person "makes" a credit card when he makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or when he alters a credit card which was validly issued. A person "embosses" a credit card when, without the authorization of the named issuer, he completes a credit card by adding any other matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

History: 1953 Comp., § 40A-16-31, enacted by Laws 1971, ch. 239, § 7.

30-16-32. Fraudulent signing of credit cards or sales slips or agreements.

Any person, other than a cardholder, or a person authorized by him, who, with intent to defraud, signs the name of another, or of a fictitious person, to a credit card or to a sales slip or agreement is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-32, enacted by Laws 1971, ch. 239, § 8.

30-16-33. Fraudulent use of a credit card.

A. Fraudulent use of a credit card consists of a person obtaining anything of value, with intent to defraud, by using:

(1) a credit card obtained in violation of Sections 30-16-25 through 30-16-38 NMSA 1978;

(2) a credit card that is invalid, expired or revoked;

(3) a credit card while fraudulently representing that the person is the cardholder named on the credit card or an authorized agent or representative of the cardholder named on the credit card; or

(4) a credit card issued in the name of another person without the consent of the person to whom the card has been issued.

B. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is two hundred fifty dollars ($250) or less in any consecutive six-month period is guilty of a petty misdemeanor.

C. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) in any consecutive six-month period is guilty of a misdemeanor.

D. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) in any consecutive six-month period is guilty of a fourth degree felony.

E. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) in any consecutive six-month period is guilty of a third degree felony.

F. Whoever commits fraudulent use of a credit card when the value of the property or service obtained is over twenty thousand dollars ($20,000) in any consecutive six-month period is guilty of a second degree felony.

History: 1953 Comp., § 40A-16-33, enacted by Laws 1971, ch. 239, § 9; 2006, ch. 29, § 11.

30-16-34. Fraudulent acts by merchants or their employees.

A. A merchant or the employee of a merchant commits fraud if, with intent to defraud, the merchant or employee furnishes or allows to be furnished anything of value upon presentation of a credit card:

(1) obtained or retained in violation of Sections 30-16-25 through 30-16-38 NMSA 1978;

(2) fraudulently made or embossed;

(3) fraudulently signed;

(4) that the merchant or employee knows is invalid, expired or revoked; or

(5) by a person whom the merchant or employee knows is not the cardholder named on the credit card or an authorized agent or representative of the cardholder named on the credit card.

B. When the value of anything furnished by a merchant, or by an employee of a merchant, in violation of this section:

(1) is two hundred fifty dollars ($250) or less in any consecutive six-month period, the offense is a petty misdemeanor;

(2) is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) in any consecutive six-month period, the offense is a misdemeanor;

(3) is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) in any consecutive six-month period, the offense is a fourth degree felony;

(4) is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) in any consecutive six-month period, the offense is a third degree felony; or

(5) is more than twenty thousand dollars ($20,000) in any consecutive six-month period, the offense is a second degree felony.

C. A merchant or the employee of a merchant commits fraud if, with intent to defraud, the merchant or employee fails to furnish anything of value that the merchant or employee represents in writing to the issuer or to a participating party that the merchant or employee has furnished on a credit card or cards of the issuer. When the difference between the value of anything actually furnished to a person and the value represented by the merchant to the issuer or participating party:

(1) is two hundred fifty dollars ($250) or less in any consecutive six-month period, the offense is a petty misdemeanor;

(2) is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) in any consecutive six-month period, the offense is a misdemeanor;

(3) is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) in any consecutive six-month period, the offense is a fourth degree felony;

(4) is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) in any consecutive six-month period, the offense is a third degree felony; or

(5) is more than twenty thousand dollars ($20,000) in any consecutive six-month period, the offense is a second degree felony.

History: 1953 Comp., § 40A-16-34, enacted by Laws 1971, ch. 239, § 10; 2006, ch. 29, § 12.

30-16-35. Possession of incomplete credit cards or machinery, plates or other contrivance.

A. Any person who possesses an incomplete credit card, with intent to defraud, is guilty of a misdemeanor. Possession of four or more incomplete credit cards, with intent to defraud, is a fourth degree felony.

B. Any person, who with intent to defraud, possesses machinery, plates or any other contrivance designed to reproduce instruments purporting to be credit cards of an issuer who has not consented to the preparation of such credit cards, is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-35, enacted by Laws 1971, ch. 239, § 11.

30-16-36. Receipt of property obtained in violation of act.

A person who receives money, goods, services or anything else of value obtained in violation of Section 30-16-33 NMSA 1978, and who knows or has reason to believe that it was so obtained, violates this section. The degree of the offense is determined as follows:

A. when the value of all things of value obtained from a person in violation of this section is two hundred fifty dollars ($250) or less in any consecutive six-month period, then the offense is a petty misdemeanor;

B. when the value of all things of value obtained from a person in violation of this section is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) in any consecutive six-month period, then the offense is a misdemeanor;

C. when the value of all things of value obtained from a person in violation of this section is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) in any consecutive six-month period, then the offense is a fourth degree felony;

D. when the value of all things of value obtained from a person in violation of this section is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) in any consecutive six-month period, then the offense is a third degree felony; or

E. when the value of all things of value obtained from a person in violation of this section is more than twenty thousand dollars ($20,000) in any consecutive six-month period, then the offense is a second degree felony.

History: 1953 Comp., § 40A-16-36, enacted by Laws 1971, ch. 239, § 12; 2006, ch. 29, § 13.

30-16-37. Obtaining fraudulently acquired transportation ticket at a discount.

Any person who obtains, at a discount price, a ticket issued by an airline, railroad, steamship or other transportation company, which ticket was acquired in violation of Section 30-16-33 NMSA 1978, without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it, shall be presumed to know that the ticket was acquired under circumstances constituting a violation of Section 30-16-33 NMSA 1978, and shall be guilty of a fourth degree felony.

History: 1953 Comp., § 40A-16-37, enacted by Laws 1971, ch. 239, § 13.

30-16-38. Applicability of other laws.

The provisions of Sections 30-16-25 through 30-16-38 NMSA 1978 shall not be construed to preclude the applicability of any other provision of the criminal law of this state or any municipality thereof that presently applies or may in the future apply to any transaction that violates the cited provisions, unless the other state or municipal law is inconsistent with the terms of the cited provisions.

History: 1953 Comp., § 40A-16-38, enacted by Laws 1971, ch. 239, § 14.

30-16-39. Fraudulent acts to obtain or retain possession of rented or leased vehicle or other personal property; penalty.

A person who rents or leases a vehicle or other personal property and obtains or retains possession of it by means of any false or fraudulent representation, fraudulent concealment, false pretense, trick, artifice or device, including a false representation as to the person's name, residence, employment or operator's license, is guilty of a:

A. petty misdemeanor if the vehicle or property has a value of two hundred fifty dollars ($250) or less;

B. misdemeanor if the vehicle or property has a value of over two hundred fifty dollars ($250) but not more than five hundred dollars ($500);

C. fourth degree felony if the property or vehicle has a value of over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500);

D. third degree felony if the property or vehicle has a value of over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000); and

E. second degree felony if the property or vehicle has a value of over twenty thousand dollars ($20,000).

History: 1953 Comp., § 40A-16-39, enacted by Laws 1972, ch. 23, § 1; 1979, ch. 251, § 1; 2006, ch. 29, § 14.

30-16-40. Fraudulent refusal to return a leased vehicle or other personal property; penalty; presumption.

A. A person who, after leasing a vehicle or other personal property under a written agreement that provides for the return of the vehicle or personal property to a particular place at a particular time and who, with intent to defraud the lessor of the vehicle or personal property, fails to return the vehicle or personal property to the place within the time specified, is guilty of a:

(1) petty misdemeanor if the property or vehicle has a value of two hundred fifty dollars ($250) or less;

(2) misdemeanor if the property or vehicle has a value of over two hundred fifty dollars ($250) but not more than five hundred dollars ($500);

(3) fourth degree felony if the property or vehicle has a value of over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500);

(4) third degree felony if the property or vehicle has a value of over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000); and

(5) second degree felony if the property or vehicle has a value of over twenty thousand dollars ($20,000).

B. Failure of the lessee to return the vehicle or personal property to the place specified within seventy-two hours after mailing to the lessee by certified mail at the lessee's address shown on the leasing agreement a written demand to return the vehicle or personal property shall raise a rebuttable presumption that the failure to return the vehicle or personal property was with intent to defraud.

History: 1953 Comp., § 40A-16-40, enacted by Laws 1973, ch. 154, § 1; 1979, ch. 251, § 2; 1998, ch. 67, § 1; 2006, ch. 29, § 15.

30-16-41. Repealed.

30-16-42. Repealed.

30-16-43. Repealed.

30-16-44. Repealed.

30-16-45. Repealed.

30-16-46. Legislative finding.

The legislature finds that thefts of crude petroleum oil are a significant problem in this state, and that due to the fungible nature of the product and difficulty of identification and apprehension, extraordinary measures are necessary.

History: Laws 1981, ch. 257, § 1.

30-16-47. Documentation required.

A. Any person in possession of crude petroleum oil or any sediment, water or brine produced in association with the production of oil or gas or both for transportation by motor vehicle from or to storage, disposal, processing or refining must also possess specific documentation required by regulation of the oil conservation division of the energy and minerals department, hereinafter in this act [30-16-46 to 30-16-48 NMSA 1978] called "division," which substantiates his right to be in possession of the estimated volume of crude petroleum oil carried in that vehicle. The regulation shall require the documentation to include:

(1) the identity of the operator and the location of the lease from which the crude petroleum oil or any sediment, water or brine produced in association with the production of oil or gas or both, if it is purportedly being transported from a lease; and

(2) the identity of the operator of and the location of the storage facility from which or to which the crude petroleum oil or any sediment, water or brine produced in association with the production of oil or gas or both is being transported; and

(3) the identity of the operator of and the location of the disposal, processing or refining facility to which the crude petroleum oil or any sediment, water or brine produced in association with the production of oil or gas or both is being transported; and

(4) the estimated percentage of crude petroleum oil in the sediment, water or brine produced in association with the production of oil or gas or both, which is being transported; or

(5) the volume of crude petroleum oil being transported; and

(6) any additional information the division finds necessary or convenient.

B. Any person who stores, processes, disposes of or refines any volume of crude petroleum oil must possess specific documentation as prescribed by regulation of the division which substantiates his right to be in possession of the volume of crude petroleum oil he possesses or in possession of an amount of crude petroleum oil which could reasonably justify the amount of processed or refined products produced by him from crude petroleum oil, and in his possession or sold by him.

History: Laws 1981, ch. 257, § 2.

30-16-48. Penalty; further investigation.

Any person who is found within any geographical area of the state designated by regulation of the division as a crude petroleum oil producing area, in possession of crude petroleum oil, sediment, water or brine produced in association with the production of oil or gas or both, which contains crude petroleum oil, and does not, on a reasonable request of any state police officer or other law enforcement officer as defined in Section 29-7-9 NMSA 1978, produce the required documentation for examination and inspection is guilty of a misdemeanor. If the documentation is produced but differs substantially from the load the transporter is carrying, or differs substantially from crude petroleum oil or processed or refined products produced by him from crude petroleum oil, and in his possession or sold by him, it shall be substantial evidence supporting further investigation by such officer or agent of possible theft of crude petroleum oil.

History: Laws 1981, ch. 257, § 3.

ARTICLE 16A
Computer Crimes (Repealed.)

30-16A-1. Repealed.

30-16A-2. Repealed.

30-16A-3. Repealed.

30-16A-4. Repealed.

ARTICLE 16B
Unauthorized Recording

30-16B-1. Short title.

Sections 1 through 9 [30-16B-1 to 30-16B-9 NMSA 1978] of this act may be cited as the "Unauthorized Recording Act".

History: Laws 1991, ch. 112, § 1.

30-16B-2. Definitions.

As used in the Unauthorized Recording Act:

A. "audiovisual recording" means a recording on which images, including images accompanied by sound, are recorded or otherwise stored, including motion picture film, video cassette, video tape, video disc, other recording mediums or a copy that duplicates in whole or in part the original, but does not include recordings produced by an individual for personal use that are not commercially distributed for profit;

B. "fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the owner, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration;

C. "live performance" means a recitation, rendering or playing of a series of images, musical, spoken or other sounds, or a combination of images and sounds;

D. "manufacturer" means any person who actually transfers or causes the transfer of a recording, or assembles and transfers any product containing any recording as a component thereof, but does not include the manufacturer of a cartridge or casing for a recording;

E. "owner" means a person who owns the sounds or images fixed in a master phonograph record, master disc, master tape, master film or other recording on which sound or image is or can be recorded and from which the transferred recorded sounds or images are directly or indirectly derived;

F. "person" means any individual, firm, partnership, corporation, association or other entity;

G. "recording" means a tangible medium on which sounds, images or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio cassette or videocassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original;

H. "tangible medium of expression" means the material object on which sounds, images or a combination of both are fixed by any method now known or later developed, and from which the sounds, images or combination of both can be

perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device; and

I. "transfer" means to duplicate a recording from one tangible medium of expression to another recording.

History: Laws 1991, ch. 112, § 2.

30-16B-3. Unauthorized recording; prohibited act; penalties.

A. It is unlawful for any person to:

(1) knowingly transfer for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(2) transport within this state for commercial advantage or private financial gain a recording with the knowledge that the sounds have been transferred without the consent of the owner; or

(3) advertise or offer for sale, sell, rent or cause the sale, resale or rental of or possess for one or more of these purposes any recording that the person knows has been transferred without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

(1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1991, ch. 112, §3; 2005, ch. 248, § 1.

30-16B-4. Required labeling; penalties.

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale or resale, sell, resell, lease or possess for any of these purposes any recording that the person knows does not contain the true name of the manufacturer in a prominent place on the cover, jacket or label of the recording.

B. Any person violating the provisions of Subsection A of this section:

(1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History: Laws 1991, ch. 112, § 4; 2005, ch. 248, § 2.

30-16B-5. Unauthorized recording of live performances; penalties.

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance that has been recorded or fixed without the consent of the owner.

B. Any person violating the provisions of Subsection A of this section:

(1) when the offense involves seven or more unauthorized recordings embodying sound or seven or more audiovisual recordings, at any one time, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) when the offense involves fewer than seven unauthorized recordings embodying sound or fewer than seven audiovisual recordings, at any one time, is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. In the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix those sounds.

D. For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

History: Laws 1991, ch. 112, § 5; 2005, ch. 248, § 3.

30-16B-6. Exemptions.

The provisions of the Unauthorized Recording Act do not apply to:

A. any radio or television broadcaster who transfers any recording as part of, or in connection with, a radio or television broadcast transmission or for archival preservation;

B. any recording defined as a public record of any court, legislative body or proceedings of a public body, whether or not a fee is charged or collected for copies; or

C. any person who transfers a recording for his personal use and who does not derive any commercial advantage or private financial gain from the transfer.

History: Laws 1991, ch. 112, § 6.

30-16B-7. Construction.

Nothing in the Unauthorized Recording Act shall enlarge or diminish the rights of parties in private litigation.

History: Laws 1991, ch. 112, § 7.

30-16B-8. Forfeitures; property subject.

Pursuant to the provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978], the following are subject to forfeiture:

A. all equipment, devices or articles that have been produced, reproduced, manufactured, distributed, dispensed or acquired in violation of the Unauthorized Recording Act;

B. all devices, materials, products and equipment of any kind that are used or intended for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting any item set forth in and in violation of the Unauthorized Recording Act;

C. all books, business records, materials and other data that are used or intended for use in violation of Section 30-16B-3, 30-16B-4 or 30-16B-5 NMSA 1978; and

D. money or negotiable instruments that are the fruit or instrumentality of the crime.

History: Laws 1991, ch. 112, § 8; 2015, ch. 152, § 16.

30-16B-9. Forfeiture; procedure.

The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture under the Unauthorized Recording Act.

History: Laws 1991, ch. 112, § 9; 2002, ch. 4, § 13.

ARTICLE 16C
Unauthorized Theater Recording

30-16C-1. Unlawful operation of an audiovisual recording device.

A. Unlawful operation of an audiovisual recording device consists of a person knowingly operating an audiovisual recording device to record or transmit a motion picture in a motion picture theater without the consent of the motion picture theater owner or manager while a motion picture is being exhibited.

B. A person who commits unlawful operation of an audiovisual recording device is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. The owner, manager or lessee of a motion picture theater or an agent or employee of the owner, manager or lessee who alerts law enforcement authorities that an alleged violation of Subsection A of this section is taking place is not liable in any civil action arising from the detention of the person alleged to be operating or to have operated the audiovisual recording device when the owner, manager or lessee or an agent or employee of the owner, manager or lessee is acting in good faith, unless the plaintiff can show by a preponderance of the evidence that the detention measures were unreasonable or the period of detention was unreasonably long.

D. This section does not prevent law enforcement personnel from operating an audiovisual recording device in a motion picture theater as part of a lawfully authorized investigation.

E. Nothing in this section prevents prosecution under any other statutes.

F. As used in this section:

(1) "audiovisual recording device" means a device capable of recording or transmitting a motion picture or any part of a motion picture by means of any technology; and

(2) "motion picture theater" means a movie theater, screening room or other venue used primarily for the exhibition of motion pictures.

History: Laws 2006, ch. 79, § 1.

ARTICLE 16D
Unlawful Taking of a Vehicle or Motor Vehicle

30-16D-1. Unlawful taking of a vehicle or motor vehicle.

A. Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] intentionally and without consent of the owner. Whoever commits unlawful taking of a vehicle or motor vehicle is guilty of a felony as provided in Section 30-16D-4.1 NMSA 1978.

B. The consent of the owner of the vehicle or motor vehicle to its taking shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking of the vehicle or motor vehicle by the same or a different person.

C. Nothing in this section shall be construed to prohibit the holder of a lien duly recorded with the motor vehicle division of the taxation and revenue department from taking possession of a vehicle to which possession the lienholder is legally entitled under the provisions of the instrument evidencing the lien. A holder of a duly recorded lien who takes possession of a vehicle without the knowledge of the owner of the vehicle shall immediately notify the local police authority of the fact that the holder has taken possession of the vehicle.

History: 1953 Comp., § 64-3-504, enacted by Laws 1978, ch. 35, § 91; 1998, ch. 67, § 2; § 66-3-504 NMSA 1978 recompiled and amended as § 30-16D-1 by Laws 2009, ch. 253, § 1 and 2009, ch. 261, § 1; 2025, ch. 4, § 11.

30-16D-2. Embezzlement of a vehicle or motor vehicle.

A. Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978], with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle or motor vehicle.

B. Whoever commits embezzlement of a vehicle or motor vehicle is guilty of a felony as provided in Section 30-16D-4.1 NMSA 1978.

History: Laws 2009, ch. 253, § 2; 2009, ch. 261, § 2; 2025, ch. 4, § 12.

30-16D-3. Fraudulently obtaining a vehicle or motor vehicle.

A. Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] that belongs to another person by means of fraudulent conduct, practices or representations.

B. Whoever commits fraudulently obtaining a vehicle or motor vehicle is guilty of a felony as provided in Section 30-16D-4.1 NMSA 1978.

History: Laws 2009, ch. 253, § 3; 2009, ch. 261, § 3; 2025, ch. 4, § 13.

30-16D-4. Receiving or transferring stolen vehicles or motor vehicles.

A. Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken. This section shall not apply to an officer of the law engaged at the time in the performance of the officer's duty as an officer.

B. Whoever commits receiving or transferring a stolen vehicle or motor vehicle is guilty of a felony as provided in Section 30-16D-4.1 NMSA 1978.

History: 1953 Comp., § 64-3-505, enacted by Laws 1978, ch. 35, § 92; 1978 Comp., § 66-3-505, recompiled and amended as § 30-16D-4 by Laws 2009, ch. 253, § 4 and 2009, ch. 261, § 4; 2025, ch. 4, § 14.

30-16D-4.1. Penalties.

A. Whoever violates any of the provisions described in Sections 30-16D-1 through 30-16D-4 NMSA 1978 is guilty of a:

(1) fourth degree felony for a first offense;

(2) third degree felony for a second offense, regardless of which provision was the first offense; and

(3) second degree felony for a third or subsequent offense, regardless of which provision was the first or second offense.

B. A defendant who violates multiple provisions described in Sections 30-16D-1 through 30-16D-4 NMSA 1978 with a single vehicle shall be determined to have committed a single offense for purposes of this section.

History: 1978 Comp., § 30-16D-4.1, enacted by Laws 2025, ch. 4, § 15.

30-16D-5. Injuring or tampering with a motor vehicle.

A. Injuring or tampering with a motor vehicle consists of a person, individually or in association with another person:

(1) purposely and without authority from the owner starting or causing to be started the engine of any motor vehicle;

(2) purposely and maliciously shifting or changing the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of the motor vehicle;

(3) purposely scratching or damaging the chassis, running gear, body, sides, top covering or upholstering of a motor vehicle that is the property of another;

(4) purposely destroying any part of a motor vehicle or purposely cutting, mashing or marking or in any other way destroying or damaging any part, attachment, fastening or appurtenance of a motor vehicle without the permission of the owner;

(5) purposely draining or starting the drainage of any radiator, oil tank or gas tank upon a motor vehicle without the permission of the owner;

(6) purposely putting any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage or impede the working of the machinery of the motor vehicle;

(7) maliciously tightening or loosening any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or

(8) purposely releasing the brake upon a standing motor vehicle with the intent to injure the motor vehicle.

B. Whoever commits injuring or tampering with a motor vehicle is guilty of a misdemeanor.

C. As used in this section, "motor vehicle" means a motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978].

History: 1953 Comp., § 64-3-506, enacted by Laws 1978, ch. 35, § 93; § 66-3-506 NMSA 1978 recompiled and amended as § 30-16D-5 by Laws 2009, ch. 253, § 5 and Laws 2009, ch. 261, § 5.

30-16D-6. Altering or changing engine or other numbers.

A. No person shall, with fraudulent intent, deface, remove, cover, destroy or alter the manufacturer's serial number, engine number, decal or other distinguishing number or identification mark or number placed under assignment of the motor vehicle division of the taxation and revenue department of a vehicle required to be registered under the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] or any vehicle, motor vehicle or motor vehicle engine or component as defined by the Motor Vehicle Code for

which a dismantler's notification form has been processed through the division, nor shall any person place or stamp any serial, engine, decal or other number or mark upon the vehicle except one assigned by the division. Any violation of this section is a fourth degree felony.

B. This section shall not prohibit the restoration by an owner of an original serial, engine, decal or other number or mark when the restoration is made under permit issued by the division nor prevent any manufacturer from placing, in the ordinary course of business, numbers, decals or marks upon vehicles or parts thereof.

History: 1953 Comp., § 64-3-508, enacted by Laws 1978, ch. 35, § 95; 1978 Comp., § 66-3-508, recompiled and amended as § 30-16D-6 by Laws 2009, ch. 253, § 6 and Laws 2009, ch. 261, § 6.

30-16D-7. Operating a chop shop; penalty.

A. Operating a chop shop consists of a person owning, operating, maintaining, controlling or conducting operations in a chop shop, who knows or should have known that it is a chop shop.

B. Whoever commits operating a chop shop is guilty of a third degree felony.

C. As used in this section:

(1) "chop shop" means a premises where a person possesses, receives, stores, disassembles or alters an unlawfully obtained motor vehicle or vehicle as defined in the Motor Vehicle Code [66-1-1 NMSA 1978], including the alteration or concealment of any identifying feature or number, including the manufacturer's serial number, engine number, decal or other distinguishing number or identification mark or number placed under assignment of the motor vehicle division of the taxation and revenue department; and

(2) "unlawfully obtained" means obtained by theft, fraud or deceit or obtained without the permission of the owner.

D. Nothing in this section shall be construed to preclude a claim made pursuant to any other section of law.

History: Laws 2022, ch. 56, § 49.

ARTICLE 17
Fire

30-17-1. Improper handling of fire.

Improper handling of fire consists of:

A. setting fire, or causing or procuring a fire to be set to any inflammable vegetation or forest material, growing or being on the lands of another person and without the permission of the owner thereof;

B. allowing fire to escape or spread from the control of the person having charge thereof without using reasonable and proper precaution to prevent such fire from escaping or spreading;

C. burning any inflammable vegetation or forest material, whether upon his own land or that of another person, without using proper and reasonable precaution at all times to prevent the escape of such fire;

D. leaving any campfire burning and unattended upon the lands of another person; or

E. causing a fire to be started in any inflammable vegetation or forest material, growing or being upon the lands of another person, by means of any lighted cigar, cigarette, match or other manner, and leaving such fire unquenched.

Provided, nothing herein shall constitute improper handling of fire where the fire is a backfire set for the purpose of stopping the progress of a fire then actually burning.

Whoever commits improper handling of fire is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-17-1, enacted by Laws 1963, ch. 303, § 17-1.

30-17-2. Use of an engine without spark arrester.

Use of an engine without spark arrester consists of using or operating any locomotive, logging engine, portable engine, traction engine or stationary engine using any combustible fuel when such engine is not provided with an adequate spark arrester kept in constant use and repair.

Escape of fire or live sparks from any engine shall be prima facie evidence that such engine has not been adequately equipped with a spark arrester in compliance with this section.

Whoever commits use of an engine without spark arrester is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-17-2, enacted by Laws 1963, ch. 303, § 17-2.

30-17-3. Repealed.

30-17-4. Repealed.

30-17-5. Arson and negligent arson.

A. Arson consists of a person maliciously or willfully starting a fire or causing an explosion with the purpose of destroying or damaging:

(1) a building, occupied structure or property of another person;

(2) a bridge, utility line, fence or sign; or

(3) any property, whether the person's own property or the property of another person, to collect insurance for the loss.

B. Whoever commits arson when the damage is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits arson when the damage is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits arson when the damage is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits arson when the damage is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits arson when the damage is over twenty thousand dollars ($20,000) is guilty of a second degree felony.

G. Negligent arson consists of a person recklessly starting a fire or causing an explosion, whether on the person's property or the property of another person, and thereby directly:

(1) causing the death or bodily injury of another person; or

(2) damaging or destroying a building or occupied structure of another person.

H. Whoever commits negligent arson is guilty of a fourth degree felony.

I. As used in this section, "occupied structure" includes a boat, trailer, car, airplane, structure or place adapted for the transportation or storage of property, for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

History: 1953 Comp., § 40A-17-5, enacted by Laws 1970, ch. 39, § 1; 2006, ch. 29, § 16.

30-17-6. Aggravated arson.

Aggravated arson consists of the wilful [willful] or malicious damaging by any explosive substance or the wilful [willful] or malicious setting fire to any bridge, aircraft, watercraft, vehicle, pipe line [pipeline], utility line, communication line or structure, railway structure, private or public building, dwelling or other structure, causing a person great bodily harm.

Whoever commits aggravated arson is guilty of a second degree felony.

History: 1953 Comp., § 40A-17-6, enacted by Laws 1963, ch. 303, § 17-6.

ARTICLE 18
Animals

30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions.

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

(1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or

(2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

(1) humanely destroying a sick or injured animal; or

(2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

(1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;

(2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;

(3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;

(4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;

(5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;

(6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or

(7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock

board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

History: 1978 Comp., § 30-18-1, enacted by Laws 1999, ch. 107, § 1; 2001, ch. 81, § 1; 2007, ch. 6, § 1.

30-18-1.1. Seizure of animals; notice.

A. A peace officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court or the metropolitan court in the county where the animal is located for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the state for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

F. If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978.

History: Laws 1999, ch. 107, § 2.

30-18-1.2. Disposition of seized animals.

A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.

B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

C. An agent of the New Mexico livestock board, an animal control agency operated by the state, a county or a municipality, or an animal shelter or other animal welfare

organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.

D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay, and may conduct periodic reviews of its order. If the posting of security is ordered, the New Mexico livestock board, animal control agency, animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the New Mexico livestock board, animal control agency, animal shelter or animal welfare organization for adoption or humane destruction; provided that if the animal is livestock other than poultry associated with cockfighting, the animal may be sold pursuant to the procedures set forth in Section 77-18-2 NMSA 1978.

F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.

G. Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.

H. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes equines as defined in Section 77-2-1.1 NMSA 1978, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

History: Laws 1999, ch. 107, § 3; 2009, ch. 43, § 1; 2023, ch. 45, § 2.

30-18-1.3. Costs.

A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to Section 30-18-1.2 NMSA 1978. Unexpended security funds shall be returned to the defendant.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to Section 30-18-1.2 NMSA 1978.

History: Laws 1999, ch. 107, § 4; 2009, ch. 43, § 2.

30-18-2. Repealed.

30-18-2.1. Repealed.

30-18-3. Unlawful branding.

Unlawful branding consists of either:

A. branding, marking or causing to be branded or marked any animal, which is the property of another, with any brand not the brand of the owner of the animal;

B. defacing or obliterating any brand or mark upon any animal which is the property of another; or

C. using any brand unless said brand shall have been duly recorded in the office of the cattle sanitary board of New Mexico [New Mexico livestock board] or the sheep sanitary board of New Mexico [New Mexico livestock board], whichever is applicable, and the person holds a certificate from the cattle sanitary board [New Mexico livestock board] or the sheep sanitary board [New Mexico livestock board] certifying to the fact of such record.

Whoever commits unlawful branding is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-18-3, enacted by Laws 1963, ch. 303, § 18-3.

30-18-4. Unlawful disposition of animal.

Unlawful disposition of animal consists of:

A. skinning or removing without the permission of the owner any part of the hide of any neat cattle found dead;

B. abandoning any livestock without giving reasonable notice to the owner, where the livestock has been entrusted by the owner to such person for the herding, care or safekeeping upon a contract for a valuable consideration;

C. taking any livestock for use or work, without the consent of the owner;

D. driving or leading any animal being the property of another from its usual range, without the consent of the owner;

E. contracting, selling or otherwise disposing of any animal, which a person has in his possession or under his control on shares or under contract, without the consent of the owner of such animal; or

F. knowingly buying, taking or receiving from any person having in his possession, or under his control, any animal on shares or under contract, without the consent of the owner of such animal.

Whoever commits unlawful disposition of animal is guilty of a misdemeanor.

History: 1953 Comp., § 40A-18-4, enacted by Laws 1963, ch. 303, § 18-4.

30-18-5. [Illegal confinement of animals.]

Illegal confinement of animals consists of:

A. detaining for more than two (2) hours for the purpose of milking any cow, without the permission of the owner;

B. taking and detaining any bull for the purpose of improving livestock, without the consent of the owner;

C. intentionally separating offspring of livestock from the mother, unless branded. Provided that, when milk cows, which are actually used to furnish milk for household or dairy purposes, have calves, that are unbranded, such young animals may be separated from their mother and inclosed; or

D. confining, or in any manner interfering with the freedom of, or selling, or offering to sell, any freshly branded animal, unless such animal has been previously branded with an older and duly recorded brand for which the person has a legally executed bill of sale from the owner of such brand or unless such animals are with their mother, or unless such animals are the calves of milk cows when such cows are actually used to furnish milk for household purposes or for carrying on a dairy; but in every such case the person, firm or corporation, separating calves from their mother for either of these purposes shall, upon the demand of any sheriff, inspector or other officer, produce, in a reasonable time, the mother of each of such calves so that interested parties may ascertain if the cow does or does not claim and suckle such calf.

Whoever commits illegal confinement of animals is guilty of a misdemeanor.

History: 1953 Comp., § 40A-18-5, enacted by Laws 1963, ch. 303, § 18-5; 1965, ch. 3, § 1.

30-18-6. Transporting stolen livestock.

Transporting stolen livestock consists of knowingly transporting or carrying any stolen or unlawfully possessed livestock or any unlawfully possessed game animal, or any parts thereof.

Whoever commits transporting stolen livestock is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-18-6, enacted by Laws 1963, ch. 303, § 18-6.

30-18-7. Misrepresentation of pedigree.

Misrepresentation of pedigree consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any animal, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

Whoever commits misrepresentation of pedigree is guilty of a misdemeanor.

History: 1953 Comp., § 40A-18-7, enacted by Laws 1963, ch. 303, § 18-7.

30-18-8. [Killing unbranded cattle; killing, without bill of sale, cattle bearing brand of another person; penalty.]

Any person, firm or corporation, who shall kill or cause to be killed, for sale or use any unbranded neat cattle, or any cattle on which the brand has not peeled off and fully healed, unless such cattle shall have an older and duly recorded brand; or shall kill, or cause to be killed for sale or use any neat cattle having a brand not legally owned by such person, firm or corporation, without having taken a duly acknowledged bill of sale for the same from the owner thereof, shall be deemed guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-18-8, enacted by Laws 1965, ch. 7, § 1.

30-18-9. Dog fighting and cockfighting; penalty.

A. It is unlawful for any person to cause, sponsor, arrange, hold or participate in a fight between dogs or cocks for the purpose of monetary gain or entertainment. Participation in a fight between dogs or cocks for the purpose of monetary gain or entertainment consists of an adult knowingly:

(1) being present at a dog fight without attempting to interfere with or stop the contest; or

(2) owning or equipping one of the participating dogs or cocks with knowledge of the contest.

B. It is unlawful to train, equip or sponsor a dog or cock for the purpose of having it participate in a fight with another dog or cock, respectively, for monetary gain or entertainment.

C. Any person violating the provisions of Subsection A or B of this section, as it pertains to dogs, is guilty of a fourth degree felony.

D. Any person violating the provisions of Subsection A or B of this section as it pertains to cocks:

(1) upon a first conviction, is guilty of a petty misdemeanor;

(2) upon a second conviction, is guilty of a misdemeanor; and

(3) upon a third or subsequent conviction, is guilty of a fourth degree felony.

History: Laws 1981, ch. 30, § 1; 2007, ch. 6, § 2.

30-18-10. Exclusion.

Nothing in this act [30-18-9, 30-18-10 NMSA 1978] shall be construed to prohibit or make unlawful the taking of game animals, game birds or game fish by the use of dogs, provided the person so doing is licensed as provided by law and is using such dogs in a lawful manner.

History: Laws 1981, ch. 30, § 2.

30-18-11. Unlawful tripping of an equine; exception.

A. Unlawful tripping of an equine consists of intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment.

B. The provisions of Subsection A of this section do not apply to laying an equine down for medical or identification purposes.

C. As used in this section, "equine" means a horse, pony, mule, donkey or hinny.

D. Whoever commits unlawful tripping of an equine is guilty of a misdemeanor.

E. Whoever commits unlawful tripping of an equine that causes the maiming, crippling or death of the equine is guilty of a fourth degree felony.

History: Laws 1995, ch. 113, § 1.

30-18-12. Injury to livestock.

A. Injury to livestock consists of willfully and maliciously poisoning, killing or injuring livestock that is the property of another.

B. As used in this section, "livestock" means cattle, sheep, buffalo, horses, mules, goats, swine and ratites.

C. Whoever commits injury to livestock is guilty of a fourth degree felony.

History: Laws 1998, ch. 35, § 1.

30-18-13. Injury to a police dog, police horse or fire dog; harassment of a police dog, police horse or fire dog.

A. As used in this section:

(1) "fire dog" means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

(2) "police dog" means a dog used by a law enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection; and

(3) "police horse" means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.

B. Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

(1) striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

(2) throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of

the animal is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog, police horse or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog, police horse or fire dog by frightening, agitating, harassing or hindering the animal.

G. Whoever commits harassment of a police dog, police horse or fire dog is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

H. Whoever commits harassment of a police dog, police horse or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog, police horse or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures.

History: Laws 1999, ch. 107, § 5.

30-18-14. Livestock crimes; livestock inspectors to enforce.

Livestock inspectors who are certified peace officers shall enforce the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock.

History: Laws 2001, ch. 8, § 1 and Laws 2001, ch. 341, § 1.

30-18-15. Intracardiac injection prohibited on conscious animal.

A. It is unlawful for an employee or agent of an animal control service or facility, animal shelter or humane society to use intracardiac injection to administer euthanasia on a conscious animal if the animal could first be rendered unconscious in a humane manner.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

History: Laws 2004, ch. 35, § 1.

30-18-16. Coyote; killing contests prohibited; definition; penalties.

A. It is unlawful for a person to organize, cause, sponsor, arrange, hold or participate in a coyote-killing contest.

B. As used in this section, "coyote-killing contest" means an organized or sponsored competition with the objective of killing coyotes for prizes or entertainment.

C. Organizing, causing, sponsoring, arranging or holding a coyote-killing contest consists of a person knowingly:

(1) planning, organizing or enticing a person to participate in a coyote-killing contest; or

(2) providing the venue for a coyote-killing contest.

D. Participation in a coyote-killing contest consists of a person knowingly taking part in a coyote-killing contest.

E. A person who organizes, causes, sponsors, arranges or holds a coyote-killing contest is guilty of a misdemeanor.

F. A person who participates in a coyote-killing contest is guilty of a petty misdemeanor.

G. Nothing in this section shall be construed to prohibit a person from protecting a person or property or the state game commission from carrying out the statutory authority allowed by Chapter 17 NMSA 1978 in a non-coyote-killing contest setting.

History: Laws 2019, ch. 151, § 1.

ARTICLE 19
Gambling

30-19-1. Definitions relating to gambling.

As used in Chapter 30, Article 19 NMSA 1978:

A. "antique gambling device" means a gambling device manufactured before 1970 and substantially in original condition that is not used for gambling or commercial gambling or located in a gambling place;

B. "bet" means a bargain in which the parties agree that, dependent upon chance, even though accompanied by some skill, one stands to win or lose anything of value specified in the agreement. A bet does not include:

(1) bona fide business transactions that are valid under the law of contracts, including:

(a) contracts for the purchase or sale, at a future date, of securities or other commodities; and

(b) agreements to compensate for loss caused by the happening of the chance, including contracts for indemnity or guaranty and life or health and accident insurance;

(2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(3) a lottery as defined in this section; or

(4) betting otherwise permitted by law;

C. "gambling device" means a contrivance other than an antique gambling device that is not licensed for use pursuant to the Gaming Control Act [Chapter 60, Article 2E NMSA 1978] and that, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the device;

D. "gambling place" means a building or tent, a vehicle, whether self-propelled or not, or a room within any of them that is not within the premises of a person licensed as a lottery retailer or that is not licensed pursuant to the Gaming Control Act, one of whose principal uses is:

(1) making and settling of bets;

(2) receiving, holding, recording or forwarding bets or offers to bet;

(3) conducting lotteries; or

(4) playing gambling devices; and

E. "lottery" means an enterprise wherein, for a consideration, the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill. "Lottery" does not include the New Mexico state lottery established and operated pursuant to the New Mexico Lottery Act [Chapter 6, Article 24 NMSA 1978] or gaming that is licensed and operated pursuant to the Gaming Control Act. As used in this subsection, "consideration" means anything of pecuniary value required to be paid to the promoter in order to participate in a gambling or gaming enterprise.

History: 1953 Comp., § 40A-19-1, enacted by Laws 1963, ch. 303, § 19-1; 1965, ch. 37, § 1; 1985, ch. 108, § 1; 1995, ch. 155, § 37; 1997, ch. 190, § 66; 2002, ch. 102, § 1.

30-19-2. Gambling.

Gambling consists of:

A. making a bet;

B. entering or remaining in a gambling place with intent to make a bet, to participate in a lottery or to play a gambling device;

C. conducting a lottery; or

D. possessing facilities with intent to conduct a lottery.

Whoever commits gambling is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-19-2, enacted by Laws 1963, ch. 303, § 19-2.

30-19-3. Commercial gambling.

Commercial gambling consists of either:

A. participating in the earnings of or operating a gambling place;

B. receiving, recording or forwarding bets or offers to bet;

C. possessing facilities with the intent to receive, record or forward bets or offers to bet;

D. for gain, becoming a custodian of anything of value, bet or offered to be bet;

E. conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery, possesses facilities to do so; or

F. setting up for use, for the purpose of gambling, or collecting the proceeds of, any gambling device.

Whoever commits commercial gambling is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-19-3, enacted by Laws 1963, ch. 303, § 19-3.

30-19-4. Permitting premises to be used for gambling.

Permitting premises to be used for gambling consists of:

A. knowingly permitting any property owned or occupied by such person or under his control to be used as a gambling place; or

B. knowingly permitting a gambling device to be set up for use for the purpose of gambling in a place under his control.

Whoever commits permitting premises to be used for gambling is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-19-4, enacted by Laws 1963, ch. 303, § 19-4.

30-19-5. Dealing in gambling devices.

A. Dealing in gambling devices consists of manufacturing, transferring commercially or possessing, with intent to transfer commercially, any of the following:

(1) anything which he knows evidences, purports to evidence or is designed to evidence participation in gambling; or

(2) any device which he knows is designed exclusively for gambling purposes or anything which he knows is designed exclusively as a subassembly or essential part of such device. This includes, without limitation, gambling devices, numbers jars, punchboards and roulette wheels.

Proof of possession of any device designed exclusively for gambling purposes which is not in a gambling place and is not set up for use is prima facie evidence of possession with intent to transfer.

B. The provisions of this section shall not apply to any manufacturer of gambling devices who exports his product exclusively in foreign commerce, and who is under ten thousand dollar ($10,000) bond payable to the state of New Mexico to assure export.

Provided, however, the provisions of this section shall apply to manufacturers of gambling devices used, adapted, devised or designed to be used in bookmaking, in wagering pools with respect to a sporting event, or in a numbers, policy, bolita or similar game.

C. Nothing in this section shall be construed to prohibit the ownership, possession, display, sale, purchase, exchange or transfer of antique gambling devices.

D. Whoever deals in gambling devices, other than those herein specified and excluded, is guilty of a misdemeanor.

History: 1953 Comp., § 40A-19-5, enacted by Laws 1963, ch. 303, § 19-5; 1965, ch. 230, § 1; 1985, ch. 108, § 2.

30-19-6. Permissive lottery.

A. Nothing in Chapter 30, Article 19 NMSA 1978 shall be held to prohibit any bona fide motion picture theater from offering prizes of cash or merchandise for advertising purposes, in connection with such business or for the purpose of stimulating business, whether or not any consideration other than a monetary consideration in excess of the regular price of admission is exacted for participation in drawings for prizes.

B. Nothing in Chapter 30, Article 19 NMSA 1978 shall be construed to apply to any activity:

(1) regulated by the New Mexico Bingo and Raffle Act [60-2F-1 to 60-2F-26 NMSA 1978]; or

(2) specifically exempted from regulation by the provisions of the New Mexico Bingo and Raffle Act.

History: 1953 Comp., § 40A-19-6, enacted by Laws 1963, ch. 303, § 19-6; 1981, ch. 231, § 1; 2009, ch. 81, § 27.

30-19-7. Fraudulently operating a lottery.

Fraudulently operating a lottery consists of operating or managing any lottery which does not provide a fair and equal chance to all participants, or which lottery is conducted in a manner tending to defraud or mislead the public.

Whoever commits fraudulently operating a lottery is guilty of a misdemeanor.

History: 1953 Comp., § 40A-19-7, enacted by Laws 1963, ch. 303, § 19-7.

30-19-7.2. Recreational bingo exception.

Nothing in this chapter or in the New Mexico Bingo and Raffle Act [60-2F-1 to 60-2F-26 NMSA 1978] prohibits a senior citizen group from organizing and conducting bingo at a senior citizen center, provided that no person other than players participating in the bingo game receive or become entitled to receive any part of the proceeds, either directly or indirectly, from the bingo game, and no minor is allowed to participate in the organization or conduct of games or play bingo. As used in this section, "senior citizen group" means an organization in which the majority of the membership consists of persons who are at least fifty-five years of age and the primary activities and purposes of which are to provide recreational or social activities for those persons.

History: Laws 1997, ch. 101, § 1.

30-19-8. Gambling and gambling houses as public nuisance.

Except as otherwise permitted or excepted under this article [30-19-1 to 30-19-15 NMSA 1978], any gambling device or gambling place is a public nuisance per se.

The attorney general, any district attorney or any citizen of this state may institute an injunction proceeding to have such public nuisance abated. In the event such injunction is issued on behalf of any citizen of this state it shall not be necessary in such proceeding to show that he is personally injured by the act complained of.

History: 1953 Comp., § 40A-19-8, enacted by Laws 1963, ch. 303, § 19-8.

30-19-9. Evidence of unlawful use of premises.

Evidence that a place has a general reputation as a gambling site or that at or about the time in question it was frequently visited by persons known to be professional gamblers or known as frequentors [frequenters] of gambling places is admissible on the issue of whether such site is a gambling place.

History: 1953 Comp., § 40A-19-9, enacted by Laws 1963, ch. 303, § 19-9.

30-19-10. Forfeiture of equipment.

Any gambling device or other equipment of any type used in gambling is subject to forfeiture, and the provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.

History: 1953 Comp., § 40A-19-10, enacted by Laws 1963, ch. 303, § 19-10; 2002, ch. 4, § 14.

30-19-11. Remedy of lessor.

If the lessee of property has been convicted of using it as a gambling place or if the property has been adjudged to constitute a public nuisance, such lease shall be voidable at the option of the lessor. The lessor shall have the same remedies for regaining possession as in the case of a tenant holding over his term.

History: 1953 Comp., § 40A-19-11, enacted by Laws 1963, ch. 303, § 19-11.

30-19-12. Duties of enforcement officials.

Upon the filing with any district judge or justice of the peace [magistrate court] of an affidavit in writing made by any citizen that gambling as prohibited by this article [30-19-1 to 30-19-15 NMSA 1978] is being conducted in any building, room, premises or place describing the same for sufficient identification, it shall be the duty of the district judge or justice of the peace [magistrate] with whom such affidavit is filed to immediately issue a warrant commanding the peace officer to whom the same is addressed to forthwith

enter and search the building, room, premises or place. In the event the location is being used for purposes prohibited by this article, the peace officer shall arrest without a warrant the parties therein or making their escape therefrom, and who would be subject to arrest with a warrant. The officers shall also take possession of any gambling paraphernalia, device or equipment found therein, and shall hold the same until deprived of the possession thereof by law. It shall be the duty of the peace officers to take any persons so arrested before some magistrate having jurisdiction and to forthwith file a proper complaint against each person so arrested.

History: 1953 Comp., § 40A-19-12, enacted by Laws 1963, ch. 303, § 19-12.

30-19-13. Bribery of participant in a contest.

Bribery of participant in a contest consists of:

A. the transferring or promise to transfer anything of value to any person with intent to influence thereby any participant in a contest to refrain from exerting his full skill, speed, strength or endurance in such contest; or

B. the agreeing or offering by a participant in a contest, to refrain from exerting his full skill, speed, strength or endurance, in return for anything of value transferred or promised to himself or another.

The term "participant" as used in this section includes any person who is selected to or expects to take part in any such contest.

Whoever commits bribery of participant in a contest is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-19-13, enacted by Laws 1963, ch. 303, § 19-13.

30-19-14. Testimony of witnesses to gambling.

Any district judge or justice of the peace [magistrate court] having jurisdiction over any of the crimes enumerated in this article [30-19-1 to 30-19-15 NMSA 1978], or any district attorney inquiring into the alleged violation of any of the provisions of this article, may subpoena persons and compel their attendance as witnesses and may compel such witnesses to testify concerning any violation of this article.

Any person who is so subpoenaed and examined shall be immune to prosecution or conviction for any violation of this article about which he testifies.

A conviction may be had for any violation of this article upon the unsupported testimony of any accomplice or participant.

History: 1953 Comp., § 40A-19-14, enacted by Laws 1963, ch. 303, § 19-14.

30-19-15. Unlawful to accept for profit anything of value to be transmitted or delivered for gambling; penalty.

A. It is unlawful for any person to, directly or indirectly, knowingly accept for a fee, property, salary or reward anything of value from another to be transmitted or delivered for gambling or parimutuel [pari-mutuel] wagering on the results of a race, sporting event, contest or other game of skill or chance or any other unknown or contingent future event or occurrence whatsoever.

B. None of the provisions of this act shall be construed to prohibit the operation or continued operation of bingo programs presently conducted for charitable purposes.

C. Any person violating any of the provisions of this section is guilty of a fourth degree felony.

History: Laws 1979, ch. 4, § 1.

ARTICLE 20
Crimes Against Public Peace

30-20-1. Disorderly conduct.

Disorderly conduct consists of:

A. engaging in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace; or

B. maliciously disturbing, threatening or, in an insolent manner, intentionally touching any house occupied by any person.

Whoever commits disorderly conduct is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-20-1, enacted by Laws 1963, ch. 303, § 20-1; 1967, ch. 120, § 1.

30-20-2. Public affray.

Public affray consists of two or more persons voluntarily or by agreement engaging in any fight or using any blows or violence toward each other in an angry or quarrelsome manner in any public place, to the disturbance of others.

Whoever commits public affray is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-20-3, enacted by Laws 1963, ch. 303, § 20-3.

30-20-3. Unlawful assembly.

Unlawful assembly consists of three or more persons assembling together with intent to do any unlawful act with force or violence against the person or property of another, and who shall make any overt act to carry out such unlawful purpose.

Whoever commits unlawful assembly is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-20-4, enacted by Laws 1963, ch. 303, § 20-4.

30-20-4. Recompiled.

30-20-5. Recompiled.

30-20-6. Recompiled.

30-20-7. Recompiled.

30-20-8. Recompiled.

30-20-9. Recompiled.

30-20-10. Loitering of minors.

Loitering of minors consists of the owner or operator of any saloon permitting a person under the age of twenty-one years to attend, frequent or loiter in or about such premises without being accompanied by the parent or guardian of the person.

Whoever commits loitering of minors is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-20-6, enacted by Laws 1963, ch. 303, § 20-6; 1973, ch. 138, § 17; 1977, ch. 35, § 1.

30-20-11. Dueling.

Dueling consists of any person:

A. conveying by written or verbal message a challenge to any other person to fight a duel with any deadly weapon, and whether or not such duel ensues;

B. accepting a challenge from another person to fight a duel with any deadly weapon, and whether or not such duel ensues;

C. engaging in or fighting a duel with any deadly weapon; or

D. aiding, encouraging or seconding either party to a duel and being present at such duel when deadly weapons are used.

Whoever commits dueling is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-20-7, enacted by Laws 1963, ch. 303, § 20-7.

30-20-12. Use of telephone to terrify, intimidate, threaten, harass, annoy or offend; penalty.

A. It shall be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any obscene, lewd or profane language or suggest any lewd, criminal or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person. It shall also be unlawful for any person to attempt by telephone to extort money or other thing of value from any other person, or to otherwise disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any other person at the place where the telephone call or calls were received, or to maliciously make a telephone call, whether or not conversation ensues, with intent to annoy or disturb another, or to disrupt the telecommunications of another.

B. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in Subsection A shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.

C. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.

D. Whosoever violates this section is guilty of a misdemeanor, unless such person has previously been convicted of such offense or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, in which case such person is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-20-8, enacted by Laws 1967, ch. 120, § 2.

30-20-13. Interference with members of staff, public officials or the general public; trespass; damage to property; misdemeanors; penalties.

A. No person shall, at or in any building or other facility or property owned, operated or controlled by the state or any of its political subdivisions, willfully deny to staff, public officials or the general public:

(1) lawful freedom of movement within the building or facility or the land on which it is situated;

(2) lawful use of the building or facility or the land on which it is situated; or

(3) the right of lawful ingress and egress to the building or facility or the land on which it is situated.

B. No person shall, at or in any building or other facility or property owned, operated or controlled by the state or any of its political subdivision [subdivisions], willfully impede the staff or a public official or a member of the general public through the use of restraint, abduction, coercion or intimidation or when force and violence are present or threatened.

C. No person shall willfully refuse or fail to leave the property of or any building or other facility owned, operated or controlled by the state or any of its political subdivisions when requested to do so by a lawful custodian of the building, facility or property if the person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of the property, building or facility.

D. No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school.

E. Nothing in this section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute.

F. Any person who violates any of the provisions of this section shall be deemed guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-20-10, enacted by Laws 1970, ch. 86, § 2; 1975, ch. 52, § 2; 1981, ch. 32, § 1.

30-20-14. Institutions permitted to adopt rules.

Nothing in this act [30-20-13 to 30-20-15 NMSA 1978] shall be construed as limiting the power or duty of any institution of higher education to establish standards of conduct and scholastic achievement relevant to its lawful missions, processes and functions and to invoke appropriate discipline for violations of the standards.

History: 1953 Comp., § 40A-20-11, enacted by Laws 1970, ch. 86, § 3.

30-20-15. Construction.

This act [30-20-13 to 30-20-15 NMSA 1978] shall be construed to be an alternative to and not in lieu of the provisions of Laws 1969, Chapter 281 [30-20-4 to 30-20-9 NMSA 1978].

History: 1953 Comp., § 40A-20-12, enacted by Laws 1970, ch. 86, § 4.

30-20-16. Bomb scares and shooting threats unlawful.

A. Making a bomb scare consists of intentionally and maliciously stating to another person that a bomb or other explosive has been placed in such a position that property or persons are likely to be injured or destroyed.

B. Making a shooting threat consists of intentionally and maliciously communicating to another person a serious expression of an intent to bring a firearm to a property or use the firearm and an intent to:

(1) place a person or group of persons in fear of great bodily harm, and a person or group of persons was placed in fear of great bodily harm;

(2) prevent or interrupt the occupation or use of a public building, and the occupation or use of a public building was prevented or interrupted; or

(3) cause a response to the threat by a law enforcement official or volunteer agency organized to deal with emergencies, and the threat caused a response by a law enforcement official or volunteer agency organized to deal with emergencies.

C. Whoever commits making a bomb scare is guilty of a fourth degree felony.

D. Whoever commits making a shooting threat is guilty of a fourth degree felony.

E. A court may order a person convicted for the offense of making a bomb scare or shooting threat to reimburse the victim of the offense for economic harm caused by that offense.

F. As used in this section, "economic harm" means all direct, incidental and consequential financial harm suffered by a victim of the offense of making a bomb scare or shooting threat. "Economic harm" includes:

(1) wages, salaries or other compensation lost as a result of the commission of the offense of making a bomb scare or shooting threat;

(2) the cost of all wages, salaries or other compensation paid to employees for time that those employees are prevented from working as a result of the commission of the offense of making a bomb scare or shooting threat; and

(3) overhead costs incurred for the period of time that a business is shut down as a result of the commission of the offense of making a bomb scare or shooting threat.

History: 1953 Comp., § 40A-20-13, enacted by Laws 1975, ch. 285, § 1; 1981, ch. 15, § 1; 2003, ch. 35, § 1; 2022, ch. 56, § 24; 2025, ch. 4, § 16.

30-20-17. Reward.

If a person provides information leading to the conviction, or adjudication of delinquency pursuant to the Children's Code [Chapter 32A NMSA 1978], of another for making a bomb scare, he shall, upon the recommendation of the district attorney, be entitled to a reward in the amount of one hundred dollars ($100).

History: 1953 Comp., § 40A-20-14, enacted by Laws 1975, ch. 285, § 2.

30-20-18. Interference with athletic event.

Interference with athletic event consists of intentionally throwing any object on or across the field of play of an athletic event with the intent to interfere with the normal conduct of that event while the contestants of that event are on that field. As used in this section, "athletic event" means a scheduled sports event for which an admission fee is charged to the public.

Any person other than an official or a contestant of an athletic event who commits interference with [an] athletic event is guilty of a petty misdemeanor.

History: Laws 1986, ch. 53, § 1.

ARTICLE 20A
Antiterrorism

30-20A-1. Short title.

This act [30-20A-1 to 30-20A-4 NMSA 1978] may be cited as the "Antiterrorism Act".

History: Laws 1990, ch. 66, § 1.

30-20A-2. Definitions.

As used in the Antiterrorism Act:

A. "civil disorder" means any planned act of violence by an assemblage of two or more persons with the intent to cause damage or injury to another individual or his property;

B. "destructive device" means:

(1) any explosive, incendiary or poison gas:

(a) bomb;

(b) grenade;

(c) rocket having a propellant charge of more than four ounces;

(d) missile having an explosive or incendiary charge of more than one-quarter ounce;

(e) mine; or

(f) similar device;

(2) any type of weapon that can expel or may be readily converted to expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than six-tenths inch in diameter, except a shotgun, shotgun shell or muzzle loading firearm that is generally recognized as particularly suitable for sporting purposes; or

(3) any part or combination of parts either designed or intended for use in converting or assembling any device described in Paragraphs (1) and (2) of this subsection.

The term "destructive device" shall not include any device that is neither designed nor redesigned for use as a weapon;

C. "firearm" means any weapon that can expel or is designed to or may readily be converted to expel a projectile by the action of an explosion, the frame or receiver of any such weapon, any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun; and

D. "law enforcement officer" means any employee of a police or public safety department administered by the state or any political subdivision of the state where the employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state. "Law enforcement officer" includes any member of the New Mexico national guard; any peace officer of the United States, any state, any political subdivision of a state or the District of Columbia; any member of the New Mexico mounted patrol or the national guard, as defined in 10 U.S.C. Sec. 101(9); any member of the organized militia of any state or territory of the United States, the commonwealth of Puerto Rico or the District of Columbia not included within the definition of national guard; and any member of the armed forces of the United States. "Law enforcement officer" also means any person or entity acting as a contractor for

any other law enforcement officer, police or public safety department described in this section.

History: Laws 1990, ch. 66, § 2.

30-20A-3. Unlawful acts; penalty.

A. Any person who teaches or demonstrates the use, application or making of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder is guilty of a fourth degree felony and shall be sentenced under the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978] to imprisonment for a definite term of eighteen months or, in the discretion of the sentencing court, to a fine of not more than five thousand dollars ($5,000), or both.

B. Any person who trains, practices or receives instruction in the use of any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder is guilty of a fourth degree felony and shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite term of eighteen months or, in the discretion of the sentencing court, to a fine of not more than five thousand dollars ($5,000), or both.

History: Laws 1990, ch. 66, § 3.

30-20A-4. Exemptions.

A. Nothing in the Antiterrorism Act shall make unlawful any activity:

(1) in accordance with Article 2, Section 6 of the constitution of New Mexico;

(2) of any governmental agency;

(3) of any law enforcement agency;

(4) of any hunting, rifle, pistol, shotgun, sportsmen's or conservation club;

(5) lawfully engaged in on a shooting range;

(6) lawfully undertaken pursuant to any shooting school or other program of instruction;

(7) intended to teach the safe handling, including marksmanship, or use of firearms, archery equipment or other weapons or techniques to individuals or groups;

(8) that teaches the use of martial arts or arms for the defense of home, person or property or the lawful use of force as defined in Section 30-2-7 NMSA 1978; or

(9) that is otherwise lawful.

B. Nothing in the Antiterrorism Act shall make unlawful any act of a law enforcement officer that is performed as a part of his official duties.

History: Laws 1990, ch. 66, § 4.

ARTICLE 20B
Demonstrations at Funerals and Memorial Services

30-20B-1. Short title.

This act [30-20B-1 to 30-20B-5 NMSA 1978] may be cited as the "Demonstrations at Funerals and Memorial Services Act".

History: Laws 2007, ch. 254, § 1.

30-20B-2. Definitions.

As used in the Demonstrations at Funerals and Memorial Services Act:

A. "funeral" means the ceremonies, rituals, processions and memorial services held at a funeral site in connection with the viewing, burial, cremation or memorial of or wake for a deceased person;

B. "funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, grave site, mausoleum or other place at which a funeral is being conducted or is scheduled to be conducted within the next sixty minutes or has been conducted within the last sixty minutes; and

C. "targeted residential picketing" includes the following acts:

(1) marching, standing or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security or privacy of an occupant of the building; or

(2) marching, standing or patrolling by one or more persons that prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

History: Laws 2007, ch. 254, § 2.

30-20B-3. Prohibited acts.

A person shall not, with knowledge of the existence of a funeral or funeral site:

A. engage in any loud singing, playing of music, chanting, whistling, yelling or noisemaking with or without noise amplification, including bullhorns, auto horns and microphones within five hundred feet of any ingress or egress of that funeral site, when the volume of such singing, music, chanting, whistling, yelling or noisemaking is audible at and disturbing to the peace and good order of a funeral at that funeral site;

B. direct abusive epithets or make any threatening gesture that the person knows or reasonably should know is likely to provoke a violent reaction by another person;

C. display within five hundred feet of any ingress or egress of that funeral site any visual images that convey fighting words or actual threats against another person;

D. knowingly obstruct, hinder, impede or block another person's access to or egress from that funeral site or a facility containing that funeral site, except that the owner or occupant of property may take lawful actions to exclude others from that property;

E. knowingly obstruct, hinder, impede or block the progress of a vehicle participating in a procession to or from a funeral site; or

F. knowingly engage in targeted residential picketing at the home or domicile of any surviving member of the deceased person's family or household on the date of the funeral.

History: Laws 2007, ch. 254, § 3.

30-20B-4. Penalties.

Any person who violates Section 3 [30-20B-3 NMSA 1978] of the Demonstrations at Funerals and Memorial Services Act is:

A. for the first offense, guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

B. for the second offense, guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

C. for the third and subsequent offenses, guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 2007, ch. 254, § 4.

30-20B-5. Injunctive relief.

In addition to the criminal penalties provided in Section 4 [30-20B-4 NMSA 1978] of the Demonstrations at Funerals and Memorial Services Act, the court may enjoin conduct prohibited in Section 3 [30-20B-3 NMSA 1978] of that act if there is credible evidence that a person is likely to violate Section 3 of the Demonstrations at Funerals and Memorial Services Act. Any surviving member of the deceased person's immediate family who is threatened with loss or injury by reason of a violation described in Section 3 of the Demonstrations at Funerals and Memorial Services Act is entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation thereof.

History: Laws 2007, ch. 254, § 5.

ARTICLE 21
Sabotage and Disloyalty

30-21-1. Sabotage.

Sabotage consists of:

A. intentionally destroying, impairing, injuring, interfering or tampering with real or personal property with reasonable grounds to believe that such act will delay or interfere with the preparation of the United States or of any of the states for defense or for war or with the prosecution of war by the United States; or

B. intentionally making or causing to be made or omitting to note on inspection any defect in any article or thing with reasonable grounds to believe that such article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or war or for the prosecution of war by the United States.

Whoever commits sabotage is guilty of a second degree felony.

History: 1953 Comp., § 40A-21-1, enacted by Laws 1963, ch. 303, § 21-1.

30-21-2. Protection of rights of employees.

Nothing in this article [30-21-1 to 30-21-5 NMSA 1978] shall be construed to impair, curtail or destroy the lawful rights of employees and their representatives to self-organization, or [to] form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

History: 1953 Comp., § 40A-21-2, enacted by Laws 1963, ch. 303, § 21-2.

30-21-3. Detention or arrest of trespassers upon restricted areas.

Any peace officer or person employed as a watchman, guard or in a supervisory capacity on premises utilized in the manufacture, transportation or storage of any product in the preparation of the United States or of any of the states for defense or for war, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water or of any public utility, may stop any person found on such premises to which entry without permission is forbidden and where such premises are clearly posted with signs prohibiting entry, and may detain such person for the purpose of demanding the name, address and the individual's business in such place. If such peace officer or employee has reason to believe from the answers or conduct of the person so interrogated that the person detained has no right to be in such destricted [restricted] area, he shall forthwith either release such person, or may arrest the individual without a warrant on the charge of committing the crime of criminal trespass. In the event such peace officer or employee shall arrest such person found in the restricted area he shall forthwith turn the individual over to a peace officer who may arrest the individual without a warrant on the charge of committing criminal trespass.

History: 1953 Comp., § 40A-21-3, enacted by Laws 1963, ch. 303, § 21-3.

30-21-4. Improper use of official symbols.

Improper use of official symbols consists of:

A. the use of the state or national flags for any purpose other than the purposes for which it was designed by law;

B. offering any insult by word or act to the state or national flags; or

C. using the state or national flags for advertising purposes by painting, printing, stamping or otherwise placing thereon or affixing thereto any name or object not connected with the patriotic history of the nation or the state.

Whoever commits improper use of official symbols is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-21-4, enacted by Laws 1963, ch. 303, § 21-4.

30-21-5. Improper use of official anthems.

Improper use of official anthems consists of singing, playing or rendering "The Star Spangled Banner" or "Oh Fair New Mexico" in any public place or assemblage in this state except as an entire or separate composition or number.

Whoever commits improper use of official anthems is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-21-5, enacted by Laws 1963, ch. 303, § 21-5.

ARTICLE 22
Interference with Law Enforcement

30-22-1. Resisting, evading or obstructing an officer.

Resisting, evading or obstructing an officer consists of:

A. knowingly obstructing, resisting or opposing any officer of this state or any other duly authorized person serving or attempting to serve or execute any process or any rule or order of any of the courts of this state or any other judicial writ or process;

B. intentionally fleeing, attempting to evade or evading an officer of this state when the person committing the act of fleeing, attempting to evade or evasion has knowledge that the officer is attempting to apprehend or arrest him;

C. willfully refusing to bring a vehicle to a stop when given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed officer in an appropriately marked police vehicle; or

D. resisting or abusing any judge, magistrate or peace officer in the lawful discharge of his duties.

Whoever commits resisting, evading or obstructing an officer is guilty of a misdemeanor.

History: 1953 Comp., § 40A-22-1, enacted by Laws 1963, ch. 303, § 22-1; 1981, ch. 248, § 1.

30-22-1.1. Aggravated fleeing a law enforcement officer.

A. Aggravated fleeing a law enforcement officer consists of a person willfully and carelessly driving a vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal, by a uniformed law enforcement officer in an authorized emergency vehicle pursuant to Section 66-7-6 NMSA 1978 in pursuit in accordance with the provisions of the Law Enforcement Safe Pursuit Act [29-20-1 to 29-20-4 NMSA 1978].

B. Whoever commits aggravated fleeing a law enforcement officer that does not result in injury or great bodily harm to another person is guilty of a fourth degree felony.

C. Whoever commits aggravated fleeing a law enforcement officer that results in injury to another person is guilty of a third degree felony.

History: Laws 2003, ch. 260, § 5; 2022, ch. 56, § 27.

30-22-2. Refusing to aid an officer.

Refusing to aid an officer consists of refusing to assist any peace officer in the preservation of the peace when called upon by such officer in the name of the United States or the state of New Mexico.

Whoever commits refusing to aid an officer is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-22-2, enacted by Laws 1963, ch. 303, § 22-2.

30-22-2.1. Entry into domestic violence safe house or shelter; search warrant.

A. It is not a violation of Section 30-22-1 or Section 30-22-4 NMSA 1978 for a person who is a member, resident, employee or volunteer of or is otherwise associated with a domestic violence safe house or shelter to request that a law enforcement officer show a valid search warrant before allowing the officer to enter the domestic violence safe house or shelter. Nothing in this section shall prevent a law enforcement officer from executing a valid search warrant.

B. Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry.

History: Laws 2009, ch. 84, § 1.

30-22-3. Concealing identity.

Concealing identity consists of concealing one's true name or identity, or disguising oneself with intent to obstruct the due execution of the law or with intent to intimidate, hinder or interrupt any public officer or any other person in a legal performance of his duty or the exercise of his rights under the laws of the United States or of this state.

Whoever commits concealing identity is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-22-3, enacted by Laws 1963, ch. 303, § 22-3.

30-22-4. Harboring or aiding a felon.

Harboring or aiding a felon consists of any person, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister by consanguinity or affinity, who knowingly conceals any offender or gives such offender any other aid, knowing that he has committed a felony, with the intent that he escape or avoid arrest, trial, conviction or punishment.

In a prosecution under this section it shall not be necessary to aver, nor on the trial to prove, that the principal felon has been either arrested, prosecuted or tried.

Whoever commits harboring or aiding a felon is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-22-4, enacted by Laws 1963, ch. 303, § 22-4.

30-22-5. Tampering with evidence.

A. Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.

B. Whoever commits tampering with evidence shall be punished as follows:

(1) if the highest crime for which tampering with evidence is committed is a capital or first degree felony or a second degree felony, the person committing tampering with evidence is guilty of a third degree felony;

(2) if the highest crime for which tampering with evidence is committed is a third degree felony or a fourth degree felony, the person committing tampering with evidence is guilty of a fourth degree felony;

(3) if the highest crime for which tampering with evidence is committed is a misdemeanor or a petty misdemeanor, the person committing tampering with evidence is guilty of a petty misdemeanor; and

(4) if the highest crime for which tampering with evidence is committed is indeterminate, the person committing tampering with evidence is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-22-5, enacted by Laws 1963, ch. 303, § 22-5; 2003, ch. 296, § 1.

30-22-6. Compounding a crime.

Compounding a crime consists of knowingly agreeing to take anything of value upon the agreement or understanding, express or implied, to compound or conceal a crime or to abstain from a prosecution therefor, or to withhold any evidence thereof.

For purposes of this section, a person may be prosecuted and convicted of compounding a crime though the person guilty of the original crime has not been charged, indicted or tried.

Whoever commits compounding a crime is guilty of a misdemeanor.

History: 1953 Comp., § 40A-22-6, enacted by Laws 1963, ch. 303, § 22-6.

30-22-7. Unlawful rescue.

Unlawful rescue consists of intentionally, and without lawful authority, rescuing any person lawfully in custody or confinement.

Whoever commits unlawful rescue of a person charged with or convicted of a crime not constituting a capital felony, or who is charged with but not convicted of a capital felony, is guilty of a third degree felony.

Whoever commits unlawful rescue of an individual convicted of a capital felony is guilty of a first degree felony.

History: 1953 Comp., § 40A-22-7, enacted by Laws 1963, ch. 303, § 22-7.

30-22-8. Escape from jail.

Escape from jail consists of any person who shall have been lawfully committed to any jail, escaping or attempting to escape from such jail.

Whoever commits escape from jail is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-22-8, enacted by Laws 1963, ch. 303, § 22-8.

30-22-8.1. Escape from a community custody release program.

A. Escape from a community custody release program consists of a person, excluding a person on probation or parole, who has been lawfully committed to a judicially approved community custody release program, including a day reporting program, an electronic monitoring program, a day detention program or a community tracking program, escaping or attempting to escape from the community custody release program.

B. Whoever commits escape from a community custody release program, when the person was committed to the program for a misdemeanor charge, is guilty of a misdemeanor.

C. Whoever commits escape from a community custody release program, when the person was committed to the program for a felony charge, is guilty of a felony.

History: Laws 1999, ch. 118, § 1.

30-22-8.2. Escape from a secure residential treatment facility.

A. Escape from a secure residential treatment facility consists of a person lawfully committed for a criminal offense to a secure residential treatment facility escaping from the facility.

B. Whoever commits escape from a secure residential treatment facility is guilty of a misdemeanor.

C. As used in this section, "secure residential treatment facility" means a secure facility not located within a correctional facility or detention center in which residents are being treated for substance abuse problems, and personnel and physical barriers prevent the residents from leaving.

History: Laws 2006, ch. 31, § 1.

30-22-9. Escape from penitentiary.

Escape from penitentiary consists of any person who shall have been lawfully committed to the state penitentiary:

A. escaping or attempting to escape from such penitentiary; or

B. escaping or attempting to escape from any other lawful place of custody or confinement and although not actually within the confines of the penitentiary.

Whoever commits escape from penitentiary is guilty of a second degree felony.

History: 1953 Comp., § 40A-22-9, enacted by Laws 1963, ch. 303, § 22-9.

30-22-10. Escape from custody of a peace officer.

Escape from custody of a peace officer consists of any person who shall have been placed under lawful arrest for the commission or alleged commission of any felony, unlawfully escaping or attempting to escape from the custody or control of any peace officer.

Whoever commits escape from custody of a peace officer is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-22-10, enacted by Laws 1963, ch. 303, § 22-10.

30-22-11. Assisting escape.

Assisting escape consists of:

A. intentionally aiding any person confined or held in lawful custody or confinement to escape; or

B. any officer, jailer or other employee, intentionally permitting any prisoner in his custody to escape.

Whoever commits assisting escape is guilty of a third degree felony.

History: 1953 Comp., § 40A-22-11, enacted by Laws 1963, ch. 303, § 22-11.

30-22-11.1. Escape from the custody of the children, youth and families department; escape from juvenile detention.

Escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the custody of a department juvenile justice facility or who is alleged to be a delinquent child and has been lawfully detained in a juvenile detention facility:

A. escaping or attempting to escape from custody within the confines of a children, youth and families department juvenile justice facility; or

B. escaping or attempting to escape from another lawful place of custody or confinement that is not within the confines of a children, youth and families department juvenile justice facility. Any person who commits escape from the custody of a children, youth and families department juvenile justice facility is guilty of a misdemeanor.

History: Laws 1993, ch. 121, § 1; 2009, ch. 239, § 3.

30-22-11.2. Aggravated escape from the custody of the children, youth and families department.

Aggravated escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the custody of a department juvenile justice facility or who is alleged to be a delinquent child and has been lawfully detained in a juvenile detention facility:

A. escaping or attempting to escape from custody within the confines of a children, youth and families department juvenile justice facility and committing assault or battery on another person in the course of escaping or attempting to escape; or

B. escaping or attempting to escape from a lawful place of custody or confinement that is not within the confines of a children, youth and families department juvenile justice facility and committing assault or battery on another person in the course of escaping or attempting to escape.

Any person who commits aggravated escape from the custody of the children, youth and families department is guilty of a fourth degree felony.

History: Laws 1994, ch. 18, § 1; 2009, ch. 239, § 4.

30-22-12. Furnished [Furnishing] articles for prisoner's escape.

Furnishing articles for prisoner's escape consists of:

A. intentionally giving to any person in lawful custody or confinement any deadly weapon or explosive substance, without the express consent of the officer in charge of such place of confinement; or

B. intentionally giving to any person in lawful custody or confinement any disguise, instrument, tool or other thing useful to aid any prisoner to effect an escape, with intent to assist a prisoner to escape from custody.

Whoever commits furnishing articles for prisoner's escape is guilty of a second degree felony.

History: 1953 Comp., § 40A-22-12, enacted by Laws 1963, ch. 303, § 22-12.

30-22-13. Furnishing drugs or liquor to a prisoner.

Furnishing drugs or liquor to a prisoner consists of directly or indirectly furnishing any narcotic drug or intoxicating liquor to any person held in lawful custody or confinement, unless such narcotic drug or intoxicating liquor is furnished pursuant to the direction or prescription of a regularly licensed physician attending such person or penal facility.

Whoever commits furnishings [furnishing] drugs or liquor to a prisoner is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-22-13, enacted by Laws 1963, ch. 303, § 22-13.

30-22-14. Bringing contraband into places of imprisonment; penalties; definitions.

A. Bringing contraband into a prison consists of knowingly and voluntarily carrying, transporting or depositing contraband onto the grounds of the penitentiary of New Mexico or any other institution designated by the corrections department for the confinement of adult prisoners. Whoever commits bringing contraband into a prison is guilty of a third degree felony.

B. Bringing contraband into a jail consists of knowingly and voluntarily carrying contraband into the confines of a county or municipal jail. Whoever commits bringing contraband into a jail is guilty of a fourth degree felony.

C. As used in this section, "contraband" means:

(1) a deadly weapon, as defined in Section 30-1-12 NMSA 1978, or an essential component part thereof, including ammunition, explosive devices and explosive materials, but does not include a weapon carried by a peace officer in the lawful discharge of duties;

(2) currency brought onto the grounds of the institution for the purpose of transfer to a prisoner, but does not include currency carried into areas designated by the warden as areas for the deposit and receipt of currency for credit to a prisoner's account before contact is made with the prisoner;

(3) an alcoholic beverage;

(4) a controlled substance, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], or cannabis, as defined in the Cannabis Regulation Act [Chapter 26, Article 2C NMSA 1978], but does not include a controlled substance or medical cannabis carried into a prison or jail through regular prison or jail channels and pursuant to the direction or prescription of a licensed physician; or

(5) an electronic communication or recording device brought onto the grounds of the institution for the purpose of transfer to or use by a prisoner.

D. As used in this section, "electronic communication or recording device" means any type of instrument, device, machine or equipment that is designed to transmit or receive telephonic, electronic, digital, cellular, satellite or radio signals or communications or that is designed to have sound or image recording abilities or any part or component of such instrument, device, machine or equipment. "Electronic communication or recording device" does not include a device that is or will be used by prison or jail personnel in the regular course of business or that is otherwise authorized by the warden.

E. Nothing in this section shall prohibit the use of hearing aids, voice amplifiers or other equipment necessary to aid prisoners who have documented hearing or speech deficiencies or their visitors. Rules for such devices shall be established by the warden or director of each jail, detention center and prison.

History: 1953 Comp., § 40A-22-13.1, enacted by Laws 1976, ch. 15, § 1; 2013, ch. 55, § 1; 2024, ch. 38, § 14; 2024, ch. 49, § 1.

30-22-14.1. Bringing contraband into a juvenile detention facility or juvenile correctional facility; penalty.

A. Bringing contraband into a juvenile detention facility or juvenile correctional facility consists of carrying, transporting or depositing contraband onto the grounds of a facility designated by the children, youth and families department for the detention or

commitment of children. Whoever commits bringing contraband into a juvenile correctional facility is guilty of a third degree felony. Whoever commits bringing contraband into a juvenile detention facility is guilty of a fourth degree felony.

B. As used in this section, "contraband" means:

(1) a deadly weapon, as defined in Section 30-1-12 NMSA 1978, or an essential component part thereof, including ammunition, explosive devices and explosive materials, but does not include a weapon carried by a peace officer in the lawful discharge of the officer's duties;

(2) currency brought onto the grounds of a juvenile detention facility or juvenile correctional facility and not declared upon entry to the facility for the purpose of transfer to a child detained in or committed to the facility, but does not include currency carried into areas designated by the facility administrator as areas for the deposit and receipt of currency for credit to a child's account before contact is made with any child;

(3) an alcoholic beverage brought within the physical confines of the juvenile detention or juvenile correctional facility; or

(4) a controlled substance, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], or cannabis, as defined in the Cannabis Regulation Act [Chapter 26, Article 2C NMSA 1978], but does not include a controlled substance or medical cannabis carried into a juvenile detention facility or juvenile correctional facility through regular facility channels and pursuant to the direction or prescription of a licensed physician.

History: Laws 1997, ch. 44, § 1; 2024, ch. 38, § 15; 2024, ch. 49, § 2.

30-22-15. Maintaining male and female prisoners together.

Maintaining male and female prisoners together consists of any sheriff, jailer or guard, keeping male and female prisoners in the same cell or room, unless such prisoners are man and wife.

Whoever commits maintaining male and female prisoners together is guilty of a misdemeanor.

History: 1953 Comp., § 40A-22-14, enacted by Laws 1963, ch. 303, § 22-14.

30-22-16. Possession of deadly weapon or explosive by prisoner.

Possession of deadly weapon or explosive by prisoner in lawful custody consists of any inmate of a penal institution, reformatory, jail or prison farm or ranch possessing any deadly weapon or explosive substance.

Whoever commits possession of deadly weapon or explosive by prisoner is guilty of a second degree felony.

History: 1953 Comp., § 40A-22-15, enacted by Laws 1963, ch. 303, § 22-15; 1986, ch. 4, § 1.

30-22-17. Assault by prisoner.

Assault by prisoner consists of intentionally:

A. placing an officer or employee of any penal institution, reformatory, jail or prison farm or ranch, or a visitor therein, in apprehension of an immediate battery likely to cause death or great bodily harm;

B. causing or attempting to cause great bodily harm to an officer or employee of any penal institution, reformatory, jail or prison farm or ranch, or a visitor therein; or

C. confining or restraining an officer or employee of any penal institution, reformatory, jail or prison farm or ranch, or a visitor therein, with intent to use such person as a hostage.

Whoever commits assault by prisoner is guilty of a third degree felony.

History: 1953 Comp., § 40A-22-16, enacted by Laws 1963, ch. 303, § 22-16.

30-22-18. Encouraging violation of probation, parole or bail.

Encouraging violation of probation, parole or bail consists of intentionally aiding or encouraging a person known by him to be on parole, probation or bail to abscond or to violate a term or condition of his probation, parole or bail.

Whoever commits encouraging violation of probation, parole or bail is guilty of a misdemeanor.

History: 1953 Comp., § 40A-22-17, enacted by Laws 1963, ch. 303, § 22-17.

30-22-19. Unlawful assault on any jail.

Unlawful assault on any jail consists of any person or group of persons assaulting or attacking any jail, prison or other public building or place of confinement of prisoners held in lawful custody or confinement.

Whoever commits unlawful assault on any jail, prison or other public building or place of confinement of prisoners held in lawful custody or confinement is guilty of a third degree felony.

History: 1953 Comp., § 40A-22-18, enacted by Laws 1963, ch. 303, § 22-18.

30-22-20. Unlawful distribution of convict-made goods.

Unlawful distribution of convict-made goods consists of any person knowingly distributing, exchanging, selling or offering for sale any goods, wares or merchandise manufactured, produced or mined, either wholly or in part, by prisoners held in lawful custody or confinement of any other state or country.

Nothing in this section shall be construed to forbid the sale or distribution of goods, wares or merchandise:

A. made by prisoners of this state;

B. made by prisoners on parole or probation; or

C. which are sold or exchanged to a qualified purchaser and where such goods are to be initially used or possessed solely by a qualified purchaser. As used in this subsection, "qualified purchaser" means a state agency, local public bodies, agencies of the federal government, tribal and pueblo governments, nonprofit organizations properly registered under state law and supported wholly or in part by funds derived from public taxation and persons, partnerships, corporations or associations which provide public school transportation services to a state agency or local public body pursuant to contract.

Whoever commits unlawful distribution of convict-made goods is guilty of a misdemeanor.

History: 1953 Comp., § 40A-22-19, enacted by Laws 1963, ch. 303, § 22-19; 1982, ch. 35, § 1.

30-22-21. Assault upon peace officer.

A. Assault upon a peace officer consists of:

(1) an attempt to commit a battery upon the person of a peace officer while he is in the lawful discharge of his duties; or

(2) any unlawful act, threat or menacing conduct which causes a peace officer while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

B. Whoever commits assault upon a peace officer is guilty of a misdemeanor.

History: 1953 Comp., § 40A-22-20, enacted by Laws 1971, ch. 265, § 1.

30-22-22. Aggravated assault upon peace officer.

A. Aggravated assault upon a peace officer consists of:

(1) unlawfully assaulting or striking at a peace officer with a deadly weapon while he is in the lawful discharge of his duties;

(2) committing assault by threatening or menacing a peace officer who is engaged in the lawful discharge of his duties by a person wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner so as to conceal identity; or

(3) willfully and intentionally assaulting a peace officer while he is in the lawful discharge of his duties with intent to commit any felony.

B. Whoever commits aggravated assault upon a peace officer is guilty of a third degree felony.

History: 1953 Comp., § 40A-22-21, enacted by Laws 1971, ch. 265, § 2.

30-22-23. Assault with intent to commit violent felony upon peace officer.

A. Assault with intent to commit a violent felony upon a peace officer consists of any person assaulting a peace officer while he is in the lawful discharge of his duties with intent to kill the peace officer.

B. Whoever commits assault with intent to commit a violent felony upon a peace officer is guilty of a second degree felony.

History: 1953 Comp., § 40A-22-22, enacted by Laws 1971, ch. 265, § 3.

30-22-24. Battery upon peace officer.

A. Battery upon a peace officer is the unlawful, intentional touching or application of force to the person of a peace officer while he is in the lawful discharge of his duties, when done in a rude, insolent or angry manner.

B. Whoever commits battery upon a peace officer is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-22-23, enacted by Laws 1971, ch. 265, § 4.

30-22-25. Aggravated battery upon peace officer.

A. Aggravated battery upon a peace officer consists of the unlawful touching or application of force to the person of a peace officer with intent to injure that peace officer while he is in the lawful discharge of his duties.

B. Whoever commits aggravated battery upon a peace officer, inflicting an injury to the peace officer which is not likely to cause death or great bodily harm, but 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 fourth degree felony.

C. Whoever commits aggravated battery upon a peace officer, inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.

History: 1953 Comp., § 40A-22-24, enacted by Laws 1971, ch. 265, § 5.

30-22-26. Assisting in assault upon peace officer.

A. Every person who assists or is assisted by one or more other persons to commit a battery upon any peace officer while he is in the lawful discharge of his duties is guilty of a fourth degree felony.

B. This section is designed to protect officers from assaults and batteries by multiple assailants while quelling riots and other unlawful assemblages.

History: 1953 Comp., § 40A-22-25, enacted by Laws 1971, ch. 265, § 6.

30-22-27. Disarming a peace officer.

A. Disarming a peace officer consists of knowingly:

(1) removing a firearm or weapon from the person of a peace officer when the officer is acting within the scope of his duties; or

(2) depriving a peace officer of the use of a firearm or weapon when the officer is acting within the scope of his duties.

B. The provisions of Subsection A of this act shall not apply when a peace officer is engaged in criminal conduct.

C. Whoever commits disarming a peace officer is guilty of a third degree felony.

History: Laws 1997, ch. 122, § 1.

ARTICLE 23
Misconduct by Officials

30-23-1. Demanding illegal fees.

Demanding illegal fees consists of any public officer or public employee knowingly asking or accepting anything of value greater than that fixed or allowed by law for the execution or performance of any service or duty.

Whoever commits demanding illegal fees is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-23-1, enacted by Laws 1963, ch. 303, § 23-1.

30-23-2. Paying or receiving public money for services not rendered.

Paying or receiving public money for services not rendered consists of knowingly making or receiving payment or causing payment to be made from public funds where such payment purports to be for wages, salary or remuneration for personal servives [services] which have not in fact been rendered.

Nothing in this section shall be construed to prevent the payment of public funds where such payments are intended to cover lawful remuneration to public officers or public employees for vacation periods or absences from employment because of sickness, or for other lawfully authorized purposes.

Whoever commits paying or receiving public money for services not rendered is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-23-2, enacted by Laws 1963, ch. 303, § 23-2.

30-23-3. Making or permitting false public voucher.

Making or permitting false public voucher consists of knowingly, intentionally or wilfully [willfully] making, causing to be made or permitting to be made, a false material statement or forged signature upon any public voucher, or invoice supporting a public voucher, with intent that the voucher or invoice shall be relied upon for the expenditure of public money.

Whoever commits making or permitting false public voucher is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-23-3, enacted by Laws 1963, ch. 303, § 23-3.

30-23-4. Injunction to restrain unlawful payment of public funds.

Any citizen of this state may file suit in the district court to restrain the payment or receipt of public money in violation of Sections 23-2 and 23-3 [30-23-2 and 30-23-3

NMSA 1978]. Jurisdiction to entertain and adjudicate such suits is conferred upon the district courts, and such suits shall be subject to the same rules, statutes and law with respect to procedure, venue and appeals as ordinary civil actions for injunctive relief.

History: 1953 Comp., § 40A-23-4, enacted by Laws 1963, ch. 303, § 23-4.

30-23-5. Unlawful speculation in claims against state.

Unlawful speculation in claims against state consists of any public officer or public employee directly or indirectly buying, selling, bartering, dealing in or speculating in or with any certificate, warrant or other evidence of indebtedness issued by the state, a municipality or other political subdivision, unless such certificate, warrant or other evidence of indebtedness shall have been lawfully issued to such person in payment of his salary or in consideration for services rendered by such person for supplies furnished by him.

Whoever commits unlawful speculation in claims against state is guilty of a misdemeanor.

History: 1953 Comp., § 40A-23-5, enacted by Laws 1963, ch. 303, § 23-5.

30-23-6. Unlawful interest in a public contract.

Unlawful interest in a public contract consists of:

A. any public officer or public employee receiving anything of value, directly or indirectly, from either a seller or a seller's agents, or a purchaser or a purchaser's agents in connection with the sale or purchase of securities, goods, leases, lands or anything of value by the state or any of its political subdivisions, unless:

(1) prior written consent of the head of the department of the state or political subdivision involved in the transaction is obtained and filed as a matter of public record in the office of secretary of state; and

(2) subsequent to the transaction a statement is filed as a matter of public record in the office of secretary of state by the purchaser or seller giving anything of value to a public officer or public employee and this statement contains the date the services were rendered, the amount of remuneration for the rendered services and the nature of the rendered services;

B. any seller, or his agents, or a purchaser, or his agents, offering to pay or paying anything of value directly or indirectly to a public officer or public employee in connection with the sale or purchase of securities or goods by the state or any of its political subdivisions unless the requirements of Paragraphs (1) and (2) of Subsection A of this section ar [are] complied with.

Any person violating the provisions of Subsection B of this section, where such violations forms the basis for prosecution and conviction of a public officer or public employee, shall be disqualified from transacting any business with the state or its political subdivisions for a period of five years from the date of such violation.

Nothing in this section shall prohibit a public officer or public employee from receiving his regular remuneration for services rendered to the state or its political subdivisions in connection with the aforementioned transactions.

Whoever commits unlawful interest in public contracts where the value received by him is fifty dollars ($50.00) or less is guilty of a misdemeanor.

Whoever commits unlawful interest in public contracts where the value received by him is more than fifty dollars ($50.00) is guilty of a fourth degree felony. Any public officer or public employee convicted of a felony hereunder is forever disqualified from employment by the state or any of its political subdivisions.

History: 1953 Comp., § 40A-23-6, enacted by Laws 1963, ch. 303, § 23-6.

30-23-7. Civil damages for engaging in illegal acts.

In addition to any criminal penalties imposed by Section 23-6 [30-23-6 NMSA 1978], a public officer or public employee convicted of violating such section shall be liable for anything of value received by him to the department of the state or political subdivision in whose employ or service he was at the time of such violation of that section. Action for recovery of amounts under this section shall be brought in the district court of the county in which any element of the crime occurred. The actions shall be brought in the name of the state for the benefit and use of the department of the state or political subdivision in whose employ or service the public officer or public employee was at the time of the commission of the crime.

History: 1953 Comp., § 40A-23-7, enacted by Laws 1963, ch. 303, § 23-7.

ARTICLE 24
Bribery

30-24-1. Bribery of public officer or public employee.

Bribery of public officer or public employee consists of any person giving or offering to give, directly or indirectly, anything of value to any public officer or public employee, with intent to induce or influence such public officer or public employee to:

A. give or render any official opinion, judgment or decree;

B. be more favorable to one party than to the other in any cause, action, suit, election, appointment, matter or thing pending or to be brought before such person;

C. procure him to vote or withhold his vote on any question, matter or proceeding which is then or may thereafter be pending, and which may by law come or be brought before him in his public capacity;

D. execute any of the powers in him vested; or

E. perform any public duty otherwise than as required by law, or to delay in or omit to perform any public duty required of him by law.

Whoever commits bribery of public officer or public employee is guilty of a third degree felony.

History: 1953 Comp., § 40A-24-1, enacted by Laws 1963, ch. 303, § 24-1.

30-24-2. Demanding or receiving bribe by public officer or public employee.

Demanding or receiving bribe by public officer or public employee consists of any public officer or public employee soliciting or accepting, directly or indirectly, anything of value, with intent to have his decision or action on any question, matter, cause, proceeding or appointment influenced thereby, and which by law is pending or might be brought before him in his official capacity.

Whoever commits demanding or receiving bribe by public officer or public employee is guilty of a third degree felony, and upon conviction thereof such public officer or public employee shall forfeit the office then held by him.

History: 1953 Comp., § 40A-24-2, enacted by Laws 1963, ch. 303, § 24-2.

30-24-3. Bribery or intimidation of a witness; retaliation against a witness.

A. Bribery or intimidation of a witness consists of any person knowingly:

(1) giving or offering to give anything of value to any witness or to any person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding to testify falsely or to abstain from testifying to any fact in such cause or proceeding;

(2) intimidating or threatening any witness or person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding for

the purpose of preventing such individual from testifying to any fact, to abstain from testifying or to testify falsely; or

(3) intimidating or threatening any person or giving or offering to give anything of value to any person with the intent to keep the person from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.

B. Retaliation against a witness consists of any person knowingly engaging in conduct that causes bodily injury to another person or damage to the tangible property of another person, or threatening to do so, with the intent to retaliate against any person for any information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer.

C. Whoever commits bribery or intimidation of a witness is guilty of a third degree felony.

D. Whoever commits retaliation against a witness is guilty of a second degree felony.

History: 1953 Comp., § 40A-24-3, enacted by Laws 1963, ch. 303, § 24-3; 1987, ch. 227, § 1; 1991, ch. 84, § 1; 1997, ch. 208, § 1.

30-24-3.1. Acceptance of a bribe by a witness.

A. No person who is a witness or is likely to become a witness shall receive, agree to receive or solicit any bribe or anything of value to:

(1) testify falsely or to abstain from testifying to any fact in any cause in any judicial, administrative, legislative or other proceeding; or

(2) abstain from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.

B. Whoever receives, agrees to receive or solicits a bribe is guilty of a fourth degree felony.

History: Laws 1991, ch. 84, § 2.

ARTICLE 25
Perjury and False Affirmations

30-25-1. Perjury.

A. Perjury consists of making a false statement under oath, affirmation or penalty of perjury, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding or matter, knowing such statement to be untrue.

B. Whoever commits perjury is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-25-1, enacted by Laws 1963, ch. 303, § 25-1; 2009, ch. 78, § 9.

30-25-2. Refusal to take oath or affirmation.

Refusal to take oath or affirmation consists of the refusal of any person, when legally called upon to give testimony before any court, administrative proceeding, legislative proceeding or other authority in this state, authorized to administer oaths or affirmations, to take such oath or affirmation.

Whoever commits refusal to take oath or affirmation is guilty of a petty misdemeanor.

History: 1953 Comp., § 40A-25-2, enacted by Laws 1963, ch. 303, § 25-2.

ARTICLE 26
Interference with Public Records

30-26-1. Tampering with public records.

Tampering with public records consists of:

A. knowingly altering any public record without lawful authority;

B. any public officer or public employee knowingly filing or recording any written instrument, judicial order, judgment or decree in a form other than as the original thereof in fact appeared;

C. any public officer or public employee knowingly falsifying or falsely making any record or file, authorized or required by law to be kept;

D. any public officer or public employee knowingly issuing or causing to be issued, any false or untrue certified copy of a public record; or

E. knowingly destroying, concealing, mutilating or removing without lawful authority any public record or public document belonging to or received or kept by any public authority for information, record or pursuant to law.

Whoever commits tampering with public records is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-26-1, enacted by Laws 1963, ch. 303, § 26-1.

30-26-2. Refusal to surrender public record.

Refusal to surrender public record consists of any person wrongfully or unlawfully refusing or neglecting to deliver unto the proper authority, any record of either house of the legislature, of any court of this state or of any department of the state or local government which he has in his possession, within three days after demand therefor shall have been made by the proper officer.

Whoever commits refusal to surrender public records is guilty of a misdemeanor.

History: 1953 Comp., § 40A-26-2, enacted by Laws 1963, ch. 303, § 26-2.

ARTICLE 27
Malicious Prosecution, etc.

30-27-1. Malicious criminal prosecution.

Malicious criminal prosecution consists of maliciously procuring or attempting to procure an indictment or otherwise causing or attempting to cause a criminal charge to be preferred or prosecuted against an innocent person, knowing him to be innocent.

Whoever commits malicious criminal prosecution is guilty of a misdemeanor.

History: 1953 Comp., § 40A-27-1, enacted by Laws 1963, ch. 303, § 27-1.

30-27-2. Repealed.

30-27-2.1. Impersonating a peace officer.

A. Impersonating a peace officer consists of:

(1) without due authority exercising or attempting to exercise the functions of a peace officer; or

(2) pretending to be a peace officer with the intent to deceive another person.

B. Whoever commits impersonating a peace officer is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.

C. As used in this section, "peace officer" means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

History: Laws 1999, ch. 120, § 1.

30-27-3. Barratry.

Barratry consists of:

A. intentionally instigating, maintaining, exciting, prosecuting or encouraging the bringing of any suit in any court of this state in which such person has no interest, with the intent to distress or harass the defendant;

B. intentionally bringing or prosecuting any false suit by a person on his own account, with intent to distress or harass the defendant therein;

C. any attorney-at-law seeking or obtaining employment in any suit or case to prosecute or defend the same by means of personal solicitation of such employment or, procuring another to solicit employment for him; or

D. any attorney-at-law seeking or obtaining employment in any suit, by giving to the person from whom the employment is sought anything of value or directly or indirectly paying the debts or liabilities of the person from whom such employment is sought or loaning or promising to give or otherwise grant anything of value to the person from whom such employment is sought before such employment in order to induce such employment.

Whoever commits barratry is guilty of a misdemeanor.

History: 1953 Comp., § 40A-27-3, enacted by Laws 1963, ch. 303, § 27-3.

30-27-4. Securing signature to petition by unlawful means.

Securing signature to petition by unlawful means consists of securing the signature of any person to any petition now or hereafter provided for by the laws of this state, by paying or promising to pay the signer anything of value, direct or indirect, or by securing such signature by force, threats or intimidation, or by forging or copying the names of any person to any such petition.

Whoever commits securing signature to petition by unlawful means is guilty of a misdemeanor.

History: 1953 Comp., § 40A-27-4, enacted by Laws 1963, ch. 303, § 27-4.

30-27-5. Simulating legal process.

A. Simulating legal process consists of knowingly issuing or delivering to a person a document that falsely simulates civil or criminal process. "Civil or criminal process" means a document or order, including but not limited to a summons, lien, complaint, warrant, injunction, writ, notice, pleading or subpoena.

B. Whoever commits simulating legal process is guilty of a misdemeanor.

History: Laws 2005, ch. 327, § 1.

ARTICLE 28
Initiatory Crimes

30-28-1. Attempt to commit a felony.

Attempt to commit a felony consists of an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission.

Whoever commits attempt to commit a felony, upon conviction thereof, shall be punished as follows:

A. if the crime attempted is a capital or first degree felony, the person committing such attempt is guilty of a second degree felony;

B. if the crime attempted is a second degree felony, the person committing such attempt is guilty of a third degree felony;

C. if the crime attempted is murder in the second degree, the person committing the attempted murder is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, the basic sentence of imprisonment is nine years;

D. if the crime attempted is a third degree felony, the person committing such attempt is guilty of a fourth degree felony; and

E. if the crime attempted is a fourth degree felony, the person committing such attempt is guilty of a misdemeanor.

No person shall be sentenced for an attempt to commit a misdemeanor.

History: 1953 Comp., § 40A-28-1, enacted by Laws 1963, ch. 303, § 28-1; 1978 Comp., § 30-28-1; 2024, ch. 51, § 1.

30-28-2. Conspiracy.

A. Conspiracy consists of knowingly combining with another for the purpose of committing a felony within or without this state.

B. Whoever commits conspiracy shall be punished as follows:

(1) if the highest crime conspired to be committed is a capital or first degree felony, the person committing such conspiracy is guilty of a second degree felony;

(2) if the highest crime conspired to be committed is a second degree felony, the person committing such conspiracy is guilty of a third degree felony; and

(3) if the highest crime conspired to be committed is a third degree felony or a fourth degree felony, the person committing such conspiracy is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-28-2, enacted by Laws 1963, ch. 303, § 28-2; 1979, ch. 257, § 1.

30-28-3. Criminal solicitation; penalty.

A. Except as to bona fide acts of persons authorized by law to investigate and detect the commission of offenses by others, a person is guilty of criminal solicitation if, with the intent that another person engage in conduct constituting a felony, he solicits, commands, requests, induces, employs or otherwise attempts to promote or facilitate another person to engage in conduct constituting a felony within or without the state.

B. In any prosecution for criminal solicitation, it is an affirmative defense that under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant:

(1) notified the person solicited; and

(2) gave timely and adequate warning to law enforcement authorities or otherwise made a substantial effort to prevent the criminal conduct solicited.

The burden of raising this issue is on the defendant, but does not shift the burden of proof of the state to prove all of the elements of the crime of solicitation beyond a reasonable doubt.

C. It is not a defense that the person solicited could not be guilty of the offense solicited due to insanity, minority or other lack of criminal responsibility or incapacity. It

is not a defense that the person solicited is unable to commit the crime solicited because of lack of capacity, status or other characteristic needed to commit the crime solicited, so long as the person soliciting or the person solicited believes that he or they have such capacity, status or characteristics.

D. A person is not liable for criminal solicitation when his solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the offense solicited. When the solicitation constitutes a felony offense other than criminal solicitation, which is related to but separate from the offense solicited, the defendant is guilty of such related felony offense and not of criminal solicitation. Provided, a defendant may be prosecuted for and convicted of both the criminal solicitation as well as any other crime or crimes committed by the defendant or his accomplices or co-conspirators [coconspirators], or the crime or crimes committed by the person solicited.

E. Any person convicted of criminal solicitation shall be punished as follows:

(1) if the highest crime solicited is a capital or first degree felony, the person soliciting such felony is guilty of a second degree felony;

(2) if the highest crime solicited is a second degree felony, the person soliciting such a felony is guilty of a third degree felony; and

(3) if the highest crime solicited is a third degree felony or a fourth degree felony, the person soliciting such felony is guilty of a fourth degree felony.

History: Laws 1979, ch. 265, § 1.

ARTICLE 29
Glues

30-29-1. Glues; limiting the sales; requiring records; penalty.

A. No person shall sell glue to any person under eighteen years of age. A New Mexico driver's license shall be prima facie proof of age.

B. Wholesale distributors of glue shall make available to the health services division of the health and environment department [department of health] and to law enforcement agencies of the state, county and municipality during business hours their records of all sales to retailers of glue.

C. As used in this section, "glue" means what is commonly referred to as plastic or model airplane cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate,

tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.

D. Any person violating any provision of this section is guilty of a petty misdemeanor.

History: 1953 Comp., § 12-3-40, enacted by Laws 1968, ch. 23, § 1; 1977, ch. 253, § 24; 1979, ch. 82, § 2.

30-29-2. Glue; aerosol spray; abuse or possession for abuse; penalty.

A. No person shall intentionally smell, sniff or inhale the fumes or vapors from a glue, aerosol spray product or other chemical substance for the purpose of causing a condition of or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, stupefaction or dulling of the senses, or for the purpose of in any manner changing, distorting or disturbing the audio, visual or mental processes.

B. No person shall intentionally possess a glue, aerosol spray product or other chemical substance for any purpose set forth in Subsection A of this section.

C. As used in this section, "glue" means what is commonly referred to as plastic or model airplane cement and includes any cement containing hexane, benzene, toluene, xylene, carbon tetrachloride, chloroform, ethylene dichloride, acetone, cyclohexanone, methyl ethyl ketone, methylisobutyl ketone, amyl acetate, butyl acetate, ethyl acetate, tricresyl phosphate, butyl alcohol, ethyl alcohol, isopropyl alcohol or methylcellosolve acetate.

D. The provisions of this section do not apply to any aerosol spray product or other chemical substance used for legitimate medicinal purposes and obtained either on a prescription basis or for medicinal purposes by a person over the age of eighteen.

E. Any person who violates any provision of this section is guilty of a misdemeanor. The sentence or fine may be waived in the discretion of the court in the case of any person who has not been previously convicted of violating this section and who has successfully completed a drug education or treatment program approved by the court.

History: Laws 1979, ch. 82, § 1.

ARTICLE 30
Mercury

30-30-1. Illegal possession of mercury.

Illegal possession of mercury consists of possessing more than one pound of mercury without also possessing a bona fide bill of sale or other instrument in writing relating to the mercury in possession stating the name and address of the seller, the name and address of the purchaser, the date of the sale, the amount sold and the price paid therefor; provided however, this section shall not be applicable to any person engaged in the business of mining, processing mercury, or to any person using mercury as an integral part of a tool, instrument or device in his business, or to a law enforcement officer in discharge of his duties.

Whoever commits illegal possession of mercury is guilty of a fourth degree felony.

History: 1953 Comp., § 54-5-17, enacted by Laws 1967, ch. 88, § 1.

ARTICLE 31
Controlled Substances

30-31-1. Short title.

Chapter 30, Article 31 NMSA 1978 may be cited as the "Controlled Substances Act".

History: 1953 Comp., § 54-11-1, enacted by Laws 1972, ch. 84, § 1; 2005, ch. 280, § 1.

30-31-2. Definitions.

As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. "board" means the board of pharmacy;

D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's agent under the practitioner's supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

M. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

N. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

O. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

P. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

Q. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with the Controlled Substances Act or rules adopted thereto;

R. "scientific investigator" means a person registered to conduct research with controlled substances in the course of the person's professional practice or research and includes analytical laboratories;

S. "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal under the care, custody and control of the person or by a member of the person's household;

T. "drug paraphernalia" means, except as to use in accordance with the Cannabis Regulation Act [Chapter 26, Article 2C NMSA 1978] or the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978], all equipment, products

and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(8) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(9) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(10) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(11) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing cocaine into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) miniature cocaine spoons and cocaine vials;

(f) chamber pipes;

(g) carburetor pipes;

(h) electric pipes;

(i) air-driven pipes;

(j) chilams;

(k) bongs; or

(l) ice pipes or chillers; and

(12) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

U. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found:

(1) include:

(a) phenethylamines;

(b) N-substituted piperidines;

(c) morphinans;

(d) ecgonines;

(e) quinazolinones;

(f) substituted indoles; and

(g) arylcycloalkylamines; and

(2) do not include those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug, and Cosmetic Act;

V. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

W. "drug-free school zone" means a public school, parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

X. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient.

History: 1953 Comp., § 54-11-2, enacted by Laws 1972, ch. 84, § 2; 1979, ch. 2, § 1; 1981, ch. 31, § 1; 1987, ch. 68, § 1; 1989, ch. 177, § 19; 1990, ch. 19, § 2; 1997, ch. 244, § 2; 1997, ch. 253, § 3; 2000, ch. 53, § 1; 2001, ch. 50, § 2; 2002, ch. 100, § 2;

2005, ch. 152, § 9; 2006, ch. 17, § 1; 2008, ch. 44, § 5; 2009, ch. 102, § 2; 2017, ch. 140, § 2; 2019, ch. 116, § 9; 2021 (1st S.S.), ch. 4, § 63.

30-31-3. Duty to administer.

A. The board shall administer the Controlled Substances Act and may add by regulation substances to the list of substances enumerated in Schedules I through IV pursuant to the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. In determining whether a substance has the potential for abuse, the board shall consider the following:

(1) the actual or relative abuse of the substance;

(2) the scientific evidence of the pharmacological effect of the substance, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration and significance of abuse;

(6) the risk to the public health; and

(7) the potential of the substance to produce psychic or physiological dependence liability.

B. After considering the factors enumerated in Subsection A of this section, the board shall make findings and issue regulations controlling the substance if it finds the substance has a potential for abuse.

C. If any substance is designated as a controlled substance under federal law and notice is given to the board, the board may, by regulation, similarly control the substance under the Controlled Substances Act after providing for a hearing pursuant to the Uniform Licensing Act.

D. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, tobacco or pesticides as defined in the Pesticide Control Act [76-4-1 to 76-4-39 NMSA 1978].

History: 1953 Comp., § 54-11-3, enacted by Laws 1972, ch. 84, § 3; 1989, ch. 177, § 20; 2006, ch. 16, § 1.

30-31-4. Nomenclature.

The controlled substances listed or to be listed in Schedules I through V are included by whatever official, common, usual, chemical or trade name designated.

History: 1953 Comp., § 54-11-4, enacted by Laws 1972, ch. 84, § 4.

30-31-5. Schedules; criteria.

There are established five schedules of controlled substances to be known as Schedules I, II, III, IV and V.

A. The board shall place a substance in Schedule I if it finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

B. The board shall place a substance in Schedule II if it finds that:

(1) the substance has a high potential for abuse;

(2) the substance has a currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychic or physical dependence.

C. The board shall place a substance in Schedule III if it finds that:

(1) the substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) the substance has a currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

D. The board shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to the substances in Schedule III;

(2) the substance has a currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substance in Schedule III.

E. The board shall place a substance in Schedule V if it finds that:

(1) the substance has a currently accepted medical use in treatment in the United States; and

(2) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule IV.

History: 1953 Comp., § 54-11-5, enacted by Laws 1972, ch. 84, § 5.

30-31-6. Schedule I.

The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacylmorphan;

(29) morpheridine;

(30) noracymethadol;

(31) norlevorphanol;

(32) normethadone;

(33) norpipanone;

(34) phenadoxone;

(35) phenampromide;

(36) phenomorphan;

(37) phenoperidine;

(38) piritramide;

(39) proheptazine;

(40) properidine;

(41) racemoramide; and

(42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) acetorphine;

(2) acetyldihydrocodeine;

(3) benzylmorphine;

(4) codeine methylbromide;

(5) codeine-N-oxide;

(6) cyprenorphine;

(7) desomorphine;

(8) dihydromorphine;

(9) etorphine;

(10) heroin;

(11) hydromorphinol;

(12) methyldesorphine;

(13) methyldihydromorphine;

(14) morphine methylbromide;

(15) morphine methylsulfonate;

(16) morphine-N-oxide;

(17) myrophine;

(18) nicocodeine;

(19) nicomorphine;

(20) normorphine;

(21) pholcodine; and

(22) thebacon;

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) bufotenine;

(5) diethyltryptamine;

(6) dimethyltryptamine;

(7) 4-methyl-2,5-dimethoxy amphetamine;

(8) ibogaine;

(9) lysergic acid diethylamide;

(10) mescaline;

(11) peyote, except as otherwise provided in the Controlled Substances Act;

(12) N-ethyl-3-piperidyl benzilate;

(13) N-methyl-3-piperidyl benzilate;

(14) psilocybin, except as provided otherwise in the Controlled Substances Act and the Medical Psilocybin Act [26-2D-1 to 26-2D-11 NMSA 1978];

(15) psilocin, except as provided otherwise in the Controlled Substances Act and the Medical Psilocybin Act;

(16) synthetic cannabinoids, including:

(a) 1-[2-(4-(morpholinyl)ethyl]-3-(1-naphthoyl)indole;

(b) 1-butyl-3-(1-napthoyl)indole;

(c) 1-hexyl-3-(1-naphthoyl)indole;

(d) 1-pentyl-3-(1-naphthoyl)indole;

(e) 1-pentyl-3-(2-methoxyphenylacetyl) indole;

(f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(g) 6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol);

(h) dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(i) 1-pentyl-3-(4-chloro naphthoyl) indole;

(j) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone; and

(k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;

(17) 3,4-methylenedioxymethcathinone;

(18) 3,4-methylenedioxypyrovalerone;

(19) 4-methylmethcathinone;

(20) 4-methoxymethcathinone;

(21) 3-fluoromethcathinone; and

(22) 4-fluoromethcathinone;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of psilocybin and psilocin in this schedule does not apply to their medical use as provided in the Medical Psilocybin Act;

F. the enumeration of Schedule I controlled substances does not apply to:

(1) hemp pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture;

(2) cultivation of hemp by persons pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture;

(3) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols with concentrations of up to five percent as measured using a post-decarboxylation method and based on percentage dry weight, possessed by a person in connection with the cultivation, transportation, testing, researching, manufacturing or other processing of the plant Cannabis sativa L., or any part of the plant whether growing or not, if authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act [Chapter 76, Article 24 NMSA 1978], by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture or the department of environment; or

(4) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, including tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols in any concentration possessed by a person in connection with the extraction of tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols, if authorized pursuant to rules promulgated, pursuant to the Hemp Manufacturing Act, by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture or the department of environment; and

G. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

History: 1953 Comp., § 54-11-6, enacted by Laws 1972, ch. 84, § 6; 1978, ch. 22, § 8; 2005, ch. 280, § 2; 2007, ch. 210, § 8; 2011, ch. 16, § 1; 2017, ch. 139, § 2; 2017, ch. 140, § 3; 2018, ch. 41, § 1; 2019, ch. 116, § 10; 2021 (1st S.S.), ch. 4, § 64; 2025, ch. 73, § 13.

30-31-7. Schedule II.

A. The following controlled substances are included in Schedule II:

(1) any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; and

(d) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions that do not contain cocaine or ecgonine;

(2) any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(a) alphaprodine;

(b) anileridine;

(c) bezitramide;

(d) dihydrocodeine;

(e) diphenoxylate;

(f) fentanyl;

(g) hydromorphone;

(h) isomethadone;

(i) levomethorphan;

(j) levorphanol;

(k) meperidine;

(l) metazocine;

(m) methadone;

(n) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(o) moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(p) oxycodone;

(q) pethidine;

(r) pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;

(s) pethidine--intermediate--B, ethyl-4-phenyl-piperidine-4-carboxylate;

(t) pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(u) phenazocine;

(v) piminodine;

(w) racemethorphan; and

(x) racemorphan;

(3) unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) methamphetamine, its salts, isomers and salts of isomers; and

(d) methylphenidate; and

(4) controlled substances added to Schedule II by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of the practitioner's professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to the ultimate user the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars ($5,000), or both.

History: 1953 Comp., § 54-11-7, enacted by Laws 1972, ch. 84, § 7; 1978, ch. 22, § 9; 1979, ch. 112, § 1; 2005, ch. 280, § 3; 2007, ch. 210, § 9; 2021 (1st S.S.), ch. 4, § 65.

30-31-8. Schedule III.

The following controlled substances are included in Schedule III:

A. any material, compound, mixture or preparation containing limited quantities of any substance having a stimulant effect on the central nervous system which is controlled and listed in Schedule II;

B. unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in another schedule;

(2) chlorhexadol;

(3) glutethimide;

(4) lysergic acid;

(5) lysergic acid amide;

(6) methyprylon;

(7) phencyclidine;

(8) sulfondiethylmethane;

(9) sulfonethylmethane; or

(10) sulfonmethane;

C. nalorphine;

D. any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(3) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(5) not more than one and eight-tenths grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(6) not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(7) not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; or

(8) not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

E. controlled substances added to Schedule III by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

F. the board may exempt by regulation any compound, mixture or preparation containing any stimulant or depressant substance listed in Subsections A and B of this section from the application of any part of the Controlled Substances Act if the compound, mixture or preparation contains any active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

History: 1953 Comp., § 54-11-8, enacted by Laws 1972, ch. 84, § 8; 2005, ch. 280, § 4.

30-31-9. Schedule IV.

The following controlled substances are included in Schedule IV:

A. any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) barbital;

(2) chloral betaine;

(3) chloral hydrate;

(4) ethchlorvynol;

(5) ethinamate;

(6) methohexital;

(7) meprobamate;

(8) methylphenobarbital;

(9) paraldehyde;

(10) petrichloral; or

(11) phenobarbital;

B. controlled substances added to Schedule IV by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

C. the board may exempt by regulation any compound, mixture or preparation containing any depressant substance listed in Subsection A of this section from the

application of all or any part of the Controlled Substances Act if the compound, mixture or preparation contains any active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1953 Comp., § 54-11-9, enacted by Laws 1972, ch. 84, § 9; 2005, ch. 280, § 5.

30-31-10. Schedule V.

A. The following controlled substances are included in Schedule V:

(1) any compound, mixture or preparation that contains the following limited quantities of any of the following narcotic drugs, and that also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams;

(b) not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams;

(c) not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams;

(d) not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit; or

(e) not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(2) any compound, mixture or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, or salts of its optical isomers. A compound, mixture or preparation as specified in this paragraph shall be dispensed, sold or distributed only by a licensed pharmacist or pharmacist intern or a registered pharmacy technician. Unless pursuant to a valid prescription, a person purchasing, receiving or otherwise acquiring the compound, mixture or preparation shall:

(a) produce a driver's license or other government-issued photo identification showing the date of birth of the person;

(b) sign a written log, receipt or other program or mechanism indicating the date of the transaction, name of the person, driver's license number or government-

issued identification number, name of the pharmacist, pharmacist intern or pharmacy technician conducting the transaction, the product sold and the total quantity, in grams or milligrams, of pseudoephedrine purchased; and

(c) be limited to no more than nine grams of any product, mixture or preparation within a thirty-day period.

B. The board may by regulation exempt any compound, mixture or preparation containing any depressant or stimulant substance enumerated in Schedules III, IV or V from the application of the Controlled Substances Act if:

(1) the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system; and

(2) such ingredients are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the nervous system.

C. The board may, by rule, exempt a product containing pseudoephedrine from Schedule V if the board determines that the product is formulated as to effectively prevent the conversion of pseudoephedrine into methamphetamine.

D. The board shall monitor prices charged for compounds, mixtures and preparations that contain pseudoephedrine and may adopt rules to prevent unwarranted price increases as a result of compliance with this section.

History: 1953 Comp., § 54-11-10, enacted by Laws 1972, ch. 84, § 10; 2006, ch. 16, § 2.

30-31-11. Regulations.

The board may promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances; provided, however, that in no case shall the fees exceed eighty dollars ($80.00) per year. If the board determines to increase any fee, the board shall notify, in addition to any other notice required by law, the affected professional group of the board's intention to increase the fee and the date for the scheduled hearing to review the matter.

History: 1953 Comp., § 54-11-11, enacted by Laws 1972, ch. 84, § 11; 1989, ch. 57, § 1; 1994, ch. 42, § 1.

30-31-12. Registration requirements.

A. A person who manufactures, distributes or dispenses a controlled substance or who proposes to engage in the manufacture, distribution or dispensing of a controlled substance shall obtain a registration issued by the board in accordance with its regulations.

B. Persons registered by the board to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of the Controlled Substances Act.

C. The following persons need not register and may lawfully possess controlled substances:

(1) an agent of a registered manufacturer, distributor or dispenser of a controlled substance if the agent is acting in the usual course of the agent's principal's business or employment;

(2) a common or contract carrier or warehouseman, or an employee whose possession of a controlled substance is in the usual course of the common or contract carrier or warehouseman's business; or

(3) an ultimate user.

D. The board may waive by regulation the requirement for registration of certain manufacturers, distributors or dispensers if it is consistent with the public health and safety.

E. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's regulations.

History: 1953 Comp., § 54-11-12, enacted by Laws 1972, ch. 84, § 12; 1975, ch. 346, § 1; 2002, ch. 55, § 1; 2009, ch. 72, § 1.

30-31-13. Registrations.

A. The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal or state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

B. Registration under this section does not entitle a registrant to manufacture and distribute controlled substances in Schedules I or II other than those allowed in the registration.

C. Compliance by manufacturers and distributors with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting registration, excluding state registration fees entitles them to be registered under the Controlled Substances Act.

D. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under Section 39 [30-31-40 NMSA 1978] of the Controlled Substances Act. The board need not require separate registration under this act for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under the Controlled Substances Act in another capacity. Practitioners or scientific investigators registered under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

History: 1953 Comp., § 54-11-13, enacted by Laws 1972, ch. 84, § 13.

30-31-14. Revocation and suspension of registration.

A. A registration under Section 30-31-13 NMSA 1978 to manufacture, distribute or dispense a controlled substance may be suspended or revoked upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed with the board;

(2) has been convicted of a felony under any state or federal law relating to a controlled substance;

(3) has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances; or

(4) has had his practitioner's license suspended or revoked by his professional licensing board.

B. A hearing to revoke or suspend a registration of a practitioner shall be held before a special hearing panel consisting of the board and two additional persons designated to sit on the hearing panel by the practitioner's own examining and licensing authority.

C. The special hearing panel may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

D. If the special hearing panel suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court.

E. Upon a revocation order becoming final, the board may apply to the court for an order to sell all controlled substances under seal. The court shall order the sale of such controlled substances under such terms and conditions that the court deems appropriate.

F. The board shall promptly notify the bureau of all orders suspending or revoking registration and all sales of controlled substances.

History: 1953 Comp., § 54-11-14, enacted by Laws 1972, ch. 84, § 14; 1975, ch. 346, § 2.

30-31-15. Order to show cause.

A. Before denying, suspending or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis of the order and shall require the applicant or registrant to appear before the board not

less than thirty days after the date of service of the order, but in the case of a denial of renewal of registration the order shall be served not later than thirty days before the expiration of the registration unless the proceedings relate to suspension or revocation of a registration. These proceedings shall be conducted in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978] without regard to any criminal prosecution or other proceeding. Proceedings to suspend or revoke a registration or to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the proceeding.

B. The board may suspend, without an order to show cause, any registrant simultaneously with the institution of proceedings under Section 14 [30-31-14 NMSA 1978] or where renewal of registration is refused if it finds that there is such a substantial and imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: 1953 Comp., § 54-11-15, enacted by Laws 1972, ch. 84, § 15.

30-31-16. Records of registrants.

A. Every registrant under the Controlled Substances Act manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accordance with regulations of the board.

Inventories as required in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be deemed in compliance with inventory requirements under this section.

B. Records for drugs under Schedules I and II shall be kept separate from other records. Prescriptions for all Schedule I and II drugs and narcotic prescriptions for controlled substances listed in Schedules III, IV and V shall be maintained separately from other prescription drugs in accordance with regulations of the board.

C. Records for nonnarcotic controlled substances under Schedules III, IV and V shall be maintained either separately or in such form that they are readily retrievable and are marked for ready identification in accordance with regulations of the board. Prescriptions for nonnarcotic controlled substances shall be maintained either in a separate prescription file or in such form that they are readily retrievable from other prescription records and are marked for ready identification in accordance with regulations of the board.

D. Records shall be maintained for a period of at least three years from the date of the record and may be inspected as required by authorized agents of the board.

E. A practitioner is not required to keep records of controlled substances listed in Schedules II through V that he prescribes or administers in the lawful course of his professional practice. He shall keep records of controlled substances that he dispenses other than by prescribing or administering.

F. Each pharmacy licensed in the state shall provide information relating to the dispensing of any controlled substance designated by the board. The board shall administer the collection and dissemination of the information obtained. The manner of reporting and the extent of the required information shall be designated by regulation of the board.

History: 1953 Comp., § 54-11-16, enacted by Laws 1972, ch. 84, § 16; 1994, ch. 42, § 2.

30-31-17. Order forms.

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting order forms shall be deemed compliance with this section.

History: 1953 Comp., § 54-11-17, enacted by Laws 1972, ch. 84, § 17.

30-31-18. Prescriptions.

A. No controlled substance listed in Schedule II, which is a prescription drug as determined by the federal food and drug administration, may be dispensed without a written prescription of a practitioner, unless administered directly to an ultimate user. No prescription for a Schedule II substance may be refilled. No person other than a practitioner shall prescribe or write a prescription.

B. Prescriptions for Schedules II through IV shall contain the following information:

(1) the name and address of the patient for whom the drug is prescribed;

(2) the name, address and registry number of the person prescribing the drug; and

(3) the identity of the pharmacist of record.

C. A controlled substance included in Schedules III or IV, which is a prescription drug as determined under the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article 1 NMSA 1978], shall not be dispensed without a written or oral prescription of a practitioner, except when administered directly by a practitioner to an ultimate user. The prescription shall not be filled or refilled more than six months after the date of issue or be refilled more than five times, unless

renewed by the practitioner and a new prescription is placed in the file. Prescriptions shall be retained in conformity with the regulations of the board.

D. The label affixed to the dispensing container of a drug listed in Schedules II, III or IV, when dispensed to or for a patient, shall contain the following information:

(1) date of dispensing and prescription number;

(2) name and address of the pharmacy;

(3) name of the patient;

(4) name of the practitioner; and

(5) directions for use and cautionary statements, if any.

E. The label affixed to the dispensing container of a drug listed in Schedule II, III or IV, when dispensed to or for a patient, shall contain a clear concise warning that it is a crime to transfer the drug to any person other than the patient.

F. No controlled substance included in Schedule V, which is a proprietary nonprescription drug, shall be distributed, offered for sale or dispensed other than for a medical purpose and a record of the sale shall be made in accordance with the regulations of the board.

G. In emergency situations, as defined by regulation, Schedule II drugs may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing and filed by the pharmacy in accordance with regulations of the board.

History: 1953 Comp., § 54-11-18, enacted by Laws 1972, ch. 84, § 18; 2005, ch. 152, § 10.

30-31-19. Distributions by manufacturers or distributors.

A registered manufacturer or distributor may distribute controlled substances to the following:

A. a registered manufacturer, pharmacy or distributor;

B. a registered practitioner;

C. a registered hospital or clinic; and

D. to a person in charge of a registered laboratory, but only for use by that laboratory for scientific and medical purposes.

History: 1953 Comp., § 54-11-19, enacted by Laws 1972, ch. 84, § 19.

30-31-20. Trafficking controlled substances; violation.

A. As used in the Controlled Substances Act, "traffic" means the:

(1) manufacture of a controlled substance enumerated in Schedules I through V or a controlled substance analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

(2) distribution, sale, barter or giving away of:

(a) a controlled substance enumerated in Schedule I or II that is a narcotic drug;

(b) a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or

(c) methamphetamine, its salts, isomers and salts of isomers; or

(3) possession with intent to distribute:

(a) a controlled substance enumerated in Schedule I or II that is a narcotic drug;

(b) controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or

(c) methamphetamine, its salts, isomers and salts of isomers.

B. Except as authorized by the Controlled Substances Act, it is unlawful for a person to intentionally traffic. A person who violates this subsection is:

(1) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. A person who knowingly violates Subsection B of this section within a drug-free school zone excluding private property residentially zoned or used primarily as a residence is guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 54-11-20, enacted by Laws 1972, ch. 84, § 20; 1974, ch. 9, § 1; 1980, ch. 23, § 1; 1987, ch. 68, § 2; 1990, ch. 19, § 3; 2006, ch. 17, § 2.

30-31-21. Distribution to a minor.

Except as authorized by the Controlled Substances Act, no person who is eighteen years of age or older shall intentionally distribute a controlled substance to a person under the age of eighteen years. Any person who violates this section with respect to a controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of any controlled substance enumerated in Schedule I, II, III or IV is:

(1) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 54-11-21, enacted by Laws 1972, ch. 84, § 21; 1974, ch. 9, § 2; 1980, ch. 23, § 2; 1987, ch. 68, § 3; 2021 (1st S.S.), ch. 4, § 66.

30-31-22. Controlled or counterfeit substances; distribution prohibited.

A. Except as authorized by the Controlled Substances Act, it is unlawful for a person to intentionally distribute or possess with intent to distribute a controlled substance or a controlled substance analog except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers. A person who violates this subsection with respect to:

(1) synthetic cannabinoids is:

(a) for the first offense, guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than five hundred dollars ($500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

B. It is unlawful for a person to distribute gamma hydroxybutyric acid or flunitrazepam to another person without that person's knowledge and with intent to commit a crime against that person, including criminal sexual penetration. For the purposes of this subsection, "without that person's knowledge" means the person is unaware that a substance with the ability to alter that person's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is being distributed to that person. Any person who violates this subsection is:

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the Controlled Substances Act, it is unlawful for a person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. A person who violates this subsection with respect to:

(1) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) a counterfeit substance enumerated in Schedule V is guilty of a petty misdemeanor and shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment for a definite term not to exceed six months, or both.

D. A person who knowingly violates Subsection A or C of this section while within a drug-free school zone with respect to:

(1) synthetic cannabinoids is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:

(a) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(4) the intentional creation, delivery or possession with the intent to deliver:

(a) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) a counterfeit substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

E. Notwithstanding the provisions of Subsection A of this section, distribution of a small amount of synthetic cannabinoids for no remuneration shall be treated as provided in Paragraph (1) of Subsection B of Section 30-31-23 NMSA 1978.

History: 1953 Comp., § 54-11-22, enacted by Laws 1972, ch. 84, § 22; 1974, ch. 9, § 3; 1977, ch. 183, § 1; 1980, ch. 23, § 3; 1987, ch. 68, § 4; 1990, ch. 19, § 4; 2005, ch. 280, § 6; 2006, ch. 17, § 3; 2011, ch. 16, § 2; 2021 (1st S.S.), ch. 4, § 67.

30-31-23. Controlled substances; possession prohibited.

A. It is unlawful for a person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of professional practice or except as otherwise authorized by the Controlled Substances Act. It is unlawful for a person intentionally to possess a controlled substance analog.

B. A person who violates this section with respect to:

(1) one ounce or less of synthetic cannabinoids is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year, or both;

(2) more than one ounce and less than eight ounces of synthetic cannabinoids is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year, or both; or

(3) eight ounces or more of synthetic cannabinoids is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. A minor who violates this section with respect to the substances listed in this subsection is guilty of a petty misdemeanor and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be required to perform no more than forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to those substances, the provisions of Section 32A-2-19 NMSA 1978 shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age. The provisions of this subsection apply to the following substances:

(1) synthetic cannabinoids;

(2) any of the substances listed in Paragraphs (17) through (22) of Subsection C of Section 30-31-6 NMSA 1978; or

(3) a substance added to Schedule I by a rule of the board adopted on or after March 31, 2011 if the board determines that the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of this subsection.

D. Except as provided in Subsections B and F of this section, and for those substances listed in Subsection E of this section, a person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year, or both.

E. A person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Except for a minor as provided in Subsection C of this section, a person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding a person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

(1) one ounce or less of synthetic cannabinoids is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars

($100) or more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year, or both, and for the second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) more than one ounce and less than eight ounces of synthetic cannabinoids is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) eight ounces or more of synthetic cannabinoids is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) any amount of any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV, except phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 54-11-23, enacted by Laws 1972, ch. 84, § 23; 1974, ch. 9, § 4; 1980, ch. 23, § 4; 1983, ch. 183, § 1; 1987, ch. 68, § 5; 1989, ch. 123, § 1; 1990, ch. 19, § 5; 1990, ch. 33, § 1; 2005, ch. 280, § 7; 2011, ch. 16, § 3; 2019, ch. 217, § 1; 2021, ch. 15, § 1; 2021 (1st S.S.), ch. 4, § 68.

30-31-24. Controlled substances; violations of administrative provisions.

A. It is unlawful for any person:

(1) who is subject to Sections 30-31-11 through 30-31-19 NMSA 1978 to intentionally distribute or dispense a controlled substance in violation of Section 30-31-18 NMSA 1978;

(2) who is a registrant, to intentionally manufacture a controlled substance not authorized by his registration, or to intentionally distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) to intentionally refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under the Controlled Substances Act; or

(4) to intentionally refuse an entry into any premises for any inspection authorized by the Controlled Substances Act.

B. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 54-11-24, enacted by Laws 1972, ch. 84, § 24; 1974, ch. 9, § 5; 1980, ch. 23, § 5.

30-31-25. Controlled substances; prohibited acts.

A. It is unlawful for any person:

(1) who is a registrant to distribute a controlled substance classified in Schedules [Schedule] I or II, except pursuant to an order form as required by Section 30-31-17 NMSA 1978;

(2) to intentionally use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) to intentionally acquire or obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under the Controlled Substances Act, or any record required to be kept by that act; or

(5) to intentionally make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing, upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

B. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1953 Comp., § 54-11-25, enacted by Laws 1972, ch. 84, § 25; 1974, ch. 9, § 6; 1979, ch. 122, § 1; 1980, ch. 23, § 6.

30-31-25.1. Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to a person who is in possession of:

(1) hypodermic syringes or needles for the purpose of participation in or administration of the Harm Reduction Act [24-2C-1 to 24-2C-6 NMSA 1978];

(2) supplies or devices obtained pursuant to the Harm Reduction Act in accordance with rules established by the department of health for the harm reduction program; or

(3) supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants.

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to:

(1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act [Chapter 61, Article 11 NMSA 1978].

C. A person who violates the provisions of Subsection A of this section shall be issued a penalty assessment pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars ($50.00). A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: 1978 Comp., § 30-31-25.1, enacted by Laws 1981, ch. 31, § 2; 1997, ch. 256, § 7; 2001, ch. 189, § 1; 2019, ch. 217, § 2; 2022, ch. 4, § 4.

30-31-26. Penalties under other laws.

A. Any penalty imposed for violation of the Controlled Substances Act is in addition to any civil or administrative penalty or sanction otherwise provided by law.

B. A municipality may, by ordinance, prohibit distribution or possession of a controlled substance enumerated in Schedules I, II, III or IV but penalty provisions shall be the same as those provided for a similar crime in the Controlled Substances Act.

History: 1953 Comp., § 54-11-26, enacted by Laws 1972, ch. 84, § 26.

30-31-27. Bar to prosecution.

If a violation of the Controlled Substances Act is a violation of a federal law, the law of another state or the ordinance of a municipality, a conviction or acquittal under federal law, the law of another state or the ordinance of a municipality for the same act is a bar to prosecution.

History: 1953 Comp., § 54-11-27, enacted by Laws 1972, ch. 84, § 27.

30-31-27.1. Overdose prevention; limited immunity.

A. A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance:

(1) the provisions of Section 30-31-23 NMSA 1978 or Subsection A of Section 30-31-25.1 NMSA 1978;

(2) a restraining order; or

(3) the conditions of probation or parole.

B. A person who experiences an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance:

(1) the provisions of Section 30-31-23 NMSA 1978 or Subsection A of Section 30-31-25.1 NMSA 1978;

(2) a restraining order; or

(3) the conditions of probation or parole.

C. The act of seeking medical assistance for someone who is experiencing an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act for which immunity is not provided pursuant to this section.

D. For the purposes of this section, "seeking medical assistance" means:

(1) reporting an alcohol- or drug-related overdose or other medical emergency to law enforcement, the 911 system or another emergency dispatch system, a poison control center or a health care provider; or

(2) assisting an individual who is reporting an alcohol- or drug-related overdose or providing care to an individual who is experiencing an alcohol- or drug-related overdose or other medical emergency while awaiting the arrival of a health care provider.

History: Laws 2007, ch. 260, § 1; 2019, ch. 211, § 3.

30-31-28. Conditional discharge for possession as first offense.

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23 [30-31-23 NMSA 1978], after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the attorney general solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any

other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except nonpublic records filed with the attorney general. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

History: 1953 Comp., § 54-11-28, enacted by Laws 1972, ch. 84, § 28.

30-31-29. Probationary period.

Notwithstanding any other provision of law, the court may place on probation for a period not to exceed one year any person convicted of a violation of the Controlled Substances Act where the maximum length of the term of imprisonment is one year or less if:

A. the judge does not impose a prison sentence; or

B. the judge suspends all of any prison sentence which he imposes.

History: 1953 Comp., § 54-11-28.1, enacted by Laws 1975, ch. 80, § 1.

30-31-30. Powers of enforcement personnel.

Any officer or employee designated by the board may:

A. serve search warrants, arrest warrants and administrative inspection warrants;

B. make arrests without warrant for any offense under the Controlled Substances Act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Controlled Substances Act which may constitute a felony; or

C. make seizures of property pursuant to the Controlled Substances Act.

History: 1953 Comp., § 54-11-29, enacted by Laws 1972, ch. 84, § 29.

30-31-31. Administrative inspections and warrants.

Issuance and execution of administrative inspection warrants shall be as follows:

A. a magistrate, within his jurisdiction and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections and seizures of property authorized by the Controlled Substances Act. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the Controlled Substances Act sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

B. a warrant shall issue only upon an affidavit of a designated officer or employee having actual knowledge of the alleged facts, sworn to before the magistrate and establishing the grounds for issuing the warrant. If the magistrate is satisfied that grounds for the warrant exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(1) state the grounds for its issuance and the name of each person whose affidavit has been taken in its support;

(2) be directed to a person authorized by Section 29 [30-31-30 NMSA 1978] or a state police officer to serve and carry out the warrant;

(3) command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(4) identify the items or types of property to be seized, if any; and

(5) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned;

C. a warrant issued pursuant to this section must be served and returned within five days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person serving the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person serving the warrant. A copy of the inventory

shall be delivered to the person from whom or from whose premises the property was taken and the applicant for the warrant; and

D. the magistrate who has issued a warrant shall attach a copy of the return and all papers returnable in connection with it and file them with the clerk of the magistrate court.

History: 1953 Comp., § 54-11-30, enacted by Laws 1972, ch. 84, § 30.

30-31-32. Administrative inspections.

The board may make administrative inspections of controlled premises in accordance with the following provisions:

A. for purposes of this section, "controlled premises" means:

(1) places where persons registered or exempted from registration requirements under the Controlled Substances Act are required to keep records; and

(2) places, including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under the Controlled Substances Act are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance;

B. when authorized by an administrative inspection warrant issued pursuant to Section 30 [30-31-31 NMSA 1978], an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter the controlled premises for the purpose of conducting an administrative inspection;

C. when authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(1) inspect and copy records required by the Controlled Substances Act to be kept;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in Subsection E, all other things bearing on violations of the Controlled Substances Act, including records, files, papers, processes, controls and facilities; and

(3) inventory any stock of any controlled substance and obtain samples;

D. this section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) if the owner, operator or agent in charge of the controlled premises consents;

(2) in situations presenting substantial imminent danger to health or safety; or

(3) in all other situations in which a warrant is not constitutionally required;

E. an inspection authorized by this section shall not extend to financial data, sales data other than shipment data or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1953 Comp., § 54-11-31, enacted by Laws 1972, ch. 84, § 31.

30-31-33. Injunctions.

A. The district courts may exercise jurisdiction to restrain or enjoin violations of the Controlled Substances Act.

B. The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

History: 1953 Comp., § 54-11-32, enacted by Laws 1972, ch. 84, § 32.

30-31-34. Forfeitures; property subject.

The following are subject to forfeiture pursuant to the provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978]:

A. all raw materials, products and equipment of any kind, including firearms that are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of the Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section;

C. all conveyances, including aircraft, vehicles or vessels that are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A of this section;

D. all books, records and research products and materials, including formulas, microfilm, tapes and data that are used or intended for use in violation of the Controlled Substances Act;

E. narcotics paraphernalia or money that is a fruit or instrumentality of the crime;

F. notwithstanding Subsection C of this section and the provisions of the Forfeiture Act:

(1) a conveyance used by a person as a common carrier in the transaction of business as a common carrier shall not be subject to forfeiture pursuant to this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act;

(2) a conveyance shall not be subject to forfeiture pursuant to this section by reason of an act or omission established for the owner to have been committed or omitted without the owner's knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor; and

(4) a forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission; and

G. all drug paraphernalia as defined by Subsection T of Section 30-31-2 NMSA 1978.

History: 1953 Comp., § 54-11-33, enacted by Laws 1972, ch. 84, § 33; 1975, ch. 231, § 1; 1981, ch. 31, § 3; 1987, ch. 68, § 6; 1989, ch. 196, § 1; 2015, ch. 152, § 17; 2021 (1st S.S.), ch. 4, § 69.

30-31-35. Forfeiture; procedure.

The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal pursuant to the Controlled Substances Act.

History: 1953 Comp., § 54-11-34, enacted by Laws 1972, ch. 84, § 34; 1973, ch. 211, § 1; 1975, ch. 231, § 2; 1977, ch. 139, § 1; 1980, ch. 7, § 1; 1981, ch. 66, § 1; 2002, ch. 4, § 15; 2015, ch. 152, § 18.

30-31-36. Summary forfeiture.

A. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of the Controlled Substances Act are contraband and shall be seized and summarily forfeited to the state.

B. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I which are seized or come into the possession of the

state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

C. Species of plants from which controlled substances in Schedules I and II or controlled substance analogs of substances listed in Schedules I and II may be derived which have been planted or cultivated in violation of the Controlled Substances Act, or of which the owners or cultivators are unknown or which are wild growths, may be seized and summarily forfeited to the state.

History: 1953 Comp., § 54-11-35, enacted by Laws 1972, ch. 84, § 35; 1987, ch. 68, § 7.

30-31-37. Burden of proof.

It is not necessary for the state to negate any exemption or exception in the Controlled Substances Act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under the Controlled Substances Act. The burden of proof of any exemption or exception is upon the person claiming it.

History: 1953 Comp., § 54-11-36, enacted by Laws 1972, ch. 84, § 36.

30-31-38. Cooperative duties of board.

A. The board shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end it may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in training programs concerning controlled substances law enforcement at local and state levels; and

(3) cooperate with the bureau by establishing a centralized unit to accept, catalogue, file and collect statistics and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under Section 39 [30-31-40 NMSA 1978].

B. Results, information and evidence received from the bureau relating to the regulatory functions of the Controlled Substances Act, including results of inspections conducted by it, may be relied and acted upon by the board in the exercise of its regulatory functions under the Controlled Substances Act.

History: 1953 Comp., § 54-11-37, enacted by Laws 1972, ch. 84, § 37.

30-31-39. Education.

The board shall provide for educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

A. promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry;

B. assist the regulated industry in contributing to the reduction of misuse and abuse of controlled substances; and

C. assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

History: 1953 Comp., § 54-11-38, enacted by Laws 1972, ch. 84, § 38.

30-31-40. Research; confidentiality.

A. The board shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of the Controlled Substances Act, it may register public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

B. The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

C. The board may authorize the possession and distribution of controlled substances by persons engaged in research. Such authorization shall contain the conditions and terms of the research to be conducted. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

D. A practitioner engaged in medical practice or research shall not be required to furnish the name or identity of a patient or research subject to the board, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

History: 1953 Comp., § 54-11-39, enacted by Laws 1972, ch. 84, § 39.

30-31-41. Anabolic steroids; possession; distribution; penalties; notice.

A. Except as authorized by the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article 1 NMSA 1978], it is unlawful for any person to intentionally possess anabolic steroids. Any person who violates this subsection is guilty of a misdemeanor.

B. Except as authorized by the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act], it is unlawful for any person to intentionally distribute or possess with intent to distribute anabolic steroids. Any person who violates this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the New Mexico Drug and Cosmetic Act [New Mexico Drug, Device and Cosmetic Act], it is unlawful for any person eighteen years of age or older to intentionally distribute anabolic steroids to a person under eighteen years of age. Any person who violates this subsection is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A copy of this act shall be distributed to each licensed athletic trainer by the athletic trainers advisory board and displayed prominently in the athletic locker rooms of all state post-secondary and public schools.

History: Laws 1987, ch. 271, § 1.

ARTICLE 31A
Imitation Controlled Substances

30-31A-1. Short title.

This act [30-31A-1 to 30-31A-15 NMSA 1978] may be cited as the "Imitation Controlled Substances Act".

History: Laws 1983, ch. 148, § 1.

30-31A-2. Definitions.

As used in the Imitation Controlled Substances Act:

A. "board" means the board of pharmacy;

B. "controlled substance" means a substance as defined in Subsection E of Section 30-31-2 NMSA 1978;

C. "distribute" means the sale or possession with the intent to sell of an imitation controlled substance;

D. "imitation controlled substance" means a substance that is not a controlled substance which by dosage unit appearance, including color, shape, size and markings and by representations made would lead a reasonable person to believe that the substance is a controlled substance. The fact finder may consider:

(1) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance or its use or effect;

(2) statements made to the recipient that the substance may be resold for inordinate profit;

(3) whether the substance is packaged in a manner normally used for illicit controlled substances;

(4) evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;

(5) prior convictions, if any, of the owner or anyone in control of the object, under state or federal law related to controlled substances or fraud; and

(6) whether the physical appearance of the substance is substantially identical to a controlled substance; and

E. "manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging or labeling or relabeling as an imitation controlled substance.

History: Laws 1983, ch. 148, § 2.

30-31A-3. Duty to administer.

The board shall administer the Imitation Controlled Substances Act.

History: Laws 1983, ch. 148, § 3.

30-31A-4. Manufacture, distribution [or possession] of imitation controlled substance.

It is unlawful for any person to manufacture, distribute or possess with intent to distribute an imitation controlled substance. Any person who violates the provisions of this section is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1983, ch. 148, § 4.

30-31A-5. Sale to a minor.

No person who is eighteen years of age or older shall intentionally sell an imitation controlled substance to a person under the age of eighteen years. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1983, ch. 148, § 5.

30-31A-6. Possession with intent to distribute an imitation controlled substance.

It is unlawful for any person intentionally to possess an imitation controlled substance with the intent to distribute. Any person who violates this section is guilty of a fourth degree felony.

History: Laws 1983, ch. 148, § 6.

30-31A-7. Advertisement.

It is unlawful for any person to place in any newspaper, magazine, handbill or other publication, or to post or distribute in any place visible to the general public, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this section is guilty of a misdemeanor.

History: Laws 1983, ch. 148, § 7.

30-31A-8. Defenses.

In any prosecution for unlawful delivery of an imitation controlled substance, it is no defense that the defendant believed the imitation controlled substance to be a controlled substance.

History: Laws 1983, ch. 148, § 8.

30-31A-9. Forfeitures; property subject.

The following are subject to forfeiture:

A. all raw materials, products and equipment of any kind that are used in the manufacturing, compounding or processing of any imitation controlled substance in violation of the Imitation Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section; and

C. all books, records and research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of the Imitation Controlled Substances Act.

History: Laws 1983, ch. 148, § 9; 2015, ch. 152, § 19.

30-31A-10. Forfeiture; procedure.

The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal under the Imitation Controlled Substances Act.

History: Laws 1983, ch. 148, § 10; 2002, ch. 4, § 16.

30-31A-11. Summary forfeiture.

Imitation controlled substances that are possessed, transferred, sold or offered for sale in violation of the Imitation Controlled Substances Act are contraband and shall be seized and summarily forfeited to the state.

History: Laws 1983, ch. 148, § 11.

30-31A-12. Powers of enforcement personnel.

Any officer or employee designated by the board or other law enforcement officer may:

A. serve search warrants, arrest warrants and administrative inspection warrants;

B. make arrests without warrant for any offense under the Imitation Controlled Substances Act committed in his presence or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Imitation Controlled Substances Act which may constitute a felony; or

C. make seizures of property pursuant to the Imitation Controlled Substances Act.

History: Laws 1983, ch. 148, § 12.

30-31A-13. Administrative inspections and warrants.

Magistrate or metropolitan courts may issue administrative inspection warrants upon a showing of probable cause.

History: Laws 1983, ch. 148, § 13.

30-31A-14. Injunctions.

The district courts may exercise jurisdiction to restrain or enjoin violations of the Imitation Controlled Substances Act.

History: Laws 1983, ch. 148, § 14.

30-31A-15. Immunity.

No civil or criminal liability shall be imposed by virtue of the Imitation Controlled Substances Act on any person registered under the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] who manufactures, distributes or possesses an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

History: Laws 1983, ch. 148, § 15.

ARTICLE 31B
Drug Precursors

30-31B-1. Short title.

Chapter 30, Article 31B NMSA 1978 may be cited as the "Drug Precursor Act".

History: Laws 1989, ch. 177, § 1.; 2004, ch. 9, § 1; 2004, ch. 12 § 1.

30-31B-2. Definitions.

As used in the Drug Precursor Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. "Agent" does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. "board" means the board of pharmacy;

D. "bureau" means the bureau of narcotics and dangerous drugs of the United States department of justice or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or regulations adopted thereto;

F. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary or any respective supplement to these publications. "Drug" does not include devices or their components, parts or accessories;

L. "drug precursor" means a substance, material, compound, mixture or preparation listed in Section 30-31B-3 NMSA 1978 or regulations adopted thereto or any of their salts or isomers. "Drug precursor" specifically excludes those substances, materials, compounds, mixtures or preparations that are prepared for dispensing pursuant to a prescription or over-the-counter distribution as a substance that is generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act, unless the board makes the findings required pursuant to Subsection B of Section 30-31B-4 NMSA 1978;

M. "immediate precursor" means a substance that is a compound commonly used or produced primarily as an immediate chemical intermediary used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit the manufacture of controlled substances;

N. "license" means a license issued by the board to manufacture, possess, transfer or transport a drug precursor;

O. "manufacture" means the production, preparation, compounding, conversion or processing of a drug precursor by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by a practitioner:

(1) as an incident to the practitioner's administering or dispensing of a controlled substance in the course of professional practice; or

(2) by the practitioner's agent under the practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

P. "person" includes an individual, sole proprietorship, partnership, corporation, association, the state or a political subdivision of the state or other legal entity;

Q. "possession" means to actively or constructively exercise dominion over;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, dentist, veterinarian or other person licensed to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber and in accordance with the Controlled Substances Act or regulations adopted thereto; and

T. "transfer" means the sale, possession with intent to sell, barter or giving away of a drug precursor.

History: Laws 1989, ch. 177, § 2; 2004, ch. 9, § 2; 2004, ch. 12, § 2; 2008, ch. 44, § 6.

30-31B-3. Drug precursors list.

Any substance, material, compound, mixture or preparation of the following substances or any of their salts or isomers are subject to regulation by the board and to the requirements of the Drug Precursor Act:

A. 1-phenylcyclohexylamine;

B. 1-piperidinocyclohexanecarbonitrile;

C. ephedrine;

D. psuedoephedrine;

E. methylamine;

F. methylformamide;

G. phenylacetic acid; and

H. phenylacetone.

History: Laws 1989, ch. 177, § 3.

30-31B-4. Duty to administer.

A. The board shall administer the Drug Precursor Act and by regulation may add substances to the list of drug precursors enumerated in Section 30-31B-3 NMSA 1978. The board shall promulgate regulations pursuant to the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978].

B. In determining whether to add to the list of drug precursors a substance, material, compound, mixture or preparation that is generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or that has been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the

meaning of Section 505 of the Federal Food, Drug and Cosmetic Act, the board shall consider:

(1) whether the substance, material, compound, mixture or preparation is:

(a) a source of a substance already controlled under the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978 NMSA 1978]; or

(b) subject to being easily converted to an immediate precursor of a substance already controlled under the Controlled Substances Act ;

(2) the relative ease by which use of the substance, material, compound, mixture or preparation can facilitate the manufacture of a controlled substance;

(3) legitimate uses that would be unduly hampered by listing the substance, material, compound, mixture or preparation as a drug precursor;

(4) whether the substance, material, compound, mixture or preparation is formulated to effectively prevent its conversion into an immediate precursor of a substance already controlled under the Controlled Substances Act; and

(5) any other factors relevant to and consistent with the public health and safety.

C. In determining whether a substance, material, compound, mixture or preparation should be added to the list of drug precursors, the board shall consider:

(1) whether the substance, material, compound, mixture or preparation is an immediate precursor of a substance already controlled under the Controlled Substances Act;

(2) the relative ease by which use of the substance, material, compound, mixture or preparation can facilitate the manufacture of a controlled substance;

(3) legitimate uses which would be unduly hampered by listing the substance, material, compound, mixture or preparation as a drug precursor; and

(4) any other factors relevant to and consistent with the public health and safety.

D. After considering the factors enumerated in Subsection B or C of this section, the board shall make findings and issue regulations listing the substance, material, compound, mixture or preparation as a drug precursor if it finds that the substance, material, compound, mixture or preparation has a significant potential for use in the manufacture of controlled substances.

E. If the board designates a substance, material, compound, mixture or preparation as a drug precursor, then substances, materials, compounds, mixtures or preparations which are precursors of the drug precursor so designated shall not be subject to control solely because they are precursors of a drug precursor.

F. If any substance, material, compound, mixture or preparation is designated as controlled under federal law and notice is given to the board, the board may, by regulation, similarly control the substance under the Drug Precursor Act after providing for a hearing pursuant to the Uniform Licensing Act.

G. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, tobacco or pesticides as defined in the Pesticide Control Act [76-4-1 to 76-4-39 NMSA 1978].

History: Laws 1989, ch. 177, § 4; 2004, ch. 9, § 3; 2004, ch. 12, § 3.

30-31B-5. Nomenclature.

The drug precursors listed in Section 3 [30-31B-3 NMSA 1978] of the Drug Precursor Act are included by whatever official, common, usual, chemical or trade name designated.

History: Laws 1989, ch. 177, § 5.

30-31B-6. Regulations.

A. The board may promulgate regulations and charge reasonable fees relating to the licensing and control of the manufacture, possession, transfer and transportation of drug precursors. The fees shall not be more than two hundred fifty dollars ($250) per license for a wholesaler's license, a distributor's license or a manufacturer's license. The fees shall not be more than fifty dollars ($50.00) per license for a retail distributor's license, when the retail distributor has ten or more employees. The fees shall not be more than twenty-five dollars ($25.00) per license for a retail distributor's license, when the retail distributor has fewer than ten employees.

B. Every person who manufactures, possesses, transfers or transports any drug precursor or who proposes to engage in the manufacture, possession, transfer or transportation of any drug precursor shall obtain, annually, a license issued by the board.

C. Persons licensed by the board to manufacture, possess, transfer or transport drug precursors may manufacture, possess, transfer or transport those substances to the extent authorized by their license and in conformity with the other provisions of the Drug Precursor Act.

D. The following persons need not be licensed under the Drug Precursor Act and may lawfully possess drug precursors:

(1) physicians;

(2) an agent of any licensed manufacturer of any drug precursor if he is acting in the usual course of his principal's business or employment;

(3) an employee of a licensed common or contract carrier or licensed warehouseman whose possession of any drug precursor is in the usual course of the licensed common or contract carrier or licensed warehouseman's business;

(4) a student enrolled in a chemistry class for credit; provided, however, that the student's use of the drug precursor is for a bona fide educational purpose and that the chemistry department of the educational institution otherwise possesses all the necessary licenses required by the board;

(5) a consumer who uses a drug precursor for its intended purpose and who does not use the drug precursor to manufacture a substance controlled under the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(6) a pharmacy, an agent or employee of a pharmacy or a contractor for a pharmacy;

(7) a pharmacist, an agent or employee of a pharmacist or a contractor for a pharmacist; or

(8) an agent or employee of a licensed retail establishment or a contractor for a licensed retail establishment.

E. The board may waive by regulation the requirement for licensing of certain manufacturers if it is consistent with the public health and safety.

F. The board may inspect the establishment of a licensee or applicant for license in accordance with the board's regulations.

History: Laws 1989, ch. 177, § 6; 2004, ch. 9, § 4; 2004, ch. 12, § 4.

30-31B-7. Licenses.

A. The board shall license an applicant to manufacture, possess, transfer or transport drug precursors unless it determines that the issuance of that license would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of drug precursors into other than legitimate medical, scientific or industrial channels;

(2) compliance with applicable state and local law;

(3) any conviction of the applicant under federal or state laws relating to any controlled substance or drug precursor;

(4) past experience in the manufacture, possession, transfer or transportation of drug precursors and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Drug Precursor Act or the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances or drug precursors as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

B. Licensing under this section does not entitle a licensee to manufacture, possess, transfer or transport drug precursors other than those allowed in the license.

History: Laws 1989, ch. 177, § 7.

30-31B-8. Revocation and suspension of license.

A. A license to manufacture, possess, transfer or transport a drug precursor under Section 7 [30-31B-7 NMSA 1978] of the Drug Precursor Act may be suspended or revoked upon a finding that the registrant has:

(1) furnished false or fraudulent material information in any application filed with the board;

(2) been convicted of a felony under any state or federal law relating to a controlled substance or drug precursor;

(3) had his federal registration to manufacture, distribute or dispense controlled substances or drug precursors suspended or revoked; or

(4) violated any rule or regulation of the board with regard to drug precursors or controlled substances or any provision of the Drug Precursor Act or the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].

B. A hearing to revoke or suspend a license shall be held by a special hearing panel consisting of the board and two additional persons designated by the board to sit on the hearing panel.

C. The special hearing panel may limit revocation or suspension of a license to the particular drug precursor if grounds for revocation or suspension exist.

D. If the special hearing panel suspends or revokes a license, all drug precursors owned or possessed by the licensee at the time of suspension or the effective date of the revocation may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded, unless a court, upon application, orders the sale or destruction of perishable or dangerous substances and the deposit of the proceeds of any sale with the court.

E. Upon a revocation order becoming final, the board may apply to the court for an order to sell or destroy all drug precursors under seal. The court shall order the sale or destruction of such drug precursors under such terms and conditions that the court deems appropriate.

F. The board shall promptly notify the bureau of all orders suspending or revoking licenses.

G. The standard of proof necessary to revoke or suspend a license under this section shall be a preponderance of the evidence. The rules of evidence are not strictly applicable to a hearing under this section and all evidentiary matters are to be finally determined by the special hearing panel.

History: Laws 1989, ch. 177, § 8.

30-31B-9. Order to show cause.

A. Before denying, suspending or revoking a license or refusing a renewal of the license, the board shall serve upon the applicant or licensee an order to show cause why the license should not be denied, revoked or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis of the order and shall require the applicant or registrant to appear before the board not less than thirty days after the date of service of the order, but in the case of a denial of renewal of the license, the order shall be served not later than thirty days before the expiration of the license unless the proceedings relate to suspension or revocation of a license. These proceedings shall be conducted in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978] without regard to any criminal prosecution or other proceeding. Proceedings to suspend or revoke a license or to refuse renewal of a license shall not abate the existing license which shall remain in effect pending the outcome of the proceeding.

B. The board may suspend, without an order to show cause, any license simultaneously with the institution of proceedings to revoke or suspend a registration under Section 30-31-14 NMSA 1978 or where renewal of the license is refused if it finds that there is such a substantial and imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: Laws 1989, ch. 177, § 9.

30-31B-10. Records of licensees.

Every licensee under the Drug Precursor Act manufacturing, possessing, transferring or transporting a drug precursor shall maintain, on a current basis, a complete and accurate record of each substance manufactured, possessed, transferred or transported by the licensee in accordance with regulations of the board.

History: Laws 1989, ch. 177, § 10.

30-31B-11. Distribution by manufacturers.

A licensed manufacturer or transferer may transfer drug precursors to a licensed manufacturer, licensed possessor or licensed transporter.

History: Laws 1989, ch. 177, § 11.

30-31B-12. Drug precursors; prohibited acts; penalties.

A. It is unlawful for any person:

(1) to transfer drug precursors except to an authorized licensee;

(2) to intentionally use in the course of the manufacture or transfer of a drug precursor a license number which is fictitious, revoked, suspended or issued to another person;

(3) to intentionally acquire or obtain, or attempt to acquire or obtain, possession of a drug precursor by misrepresentation, fraud, forgery, deception or subterfuge;

(4) to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under the Drug Precursor Act or any record required to be kept by that act;

(5) who is a licensee to intentionally manufacture a drug precursor not authorized by his license or to intentionally transfer a drug precursor not authorized by his license to another licensee or authorized person;

(6) to intentionally refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under the Drug Precursor Act;

(7) to intentionally refuse an entry into any premises for any inspection authorized by the Drug Precursor Act; or

(8) to manufacture, possess, transfer or transport a drug precursor without the appropriate license or in violation of any rule or regulation of the board.

B. Any person who violates any provision of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. When a person owns or operates a retail establishment where drug precursors are sold by an employee in violation of the provisions of this section, it is an affirmative defense to a prosecution of that owner or operator if he furnishes documentation that he provided the employee with a training program regarding state and federal laws and regulations regarding drug precursors; provided that, if the owner or operator knew or should have known of the employee's violation, the owner or operator shall also be in violation of the provisions of this section.

D. When drug precursors are sold by an employee of a retail establishment in violation of the provisions of this section, it is an affirmative defense to a prosecution of that employee that he did not receive training from his employer regarding state and federal laws and regulations regarding drug precursors.

History: Laws 1989, ch. 177, § 12; 2004, ch. 9, § 5; 2004, ch. 12, § 5.

30-31B-13. Powers of enforcement personnel.

Any law enforcement officer:

A. serve search warrants, arrest warrants and administrative inspection warrants;

B. make arrests without a warrant for any offense under the Drug Precursor Act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Drug Precursor Act which may constitute a felony; and

C. make seizures of property pursuant to the Drug Precursor Act.

History: Laws 1989, ch. 177, § 13.

30-31B-14. Administrative inspection warrants.

A. Issuance and execution of administrative inspection warrants shall be as follows:

(1) a magistrate, within his jurisdiction and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections and seizures of property authorized by the Drug Precursor Act. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the Drug Precursor Act sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant; and

(2) a warrant shall be issued only upon an affidavit of a law enforcement officer or employee of the board having actual knowledge of the alleged facts, sworn to before the magistrate and establishing the grounds for issuing the warrant. If the magistrate is satisfied that grounds for the warrant exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection and, if appropriate, the type of property to be inspected, if any.

B. The warrant shall:

(1) state the grounds for its issuance and the name of the affiant;

(2) be directed to a person authorized by this section to serve and carry out the warrant;

(3) command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(4) identify the items or types of property to be seized, if any;

(5) allow the sale or destruction of perishable or dangerous substances or equipment and deposit the proceeds of any sale with the court; and

(6) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned.

C. A warrant issued pursuant to this section must be served and returned within five days of its date of issue unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made

promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person serving the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person serving the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

D. The magistrate who has issued a warrant shall attach a copy of the return and all papers returnable in connection with it and file them with the clerk of the magistrate court.

History: Laws 1989, ch. 177, § 14.

30-31B-15. Administrative inspections.

A. When authorized by an administrative inspection warrant issued pursuant to the Drug Precursor Act, a law enforcement officer or employee of the board, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter the controlled premises for the purpose of conducting an administrative inspection.

B. When authorized by an administrative inspection warrant, a law enforcement officer or employee of the board may:

(1) inspect and copy records required to be kept by the Drug Precursor Act;

(2) inspect and sample, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in Subsection D of this section, all other things bearing on violation of the Drug Precursor Act, including records, files, papers, processes, controls and facilities; and

(3) inventory any stock of any drug precursor and obtain samples.

C. This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) if the owner, operator or agent in charge of the controlled premises consents;

(2) in situations presenting substantial imminent danger to health or safety; or

(3) in all other situations in which a warrant is not constitutionally required.

D. An inspection authorized by this section shall not extend to financial data, sales data other than shipment data or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

E. When perishable or dangerous substances or equipment are seized pursuant to Subsection C of this section, the law enforcement officer or employee of the board may apply to the district court for an order to sell or destroy said property and deposit the proceeds of any sale with the court.

F. For purposes of this section "controlled premises" means:

(1) places where persons licensed or exempted from license requirements under the Drug Precursor Act are required to keep records; and

(2) places, including factories, warehouses, establishments and conveyances in which persons licensed or exempted from license requirements under the Drug Precursor Act are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any drug precursor.

History: Laws 1989, ch. 177, § 15.

30-31B-16. Injunctions.

A. The district courts may exercise jurisdiction to restrain or enjoin violations of the Drug Precursor Act.

B. The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

History: Laws 1989, ch. 177, § 16.

30-31B-17. Summary forfeiture.

A. Drug precursors that are manufactured in violation of the Drug Precursor Act are contraband and shall be seized and summarily forfeited to the state.

B. Drug precursors which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

History: Laws 1989, ch. 177, § 17.

30-31B-18. Burden of proof.

It is not necessary for the state to negate any exemption or exception in the Drug Precursor Act in any complaint, information, indictment or other pleading or in any trial,

hearing or other proceeding under the Drug Precursor Act. The burden of proof of any exception or exemption is upon the person claiming it.

History: Laws 1989, ch. 177, § 18.

ARTICLE 32
Forest Fires

30-32-1. Fires extinguished by officers; responsibility for costs.

A. As used in this section, "forest fire" means a fire burning uncontrolled on lands covered wholly or in part by timber, brush, grass, grain or other inflammable vegetation.

B. A person who willfully or recklessly sets a forest fire or causes a forest fire to be set for which efforts to control or extinguish the fire are exerted by the forestry division of the energy, minerals and natural resources department; an agency under agreement with the energy, minerals and natural resources department; a county or municipality; or any fire protection agency of the United States may be liable for the costs incurred, including expenses for fighting the fire and costs of investigation.

History: Laws 1921, ch. 33, § 4; C.S. 1929, § 35-1409; 1941 Comp., § 14-1804; 1953 Comp., § 40-18-4; Laws 1967, ch. 136, § 1; 2007, ch. 332, § 1.

30-32-2. Repealed.

History: Laws 1921, ch. 33, § 5; C.S. 1929, § 35-1410; 1941 Comp., § 41-1805; 1953 Comp., § 40-18-5; Laws 1959, ch. 123, § 1; 1977, ch. 254, § 44; repealed by Laws 2007, ch. 332, § 3.

30-32-3. Arrest for violations.

All peace officers of the state, including department of game and fish conservation officers, have the power to make arrests on warrant issued by any magistrate of the state for violation of any of the state forest fire laws, including Chapter 68, Article 2 NMSA 1978, rules implementing Chapter 68, Article 2 NMSA 1978 or fire restrictions issued pursuant to such rules, or without warrant for violations of those laws committed in their presence, and shall not be liable to civil action for trespass for acts done in the discharge of their duties.

History: Laws 1921, ch. 33, § 6; C.S. 1929, § 35-1411; 1941 Comp., § 41-1806; 1953 Comp., § 40-18-6; 2007, ch. 332, § 2.

30-32-4. Damages to person injured.

If a person sets on fire any woods, marshes or prairies, whether the person's own or not, so as thereby to occasion damage to another person or that person's property, the person shall make satisfaction in double damages to the party injured to be recovered by civil action, unless the person is conducting a prescribed burn pursuant to the Prescribed Burning Act [68-5-1 to 68-5-8 NMSA 1978].

History: Laws 1882, ch. 61, § 7; C.L. 1884, § 2314; C.L. 1897, § 3222; Code 1915, § 1518; C.S. 1929, § 35-1412; 1941 Comp., § 41-1807; 1953 Comp., § 40-18-7; 2021, ch. 13, § 9.

ARTICLE 33
Fraud and False Dealing

30-33-1. Sale of Indian-made articles as genuine.

It is unlawful to barter, trade, sell or offer for sale or trade any article represented as produced by an Indian unless the article is produced, designed or created by the labor or workmanship of an Indian.

History: Laws 1929, ch. 33, § 1; C.S. 1929, § 35-1925; 1941 Comp., § 41-2123; 1953 Comp., § 40-21-24; Laws 1957, ch. 93, § 1; 1991, ch. 90, § 1.

30-33-2. Repealed.

30-33-3. Indian Arts and Crafts Sales Act; short title.

Sections 30-33-1 through 30-33-11 NMSA 1978 may be cited as the "Indian Arts and Crafts Sales Act".

History: 1953 Comp., § 40-21-25.1, enacted by Laws 1973, ch. 163, § 1; 1975, ch. 261, § 1; 1991, ch. 90, § 2.

30-33-4. Definitions.

As used in the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978]:

A. "Indian tribe" means:

(1) any tribe, band, nation, Alaska native village or other organized group or community that is eligible for the special programs and services provided by the United States government to Indians because of their status as Indians; or

(2) any tribe that has been formally recognized as an Indian tribe by a state legislature;

B. "Indian" means:

(1) any person who is an enrolled member of an Indian tribe as evidenced by a tribal enrollment card or certified tribal records; or

(2) any person who can meet the minimum qualifications for services offered by the United States government to Indians because of their special status as Indians as evidenced by a certificate of degree of Indian blood card;

C. "authentic Indian arts and crafts" means any product, including traditional or contemporary Indian arts, that:

(1) are Indian handmade; and

(2) are not made by machine;

D. "person" means any individual, firm, association, corporation, partnership or any other legal entity;

E. "made by machine" means the producing or reproducing of a product in mass production by mechanically stamping, blanking, weaving or offset printing;

F. "Indian handmade" means any product in which the entire shaping and forming of the product from raw materials and its finishing and decoration were accomplished by Indian hand labor and manually controlled methods that permit the maker to control and vary the construction, shape, design or finish of each part of each individual product, but does not exclude the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, sawing or sewing and other processes approved by regulations adopted under the Indian Arts and Crafts Sales Act;

G. "Indian crafted" means any item that is made by an Indian when it is not entirely Indian handmade or is at least in part made by machine, including Indian-assembled and Indian-decorated items and other items consistent with this definition and approved by regulations adopted under the Indian Arts and Crafts Sales Act;

H. "findings" means an ingredient part of the product that adapts the product for wearing or display, including silver beads used in jewelry containing Indian handmade adornments in addition to beads, leather backing, binding material, bolo tie clips, tie bar clips, tie-tac pins, earring pins, earring clips, earring screw backs, cuff link toggles, money clips, pin stems, combs and chains;

I. "product" means the finished tangible arts or crafts;

J. "raw materials" means any material that can be converted by manufacture, processing or a combination of manufacture and processing into a new and useful product, and includes:

(1) "naturally occurring material", which means any material created and produced by nature;

(2) "natural material", which means any material created and produced by nature that is only altered in shape, form, finish or color as long as the color change is the result of finishing or polishing agents used that do not penetrate the surface of the material by more than one millimeter, or as further defined consistent with this definition in regulations adopted under the Indian Arts and Crafts Sales Act;

(3) "treated material", which means any material created and produced by nature that has been altered by man-made processes that leave the material in its original shape and size after processing, but alter the color, hardness or character of the material, which may be formed, shaped or finished after treating, or as further defined consistent with this definition in regulations adopted under the Indian Arts and Crafts Sales Act; and

(4) "reconstructed material", which means any material created and produced in nature that has been altered by man-made processes that change the color, hardness, shape or character of the material, provided that more than fifty percent of the original naturally occurring material is contained in the product after processing, or as further defined consistent with this definition in regulations adopted under the Indian Arts and Crafts Sales Act but excludes synthetic material; and

K. "synthetic material" means any material that imitates natural materials and is man-made or contains fifty percent or less of the original naturally occurring materials, or as further defined consistent with this definition in regulations adopted under the Indian Arts and Crafts Sales Act.

History: 1953 Comp., § 40-21-25.2, enacted by Laws 1973, ch. 163, § 2; 1975, ch. 261, § 2; 1977, ch. 334, § 1; 1991, ch. 90, § 3.

30-33-5. Purpose of act.

The purpose of the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978] is to protect the public and the Indian craftsman under the police powers of the state from false representation in the sale, trade, purchase or offering for sale of Indian arts and crafts.

History: 1953 Comp., § 40-21-25.3, enacted by Laws 1959, ch. 133, § 3; 1973, ch. 163, § 3; 1975, ch. 261, § 3; 1977, ch. 334, § 2; 1991, ch. 90, § 4.

30-33-6. Inquiry as to producer; duty of inquiry; election to label authentic Indian arts and crafts.

A. It is the duty of every person selling or offering for sale a product that is represented to be authentic Indian arts or crafts to make due inquiry of his suppliers

concerning the true nature of the materials, product design and process of manufacture to determine whether the product may be lawfully represented as authentic Indian arts or crafts.

B. Each person may elect to label or otherwise clearly and conspicuously disclose as authentic Indian arts and crafts all articles that are authentic Indian arts and crafts in accordance with the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978] and regulations adopted pursuant to that act.

C. Consistent with the purposes of the Indian Arts and Crafts Sales Act, regulations adopted under that act may specify designations other than "authentic Indian arts and crafts", including a designation such as "Indian crafted", for authorized labeling as Indian arts and crafts.

History: 1953 Comp., § 40-21-25.4, enacted by Laws 1959, ch. 133, § 4; 1973, ch. 163, § 4; 1975, ch. 261, § 4; 1977, ch. 334, § 3; 1991, ch. 90, § 5.

30-33-7. Unlawful acts.

It is unlawful for any person to:

A. sell or offer for sale any products represented to be Indian handmade or authentic Indian arts and crafts unless such products are in fact Indian handmade or authentic Indian arts and crafts;

B. sell or offer for sale any products represented to be Indian crafted unless such products are in fact Indian crafted;

C. represent that any Indian arts and crafts product is made of a material, including natural material, unless it is made of that material;

D. fail to disclose in writing that any Indian arts and crafts product is made of treated material, reconstructed material or synthetic material;

E. solicit or buy for resale as authentic Indian arts and crafts any products that are known in fact not to be authentic; or

F. prepare, disseminate or otherwise engage in any unfair or deceptive trade practice, including any false, misleading or deceptive advertising, or any unconscionable trade practice, regarding Indian arts or crafts. For the purpose of this subsection, "unfair or deceptive trade practice" and "unconscionable trade practice" mean "unfair or deceptive trade practice" and "unconscionable trade practice" as those terms are defined in Section 57-12-2 NMSA 1978.

History: 1953 Comp., § 40-21-25.5, enacted by Laws 1973, ch. 163, § 5; 1975, ch. 261, § 5; 1977, ch. 334, § 4; 1991, ch. 90, § 6.

30-33-8. Enforcement by attorney general or district attorney.

The attorney general or a district attorney with jurisdiction over a matter shall enforce the provisions of the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978]. The New Mexico office of Indian affairs [Indian affairs department] and an authorized tribal prosecutor may assist the office of the attorney general or the district attorney in determining whether the provisions of the Indian Arts and Crafts Sales Act have been or are being violated. Either the attorney general or a district attorney with jurisdiction over a matter may take action to enforce the provisions of the Indian Arts and Crafts Sales Act.

History: 1953 Comp., § 40-21-25.7, enacted by Laws 1973, ch. 163, § 6; 1977, ch. 334, § 5; 1991, ch. 90, § 7.

30-33-9. Violation of act; penalties.

A. In an action brought by the attorney general or a district attorney for a violation under the provisions of the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978], the district court may order temporary or permanent injunctive relief. The district court shall order restitution and such other relief as may be necessary to redress injury to any person resulting from the violation.

B. In any action brought under this section, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Indian Arts and Crafts Sales Act, the attorney general or district attorney, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not to exceed five thousand dollars ($5,000) per violation.

C. Any person willfully and knowingly violating the provisions of the Indian Arts and Crafts Sales Act where the violation involves property valued at two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

D. Any person willfully and knowingly violating the provisions of the Indian Arts and Crafts Sales Act where the violation involves property valued in excess of two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

E. Any person willfully and knowingly violating the provisions of the Indian Arts and Crafts Sales Act where the violation involves property valued in excess of five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

F. Any person willfully and knowingly violating the provisions of the Indian Arts and Crafts Sales Act where the violation involves property valued in excess of two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

G. Any person willfully and knowingly violating the provisions of the Indian Arts and Crafts Sales Act where the violation involves property valued in excess of twenty thousand dollars ($20,000) is guilty of a second degree felony.

History: 1953 Comp., § 40-21-25.8, enacted by Laws 1977, ch. 334, § 6; 1991, ch. 90, § 8; 2010, ch. 35, § 1.

30-33-10. Private right of action; damages.

Any person who suffers financial injury or damages by reason of any conduct declared in violation of the provisions of the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978] may sue in district court. Upon a showing that that act is being violated, the court may award damages and order injunctive relief and shall award the cost of the suit, including reasonable attorneys' fees. Where the court finds that the party charged with violating the Indian Arts and Crafts Sales Act has willfully violated that act, the court may award treble damages to the party complaining of the violation.

History: 1953 Comp., § 40-21-25.9, enacted by Laws 1977, ch. 334, § 7; 1991, ch. 90, § 9.

30-33-11. Administrative regulations.

The attorney general and the New Mexico office of Indian affairs [Indian affairs department] are authorized jointly to promulgate necessary regulations, pursuant to the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978], to further the purpose and implement the provisions of the Indian Arts and Crafts Sales Act [30-33-1 to 30-33-11 NMSA 1978].

History: 1953 Comp., § 40-21-25.10, enacted by Laws 1977, ch. 334, § 8; 1991, ch. 90, § 10.

30-33-12. Obtaining telecommunications service with intent to defraud; definitions.

For the purposes of Sections 30-33-12 through 30-33-14 NMSA 1978:

A. "credit card" means an identification card or plate issued to a person, firm or corporation by any person, firm or corporation engaged in the furnishing of telecommunications service, which permits the person, firm or corporation to whom the card has been issued to obtain telecommunications service on credit;

B. "credit card number" means the card number appearing in a credit card; and

C. "telecommunication service" means service furnished by a public utility, including a telephone company, by which there is accomplished, or may be accomplished, the

sending or receiving of information, data, messages, writing, signs, signals, pictures and sound of all kinds, by aid of wire, cable, radio or other means or apparatus.

History: 1953 Comp., § 40-21-49, enacted by Laws 1963, ch. 49, § 1; 1967, ch. 134, § 1.

30-33-13. Crime to procure or to attempt to procure telecommunications service without paying charge; crime to make, possess, sell, give or transfer certain devices for certain purposes; penalty.

A. It is unlawful for a person, with intent to defraud a person, firm or corporation, to obtain or to attempt to obtain any telecommunications service without paying the lawful charge, in whole or in part, by any of the following means:

(1) charging the service to an existing telephone number or credit card number without the authority of the subscriber or the legitimate holder;

(2) charging the service to a nonexistent, false, fictitious or counterfeit telephone number or credit card number or to a suspended, terminated, expired, canceled or revoked telephone number or credit card number;

(3) rearranging, tampering with or making electrical, acoustical, induction or other connection with any facilities or equipment;

(4) using a code, prearranged scheme or other strategem or device whereby the person in effect sends or receives information; or

(5) using any other contrivance, device or means to avoid payment of the lawful charges, in whole or in part, for the service.

B. This section shall apply when the telecommunications service either originates or terminates, or both, in this state or when charges for the service would have been billable in normal course by the public utility providing the service in this state but for the fact that the service was obtained or attempted to be obtained by one or more of the means set forth in this section.

C. Whoever violates this section when the charges for the telecommunications service obtained or attempted to be obtained are two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

D. Whoever violates this section when the charges for the telecommunications service obtained or attempted to be obtained are more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

E. Whoever violates this section when the charges for the telecommunications service obtained or attempted to be obtained are more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of fourth degree felony.

F. Whoever violates this section when the charges for the telecommunications service obtained or attempted to be obtained are more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

G. Whoever violates this section when the charges for the telecommunications service obtained or attempted to be obtained exceed twenty thousand dollars ($20,000) is guilty of a second degree felony.

H. It is unlawful for a person under circumstances evidencing an intent to use or employ any instrument, apparatus, equipment or device described in Paragraph (1) of this subsection or to allow the same to be used or employed for the purpose described in Paragraph (1) of this subsection or knowing or having reason to believe that the same is intended to be so used or that the plans and instructions described in Paragraph (2) of this subsection are intended to be used for making or assembling the instrument, apparatus, equipment or device:

(1) to make or possess any instrument, apparatus, equipment or device designed, adapted or that can be used either:

(a) to obtain telecommunications service in violation of this section; or

(b) to conceal or to assist another to conceal from any supplier of telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunications service; or

(2) to sell, give or otherwise transfer to another or to offer or advertise for sale any instrument, apparatus, equipment or device described in Paragraph (1) of this subsection or plans or instructions for making or assembling the same.

I. Whoever violates Subsection H of this section is guilty of a misdemeanor, unless the person has previously been convicted of the crime or of an offense under the laws of another state or of the United States that would have been an offense under Subsection H of this section if committed in this state, in which case the person is guilty of a fourth degree felony.

History: 1953 Comp., § 40-21-50, enacted by Laws 1963, ch. 49, § 2; 1967, ch. 134, § 2; 1987, ch. 121, § 11; 2006, ch. 29, § 17.

30-33-14. Venue.

Venue is in the county in this state where the telecommunication service giving rise to the prosecution was solicited or initiated, or attempted to be solicited or initiated, or where the service was received or was attempted to be received, or was billable in the normal course of business.

History: 1953 Comp., § 40-21-51, enacted by Laws 1963, ch. 49, § 3; 1967, ch. 134, § 3.

ARTICLE 33A
Telecommunications Service Theft

30-33A-1. Short title.

This act [30-33A-1 to 30-33A-5 NMSA 1978] may be cited as the "Telecommunications Service Theft Act".

History: Laws 1997, ch. 50, § 1.

30-33A-2. Definitions.

As used in the Telecommunications Service Theft Act:

A. "provider" means a person that offers telecommunications service for lawful compensation; and

B. "telecommunications service" means any audio, video, data or programming offered for a fee or other consideration to facilitate the origination, transmission, emission or reception of signs, signals, data, writings, images, sounds or intelligence of any nature delivered by telephone or telephone service, cable television service, including cellular or other wireless telephones, wire, radio, electromagnetic, photoelectronic or photo-optical equipment, coaxial or fiber optic cable, terrestrial microwave, television broadcast or satellite transmission.

History: Laws 1997, ch. 50, § 2.

30-33A-3. Illegal service; prohibited acts; penalties.

A. It is unlawful for any person to:

(1) obtain or attempt to obtain telecommunications service by trick, artifice, deception, use of an illegal device or decoder or other fraudulent means without authorization of the provider;

(2) assist or instruct any person to obtain or attempt to obtain any telecommunications service without authorization of the provider;

(3) make or attempt to make or assist any person to make or maintain a telecommunications service connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of telecommunications service without authorization of the provider; or

(4) make or maintain any modification or alteration to any device that was installed with the authorization of the provider for the purpose of intercepting or receiving any telecommunications service without authorization of the provider.

B. Any person who violates this section is guilty of a misdemeanor upon conviction for a first offense and shall be punished by a fine of up to five hundred dollars ($500); and upon conviction for a second or subsequent offense, is guilty of a misdemeanor and shall be punished by either a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), by imprisonment for a definite term not to exceed thirty days, or both.

History: Laws 1997, ch. 50, § 3.

30-33A-4. Illegal devices; prohibited acts; penalties.

A. It is unlawful for any person to:

(1) own or possess any device, including a printed circuit board, designed to receive or permit reception of any telecommunications service, regardless of whether that service is encoded, filtered, scrambled or otherwise made unintelligible, with the intent to distribute such device for the purpose of permitting reception or use of telecommunications service without authorization by the provider;

(2) publish or advertise for sale or lease any kit or plan for a device designed in whole or in part to receive without authorization of the provider any telecommunications service, regardless of whether that service is encoded, filtered, scrambled or otherwise made unintelligible;

(3) advertise for sale or lease any device or printed circuit or kit for a device or printed circuit designed in whole or in part to receive any telecommunications service without authorization of the provider, regardless of whether the service is encoded, filtered, scrambled or otherwise made unintelligible; or

(4) manufacture, import into New Mexico, distribute, sell, lease or offer for sale or lease any device, printed circuit or any plan or kit for a device or for a printed circuit, designed in whole or in part to receive any telecommunications service, regardless of whether the service is encoded, filtered, scrambled or otherwise made unintelligible, that can be used to receive that service without the authorization of the provider.

B. Any person who violates this section is guilty of a misdemeanor upon conviction for a first offense and shall be punished by either a fine of not less than one thousand dollars ($1,000), imprisonment for a definite term of not less than thirty days, or both; and upon conviction for a second or subsequent offense, is guilty of a fourth degree felony and shall be punished as provided in Section 31-18-15 NMSA 1978.

History: Laws 1997, ch. 50, § 4.

30-33A-5. Private remedies.

A. A person damaged by a violation of Section 3 or 4 [30-33A-3 or 30-33A-4 NMSA 1978] of the Telecommunications Service Theft Act may be granted an injunction under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of revenue or intent to deceive and take unfair advantage of any person is not required.

B. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other New Mexico statutes.

History: Laws 1997, ch. 50, § 5.

ARTICLE 34
Libel and Slander (Transferred.)

30-34-1 to 30-34-6. Transferred.

ARTICLE 35
Public Utilities

30-35-1. [Failure to relinquish telephone party line for emergency call.]

It is unlawful for any person:

A. wilfully [willfully] to refuse to yield, or wilfully [willfully] to impede, the use of a telephone party line in time of emergency, by which he is not affected and of which he has been apprised, when he has been requested so to yield; or

B. to request another to yield the use of a telephone party line because of an emergency, which in fact does not exist.

History: 1953 Comp., § 40-37-6, enacted by Laws 1963, ch. 320, § 1.

30-35-2. Penalty.

Any person:

A. who fails to yield a telephone party line or impedes its use, and any person who falsely asserts an emergency as basis for a request of another to yield a telephone party line, as provided in the preceding section [30-35-1 NMSA 1978], is liable to the person aggrieved by his act for triple the amount of damages proximately caused by his act;

B. who violates any provision of this act [30-35-1, 30-35-2 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars ($500) nor less than twenty-five dollars ($25.00).

History: 1953 Comp., § 40-37-7, enacted by Laws 1963, ch. 320, § 2.

ARTICLE 36
Worthless Checks

30-36-1. Short title.

This act [30-36-1 to 30-36-9 NMSA 1978] may be cited as the "Worthless Check Act".

History: 1953 Comp., § 40-49-1, enacted by Laws 1963, ch. 315, § 1.

30-36-2. Definitions.

As used in the Worthless Check Act:

A. "check" means any check, draft or written order for money;

B. "person" means any person, firm or corporation;

C. "draw" means the making, drawing, uttering or delivering a check;

D. "thing of value" includes money, property, services, goods and wares; and lodging;

E. "credit" means an arrangement or understanding with the drawer for the payment of the check.

History: 1953 Comp., § 40-49-2, enacted by Laws 1963, ch. 315, § 2.

30-36-3. Purpose.

It is the purpose of the Worthless Check Act to remedy the evil of giving checks on a bank without first providing funds in or credit with the depository on which they are made or drawn to pay or satisfy the same, which tends to create the circulation of worthless checks on banks, bad banking, check kiting and mischief to trade and commerce.

History: 1953 Comp., § 40-49-3, enacted by Laws 1963, ch. 315, § 3.

30-36-4. Unlawful to issue.

It is unlawful for a person to issue in exchange for anything of value, with intent to defraud, any check, draft or order for payment of money upon any bank or other depository, knowing at the time of the issuing that the offender has insufficient funds in or credit with the bank or depository for the payment of such check, draft or order in full upon its presentation.

History: 1953 Comp., § 40-49-4, enacted by Laws 1963, ch. 315, § 4.

30-36-5. Penalty.

Any person violating Section 30-36-4 NMSA 1978 shall be punished as follows:

A. when the amount of the check, draft or order, or the total amount of the checks, drafts or orders, are for more than one dollar ($1.00) but less than twenty-five dollars ($25.00), imprisonment in the county jail for a term of not more than thirty days or a fine of not more than one hundred dollars ($100), or both such imprisonment and fine;

B. when the amount of the check, draft or order, or the total amount of the checks, drafts or orders, are for twenty-five dollars ($25.00) or more, imprisonment in the penitentiary for a term of not less than one year nor more than three years or the payment of a fine of not more than one thousand dollars ($1,000) or both such imprisonment and fine.

History: 1953 Comp., § 40-49-5, enacted by Laws 1965, ch. 114, § 1.

30-36-6. Exceptions.

The Worthless Check Act does not apply to:

A. any check where the payee or holder knows or has been expressly notified prior to the drawing of the check or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment on its presentation; or

B. any post-dated check.

History: 1953 Comp., § 40-49-6, enacted by Laws 1963, ch. 315, § 6.

30-36-7. Intent to defraud; how established.

In the prosecution of offenses under the Worthless Check Act, the following rules of evidence shall govern:

A. if the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of no account in the name of the maker or drawer in the bank, proof of the fact that the maker or drawer had no account in the bank or depository upon which the check is drawn shall be prima facie evidence of an intent to defraud and of knowledge of insufficient funds in or credit with the bank or depository with which to pay the draft;

B. if the maker or drawer of a check, payment of which is refused by the bank or depository upon which it is drawn because of insufficient funds or credit in the account of the maker or drawer in the bank or depository, fails, within three business days after notice to him that the check was not honored by the bank or depository, to pay the check in full, together with any protest fees or costs thereon, such failure shall constitute prima facie evidence of a knowledge of the insufficiency of funds in the bank or depository at the time of the making or drawing of the check and of an intent to defraud.

History: 1953 Comp., § 40-49-7, enacted by Laws 1965, ch. 114, § 2; 1979, ch. 8, § 1.

30-36-8. Notice.

Notice as used in the Worthless Check Act shall consist of either notice given to the person entitled thereto in person or notice given to such person in writing. The notice in writing is presumed to have been given when deposited as certified matter in the United States mail, addressed to the person at his address as it appears on the check.

History: 1953 Comp., § 40-49-8, enacted by Laws 1963, ch. 315, § 8; 1979, ch. 8, § 2.

30-36-9. Citizen's complaint; costs.

Where prosecutions are initiated under the Worthless Check Act before any committing magistrate, the party applying for the warrant is liable for costs accruing in the event the case is dismissed at his request or for his failure to prosecute.

History: 1953 Comp., § 40-49-9, enacted by Laws 1963, ch. 315, § 9.

30-36-10. District attorney; processing fee.

A. A district attorney is authorized to assess a processing fee against any person who is convicted of violating Section 30-36-4 NMSA 1978 and against any person who acknowledges violation of that section but for whom prosecution is waived by the district attorney. The processing fee assessed pursuant to this section shall not exceed:

(1) five dollars ($5.00) if the amount of the check, draft or order is less than twenty-five dollars ($25.00);

(2) ten dollars ($10.00) if the amount of the check, draft or order is twenty-five dollars ($25.00) or more but less than one hundred dollars ($100);

(3) thirty dollars ($30.00) if the amount of the check, draft or order is one hundred dollars ($100) or more but less than three hundred dollars ($300);

(4) fifty dollars ($50.00) if the amount of the check, draft or order is three hundred dollars ($300) or more but less than five hundred dollars ($500); and

(5) seventy-five dollars ($75.00) if the amount of the check, draft or order is five hundred dollars ($500) or more.

B. All processing fees collected by a district attorney pursuant to this section shall be transmitted to the administrative office of the district attorneys for credit to the district attorney fund.

History: Laws 1984, ch. 110, § 4.

ARTICLE 37
Sexually Oriented Material Harmful to Minors

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 acts 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.

History: 1953 Comp., § 40-50-1, enacted by Laws 1973, ch. 257, § 1.

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.

History: 1953 Comp., § 40-50-2, enacted by Laws 1973, ch. 257, § 2.

30-37-2.1. Offenses; retail display.

A. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the cover of which depicts nudity, sado-masochistic [sadomasochistic] abuse, sexual conduct or sexual excitement and which is harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such books, magazines or printed materials may be displayed behind an opaque covering which conceals the depiction of nudity, sado-masochistic [sadomasochistic] abuse, sexual conduct or sexual excitement, provided that those books, magazines or printed materials are not within the convenient reach of minors who may frequent the retail establishment.

B. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the content of which exploits, is devoted to or is principally made up of descriptions or depictions of nudity, sado-masochistic [sadomasochistic] abuse, sexual conduct or sexual excitement and which are harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

History: Laws 1985, ch. 13, § 1.

30-37-3. Offenses; motion pictures; plays.

It is unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

History: 1953 Comp., § 40-50-3, enacted by Laws 1973, ch. 257, § 3.

30-37-3.1. Outdoor theaters; offenses.

A. It is unlawful for the owner or operator of an outdoor motion picture theater to show or exhibit any motion picture which in whole or in part depicts unclothed sexual conduct in an outdoor theater unless the exhibitor can prove that the outdoor screen on which the picture is to be shown cannot be seen by any minor who has not taken extraordinary measures to view the screen or who is not within the area provided for those persons who have been admitted by a ticket or pass.

B. As used in this section, "unclothed sexual conduct" means an act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's unclothed genitals, pubic area or buttocks.

C. The notice provisions of Section 30-37-4 NMSA 1978 shall not apply to this section.

History: Laws 1983, ch. 152, § 2.

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.

30-37-3.3. Criminal sexual communication with a child; penalty.

A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.

B. Whoever commits sexual communication with a child is guilty of a fourth degree felony.

C. As used in this section:

(1) "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and

(2) "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

History: Laws 2007, ch. 67, § 1.

30-37-4. Notice; prosecution.

A. No prosecution based under this act shall be commenced unless the district attorney of the county in which the offense occurs shall have previously determined that the matter or performance is harmful to minors and the defendant shall have received actual or constructive notice of such determination. Persons shall be presumed to have constructive notice of such determination on the fifth business day following publication of a notice of such determination in a newspaper of general circulation in the county in which the prosecution takes place.

B. Any person adversely affected by such determination may, at any time within thirty days after such notice is given, seek a judicial determination of its correctness. The court shall, unless otherwise agreed by the parties, render judgment not later than two court days following trial. Filing of an action under this section shall stay prosecution until a judicial determination is rendered, but no appeal shall have such effect unless so ordered by the trial court.

C. No criminal action shall be commenced in any other judicial district within this state during the pendency of the civil action authorized by Subsection B of Section 4 [this section] regarding the same matter, exhibition or performance.

History: 1953 Comp., § 40-50-4, enacted by Laws 1973, ch. 257, § 4.

30-37-5. Exclusions; defenses.

No person shall be guilty of violating the provisions of this act:

A. where such person had reasonable cause to believe that the minor involved had reached his eighteenth birthday, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor had reached his eighteenth birthday; or

B. if the minor was accompanied by his parent or guardian, or the parent or guardian has in writing waived the application of this act either generally or with reference to the particular transaction; or

C. where such person had reasonable cause to believe that the person was the parent or guardian of the minor; or

D. where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

History: 1953 Comp., § 40-50-5, enacted by Laws 1973, ch. 257, § 5.

30-37-6. Offenses by minor.

A. It is unlawful for any minor to falsely represent to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that such minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 of this act.

B. It is unlawful for any person to knowingly make a false representation to any person mentioned in Section 2 or Section 3 of this act, or to his agent, that he is the parent or guardian of any minor, or that any minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 of this act.

History: 1953 Comp., § 40-50-6, enacted by Laws 1973, ch. 257, § 6.

30-37-7. Penalties.

A. A person violating Section 30-37-2, 30-37-2.1, 30-37-3 or 30-37-3.1 NMSA 1978 is guilty of a misdemeanor.

B. Any person violating the provisions of Section 30-37-6 NMSA 1978 shall be guilty of a petty misdemeanor.

History: 1953 Comp., § 40-50-7, enacted by Laws 1973, ch. 257, § 7; 1983, ch. 152, § 3; 1985, ch. 13, § 2.

30-37-8. Uniform application.

In order to provide for the uniform application of this act to all minors within this state, it is intended that the sole and only regulation of the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to, or exhibition of, any performance described in Section 3 [30-37-3 NMSA 1978], shall be under this act, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the sale, distribution or provision of any matter described in Section 2, or admission to any performance described in Section 3, including but not limited to criminal offenses, classification of suitable matter or performances for minors, or licenses or taxes respecting the sale, distribution, exhibition or provision of matter regulated under this act. All such laws, ordinances, regulations, taxes or licenses, whether enacted before or after this act, shall be or become void, unenforceable and of no effect upon the effective date of this act.

History: 1953 Comp., § 40-50-8, enacted by Laws 1973, ch. 257, § 8.

30-37-9. Legislative findings and purpose.

The legislature finds that children do not have the judgment necessary to protect themselves from harm and that the legislature has the inherent power to control commercial conduct within this state for the protection of minors in a manner that reaches beyond the scope of its authority to protect adults. The legislature also finds that regulation of content at outdoor theaters does not deprive adults from viewing that content at indoor theaters.

History: Laws 1983, ch. 152, § 1.

30-37-10. Offenses; certain tie-in arrangements unlawful.

A. It is unlawful for any person offering for sale, selling or distributing books, magazines or other printed material to require, as a condition for any such sale or delivery, that the purchaser or receiver of the delivery purchase or accept the delivery of any other book, magazine or other printed matter which contains sexually oriented material harmful to minors as defined in Subsection F of Section 30-37-1 NMSA 1978. Nothing in this subsection prohibits the sale or purchase on a voluntary basis of books, magazines or other printed material containing sexually oriented material.

B. Any person violating the provisions of Subsection A of this section shall be guilty of a misdemeanor.

History: Laws 1985, ch. 134, § 1.

ARTICLE 37A
Unauthorized Distribution of Sensitive Images

30-37A-1. Unauthorized distribution of sensitive images; penalties.

A. Unauthorized distribution of sensitive images consists of distributing, publishing or otherwise making available, by an electronic communications device or other means, sensitive images of a person, with or without information identifying that person, without that person's consent:

(1) with the intent to:

(a) harass, humiliate or intimidate that person;

(b) incite another to harass, humiliate or intimidate that person;

(c) cause that person to reasonably fear for that person's own or family members' safety;

(d) cause that person to suffer unwanted physical contact or injury; or

(e) cause that person to suffer substantial emotional distress; and

(2) where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.

B. For the purpose of this section:

(1) "electronic communications device" means a computer, an internet web site or page, a video recorder, a digital camera, a fax machine, a telephone, a cellular telephone, a pager or any other device that can produce an electronically generated image, message or signal;

(2) "information service" means a service offering the capability of generating, acquiring, storing, transforming, processing, publishing, retrieving, utilizing or making available information;

(3) "interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users;

(4) "intimate act" has the same meaning as "sexual act", as that term is defined in Section 30-9-2 NMSA 1978;

(5) "sensitive images" means images, photographs, videos or other likenesses depicting or simulating an intimate act or depicting any portion of a person's

genitals, or of a woman's breast below the top of the areola, that is either uncovered or visible through less-than-fully opaque clothing, which images may reasonably be considered to be private, intimate or inappropriate for distribution or publication without that person's consent; and

(6) "telecommunications provider" has the same meaning as set forth in Section 63-7-23 NMSA 1978.

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

D. Nothing in this section shall be construed to impose liability on:

(1) an interactive computer service, an information service or a telecommunications provider for content provided by another person; or

(2) a person who reproduces, distributes, exhibits, publishes, transmits or otherwise disseminates content in furtherance of a legitimate public purpose, including the compilation or dissemination of news by newspapers and licensed broadcasters.

History: Laws 2015, ch. 42, § 1.

ARTICLE 38
Exhibiting Obscene Films Outdoors

30-38-1. Outdoor motion picture theatres; prohibited from showing obscene films.

A. It is unlawful for the owner or operator of an outdoor motion picture theatre to exhibit any obscene film in an outdoor theatre.

B. For purposes of this section, "obscene film" means a film that:

(1) the average person applying contemporary community standards would find that, when considered or taken as a whole, appeals to the prurient interests;

(2) the material depicts or describes sexual conduct in a patently offensive way by representations of ultimate sexual acts, normal or perverted, actual or simulated; masturbation, excretory functions or lewd exhibitions of the genitals of oneself or another; tactile stimulation of the genitals of oneself or another; and

(3) the work when considered or taken as a whole lacks serious literary, artistic, political or scientific value.

C. It is unlawful for any person to violate the provisions of Subsection A of this section. In the event a person violates the provisions of Subsection A of this section any representative of the local government involved may, upon notice to the offending person, seek an injunction in the district court to enjoin the showing of the offending film.

History: 1953 Comp., § 49-5-23, enacted by Laws 1977, ch. 241, § 1.

30-38-2. Applicability.

The provisions of Section 1 [30-38-1 NMSA 1978] of this act shall only be enforced in those political subdivisions that have adopted by ordinance the provisions of Section 1 of this act. Any ordinance that has been adopted by a political subdivision that is in conflict with the provisions of Section 1 of this act shall be void. In the event a county adopts by ordinance the provisions of Section 1 of this act, those provisions shall not be enforceable by the county within the territorial boundaries of any incorporated municipality located in the county.

History: 1953 Comp., § 49-5-24, enacted by Laws 1977, ch. 241, § 2.

ARTICLE 39
False Reporting

30-39-1. False report; penalty.

It is unlawful for any person to intentionally make a report to a law enforcement agency or official, which report he knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code [30-1-1 NMSA 1978]. Any person violating the provisions of this section is guilty of a misdemeanor.

History: Laws 1979, ch. 145, § 1.

ARTICLE 40
Public Assistance

30-40-1. Failing to disclose facts or change of circumstances to obtain public assistance.

A. Failing to disclose facts or change of circumstances to obtain public assistance consists of a person knowingly failing to disclose a material fact known to be necessary to determine eligibility for public assistance or knowingly failing to disclose a change in circumstances for the purpose of obtaining or continuing to receive public assistance to which the person is not entitled or in amounts greater than that to which the person is entitled.

B. Whoever commits failing to disclose facts or change of circumstances to obtain public assistance when the value of the assistance wrongfully received is two hundred fifty dollars ($250) or less in any twelve consecutive months is guilty of a petty misdemeanor.

C. Whoever commits failing to disclose facts or change of circumstances to obtain public assistance when the value of the assistance wrongfully received is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) in any twelve consecutive months is guilty of a misdemeanor.

D. Whoever commits failing to disclose facts or change of circumstances to obtain public assistance when the value of the assistance wrongfully received is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) in any twelve consecutive months is guilty of a fourth degree felony.

E. Whoever commits failing to disclose facts or change of circumstances to obtain public assistance when the value of the assistance wrongfully received is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) in any twelve consecutive months is guilty of a third degree felony.

F. Whoever commits failing to disclose facts or change of circumstances to obtain public assistance when the value of the assistance wrongfully received exceeds twenty thousand dollars ($20,000) in any twelve consecutive months is guilty of a second degree felony.

History: Laws 1979, ch. 170, § 1; 1987, ch. 121, § 12; 2006, ch. 29, § 18.

30-40-2. Unlawful use of food stamp identification card or medical identification card.

A. Unlawful use of food stamp identification card or medical identification card consists of the use of a food stamp or medical identification card by a person to whom it has not been issued, or who is not an authorized representative of the person to whom it has been issued, for a food stamp allotment.

B. Whoever commits unlawful use of food stamp identification card or medical identification card when the value of the food stamps or medical services wrongfully received is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits unlawful use of food stamp identification card or medical identification card when the value of the food stamps or medical services wrongfully received is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits unlawful use of food stamp identification card or medical identification card when the value of the food stamps or medical services wrongfully

received is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits unlawful use of food stamp identification card or medical identification card when the value of the food stamps or medical services wrongfully received is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits unlawful use of food stamp identification card or medical identification card when the value of the food stamps or medical services wrongfully received exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

G. For the purpose of this section, the value of the medical assistance received is the amount paid by the human services department [health care authority department] for medical services received through use of the medical identification card.

History: Laws 1979, ch. 170, § 2; 1987, ch. 121, § 13; 2006, ch. 29, § 19.

30-40-3. Misappropriating public assistance.

A. Misappropriating public assistance consists of a public officer or public employee fraudulently misappropriating, attempting to misappropriate or aiding and abetting in the misappropriation of food stamp coupons, WIC checks pertaining to the special supplemental food program for women, infants and children administered by the human services department [health care authority department], food stamp or medical identification cards, public assistance benefits or funds received in exchange for food stamp coupons.

B. Whoever commits misappropriating public assistance when the value of the thing misappropriated is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits misappropriating public assistance when the value of the thing misappropriated is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits misappropriating public assistance when the value of the thing misappropriated is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits misappropriating public assistance when the value of the thing misappropriated is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits misappropriating public assistance when the value of the thing misappropriated exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

G. Whoever commits misappropriating public assistance when the item misappropriated is a food stamp or medical identification card is guilty of a fourth degree felony.

History: Laws 1979, ch. 170, § 3; 1987, ch. 121, § 14; 2006, ch. 29, § 20.

30-40-4. Making or permitting a false claim for reimbursement for public assistance services.

A. Making or permitting a false claim for reimbursement of public assistance services consists of knowingly making, causing to be made or permitting to be made a claim for reimbursement for services provided to a recipient of public assistance for services not rendered or making a false material statement or forged signature upon any claim for services, with intent that the claim shall be relied upon for the expenditure of public money.

B. Whoever commits making or permitting a false claim for reimbursement for public assistance services is guilty of a fourth degree felony.

History: Laws 1979, ch. 170, § 4.

30-40-5. Unlawful seeking [of] payment from public assistance recipients.

A. Unlawful seeking [of] payment from public assistance recipients consists of knowingly seeking payment from recipients or their families for any unpaid portion of a bill for which reimbursement has been or will be received from the human services department [health care authority department] or for claims or services denied by the human services department [health care authority department] because of provider [the provider's] administrative error.

B. Whoever commits unlawful seeking [of] payment from [a] public assistance recipient is guilty of a misdemeanor.

History: Laws 1979, ch. 170, § 5.

30-40-6. Failure to reimburse the human services department [health care authority department] upon receipt of third party payment.

A. Failure to reimburse the human services department [health care authority department] upon receipt of third party payment consists of knowing failure by a medicaid provider to reimburse the human services department [health care authority department] or the department's fiscal agent the amount of payment received from the department for services when the provider receives payment for the same services from a third party.

B. A medicaid provider who commits failure to reimburse the human services department [health care authority department] upon receipt of third party payment when the value of the payment made by the department is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. A medicaid provider who commits failure to reimburse the human services department [health care authority department] upon receipt of third party payment when the value of the payment made by the department is more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. A medicaid provider who commits failure to reimburse the human services department [health care authority department] upon receipt of third party payment when the value of the payment made by the department is more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. A medicaid provider who commits failure to reimburse the human services department [health care authority department] upon receipt of third party payment when the value of the payment made by the department is more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. A medicaid provider who commits failure to reimburse the human services department [health care authority department] upon receipt of third party payment when the value of the payment made by the department exceeds twenty thousand dollars ($20,000) is guilty of a second degree felony.

History: Laws 1979, ch. 170, § 6; 1987, ch 121, § 15; 2006, ch. 29, § 21.

30-40-7. Failure to notify the department of receipt of anything of value from public assistance recipient.

Any employee of the human services department [health care authority department] who knowingly receives anything of value, other than as provided by law, from either a recipient of public assistance or from the family of a public assistance recipient shall notify the department within ten days after such receipt on a form provided by the department. Whoever fails to so notify the department within ten days is guilty of a petty misdemeanor.

History: Laws 1979, ch. 170, § 7.

ARTICLE 41
Kickback, Bribe or Rebate

30-41-1. Soliciting or receiving illegal kickback.

Whoever knowingly solicits or receives any remuneration in the form of any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind from a person:

A. in return for referring an individual to that person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part with public money; or

B. in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facilities, services, or items for which payment may be made in whole or in part with public money, shall be guilty of a fourth degree felony.

History: Laws 1979, ch. 384, § 1.

30-41-2. Offering or paying illegal kickback.

Whoever knowingly offers or pays any remuneration in the form of any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

A. to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part with public money; or

B. to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facilities, services, or items for which payment may be made in whole or in part with public money, shall be guilty of a fourth degree felony.

History: Laws 1979, ch. 384, § 2.

30-41-3. Exceptions.

This act [30-41-1 to 30-41-3 NMSA 1978] shall not apply to:

A. a discount or other reduction in price obtained by a provider of services or other entity if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity; or

B. any amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

History: Laws 1979, ch. 384, § 3.

ARTICLE 42
Racketeering

30-42-1. Short title.

Chapter 30, Article 42 NMSA 1978 may be cited as the "Racketeering Act".

History: Laws 1980, ch. 40, § 1; 2025, ch. 128, § 1.

30-42-2. Purpose.

The purpose of the Racketeering Act is to eliminate the infiltration and illegal acquisition of legitimate economic enterprise by racketeering practices and the use of legal and illegal enterprises to further criminal activities.

History: Laws 1980, ch. 40, § 2.

30-42-3. Definitions.

As used in the Racketeering Act:

A. “racketeering" means any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses:

(1) murder, as provided in Section 30-2-1 NMSA 1978;

(2) robbery, as provided in Section 30-16-2 NMSA 1978;

(3) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(4) forgery, as provided in Section 30-16-10 NMSA 1978;

(5) larceny, as provided in Section 30-16-1 NMSA 1978;

(6) fraud, as provided in Section 30-16-6 NMSA 1978;

(7) embezzlement, as provided in Section 30-16-8 NMSA 1978;

(8) receiving stolen property, as provided in Section 30-16-11 NMSA 1978;

(9) bribery, as provided in Sections 30-24-1 through 30-24-3.1 NMSA 1978;

(10) gambling, as provided in Sections 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;

(11) illegal kickbacks, as provided in Sections 30-41-1 and 30-41-2 NMSA 1978;

(12) extortion, as provided in Section 30-16-9 NMSA 1978;

(13) trafficking in controlled substances, as provided in Section 30-31-20 NMSA 1978;

(14) arson and aggravated arson, as provided in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;

(15) promoting prostitution, as provided in Section 30-9-4 NMSA 1978;

(16) criminal solicitation, as provided in Section 30-28-3 NMSA 1978;

(17) fraudulent securities practices, as provided in the New Mexico Uniform Securities Act [58-13C-101 to 58-13C-701 NMSA 1978];

(18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;

(19) distribution of controlled substances or controlled substance analogues, as provided in Sections 30-31-21 and 30-31-22 NMSA 1978;

(20) money laundering, as provided in Section 30-51-4 NMSA 1978;

(21) unlawful taking of a vehicle or motor vehicle, as provided in Section 30-16D-1 NMSA 1978;

(22) embezzlement of a vehicle or motor vehicle, as provided in Section 30-16D-2 NMSA 1978;

(23) fraudulently obtaining a vehicle or motor vehicle, as provided in Section 30-16D-3 NMSA 1978;

(24) receiving or transferring stolen vehicles or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

(25) altering or changing the serial number, engine number, decal or other numbers or marks of a vehicle or motor vehicle, as provided in Section 30-16D-6 NMSA 1978;

(26) trafficking cannabis products, as provided in Section 26-2C-28 NMSA 1978;

(27) sexual exploitation of children, as provided in Sections 30-6A-3 and 30-6A-4 NMSA 1978;

(28) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(29) criminal sexual contact, as provided in Sections 30-9-12 and 30-9-13 NMSA 1978;

(30) dog fighting, as provided in Section 30-18-9 NMSA 1978;

(31) cockfighting, as provided in Section 30-18-9 NMSA 1978;

(32) bringing contraband into places of imprisonment, as provided in Section 30-22-14 NMSA 1978; and

(33) human trafficking, as provided in Section 30-52-1 NMSA 1978;

B. “person" means an individual or entity capable of holding a legal or beneficial interest in property;

C. “enterprise" means a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of persons associated in fact although not a legal entity, and includes illicit as well as licit entities; and

D. “pattern of racketeering activity" means engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of the incidents occurred after February 28, 1980 and the last incident occurred within five years after the commission of a prior incident of racketeering.

History: Laws 1980, ch. 40, § 3; 1988, ch. 14, § 4; 1998, ch. 113, § 6; 2009, ch. 253, § 7; 2009, ch. 261, § 7; 2024, ch. 38, § 16; 2025, ch. 128, § 2.

30-42-4. Prohibited activities; penalties.

A. It is unlawful for a person who has received proceeds derived, directly or indirectly, from a pattern of racketeering activity in which the person has participated, to use or invest, directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use in the acquisition of an interest in, or the establishment or

operation of, an enterprise. Whoever violates this subsection is guilty of a second degree felony.

B. It is unlawful for a person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, an interest in or control of an enterprise. Whoever violates this subsection is guilty of a second degree felony.

C. It is unlawful for a person employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs by engaging in a pattern of racketeering activity. Whoever violates this subsection is guilty of a second degree felony.

D. It is unlawful for a person to conspire to violate the provisions of Subsections A through C of this section. Whoever violates this subsection is guilty of a third degree felony.

E. Whoever is convicted of a violation of Subsection A, B, C or D of this section in addition to the prescribed penalties shall forfeit to the state of New Mexico:

(1) any interest acquired or maintained in violation of the Racketeering Act; and

(2) any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over an enterprise that the person has established, operated, controlled, conducted or participated in the conduct of in violation of the Racketeering Act.

F. The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of property described in Subsection E of this section.

History: Laws 1980, ch. 40, § 4; 2002, ch. 4, § 17; 2015, ch. 152, § 20.

30-42-5. Enforcement authority.

The attorney general and the district attorneys of New Mexico shall each have authority to enforce the criminal provisions of the Racketeering Act by initiating investigations, assisting grand juries, obtaining indictments, filing informations and complaints and prosecuting criminal cases.

History: Laws 1980, ch. 40, § 5.

30-42-6. Racketeering; civil remedies.

A. A person who sustains injury to his person, business or property by a pattern of racketeering activity may file an action in the district court for the recovery of three times

the actual damages proved and the costs of the suit, including reasonable attorney's fees.

B. The state may file an action on behalf of those persons injured or to prevent, restrain or remedy racketeering as defined by the Racketeering Act.

C. The district court has jurisdiction to prevent, restrain and remedy racketeering as defined in Subsection A of Section 30-42-3 NMSA 1978 after making provision for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders. Prior to a determination of liability, such orders may include but are not limited to entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture or other restraints pursuant to this section as it deems proper.

D. Following a determination of liability, such orders may include but are not limited to:

(1) ordering any person to divest himself of any interest, direct or indirect, in any enterprise;

(2) imposing reasonable restrictions on the future activities or investments of any person;

(3) ordering dissolution or reorganization of any enterprise;

(4) ordering the payment of three times the damages proved to those persons injured by racketeering; and

(5) ordering the payment of all costs and expenses of the prosecution and investigation of any offense included in the definition of racketeering incurred by the state to be paid to the general fund of New Mexico.

History: 1978 Comp., § 30-42-6, enacted by Laws 1980, ch. 40, § 6.

ARTICLE 43
Loan Sharking

30-43-1. Short title.

This act [30-43-1 to 30-43-5 NMSA 1978] may be cited as the "Loan Sharking Act".

History: Laws 1980, ch. 39, § 1.

30-43-2. Definitions.

As used in the Loan Sharking Act:

A. "creditor" means any person making an extension of credit or any person claiming by, under or through any person making an extension of credit;

B. "debtor" means any person to whom an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the same;

C. "extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal acts other than petty misdemeanors to cause harm to the person, reputation or property of any person;

D. "extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal acts other than petty misdemeanors to cause harm to the person, reputation or property of any person;

E. "to collect an extension of credit" means to induce in any way any person to make repayment of one extension of credit;

F. "to extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid and however arising, may or shall be deferred; and

G. "repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

History: Laws 1980, ch. 39, § 2.

30-43-3. Making extortionate extensions of credit.

A. Any person who makes or conspires or attempts to make an extortionate extension of credit is guilty of a third degree felony.

B. In any prosecution pursuant to this section, if it is shown that all of the following factors were present in connection with the extension of credit, there is prima facie evidence that the extension of credit was extortionate:

(1) the extension of credit was made at a rate of interest in excess of an annual rate of forty-five percent calculated according to the actuarial method of allocating payments on a debt between principal and interest, pursuant to which a

payment is applied first to the accumulated interest and the balance is applied to the unpaid principal;

(2) at the time the extension of credit was made, the debtor reasonably believed either of the following:

(a) one or more extensions of credit by the creditor had been collected by extortionate means or the nonrepayment had been punished by extortionate means; or

(b) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof; and

(3) upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded one hundred dollars ($100).

C. In any prosecution pursuant to this section, if evidence has been introduced tending to show the existence of the circumstances described in Paragraph (1) of Subsection B of this section and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may, pursuant to the New Mexico rules of evidence, in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

D. Nothing contained in Paragraphs (1) through (3) of Subsection B of this section shall be construed as a requirement for the proof of the existence of an extortionate extension of credit.

History: Laws 1980, ch. 39, § 3.

30-43-4. Financing extortionate extensions of credit.

A person who knowingly advances money or property, whether as a gift, loan or investment, to any person with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced, directly or indirectly, for the purpose of making extortionate extensions of credit is guilty of a third degree felony.

History: Laws 1980, ch. 39, § 4.

30-43-5. Collection of extensions of credit by extortionate means.

A. A person who knowingly participates or conspires or attempts to participate in the use of any extortionate means to collect any extensions of credit or to cause harm to the

person, reputation or property of any person for the nonpayment thereof is guilty of a third degree felony.

B. In any prosecution pursuant to this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonpayment resulted in the use of extortionate means.

C. In any prosecution pursuant to this section, if evidence has been introduced tending to show the existence at the time the extension of credit in question was made of the circumstances described in Paragraph (1) of Subsection B of Section 30-43-3 NMSA 1978 and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication shown to have been employed as a means of collection in fact carried an express or implicit threat, the court may, pursuant to the New Mexico rules of evidence, in its discretion, allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection.

History: Laws 1980, ch. 39, § 5.

ARTICLE 44
Medicaid Fraud

30-44-1. Short title.

Chapter 30, Article 44 NMSA 1978 may be cited as the "Medicaid Fraud Act".

History: Laws 1989, ch. 286, § 1; 1997, ch. 98, § 1.

30-44-2. Definitions.

As used in the Medicaid Fraud Act:

A. "benefit" means money, treatment, services, goods or anything of value authorized under the program;

B. "claim" means any communication, whether oral, written, electronic or magnetic, that identifies a treatment, good or service as reimbursable under the program;

C. "cost document" means any cost report or similar document that states income or expenses and is used to determine a cost reimbursement based rate of payment for a provider under the program;

D. "covered person" means an individual who is entitled to receive health care benefits from a managed health care plan;

E. "department" means the human services department [health care authority department];

F. "entity" means a person other than an individual and includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof and nonprofit organizations;

G. "great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time;

H. "great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms or that requires psychological or psychiatric care;

I. "health care official" means:

(1) an administrator, officer, trustee, fiduciary, custodian, counsel, agent or employee of a managed care health plan;

(2) an officer, counsel, agent or employee of an organization that provides, proposes to or contracts to provide services to a managed health care plan; or

(3) an official, employee or agent of a state or federal agency with regulatory or administrative authority over a managed health care plan;

J. "managed health care plan" means a government-sponsored health benefit plan that requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with or employed by a health care insurer or provider service network. A "managed health care plan" includes the health care services offered by a health maintenance organization, preferred provider organization, health care insurer, provider service network, entity or person that contracts to provide or provides goods or services that are reimbursed by or are a required benefit of a state or federally funded health benefit program, or any person or entity who contracts to provide goods or services to the program;

K. "person" includes individuals, corporations, partnerships and other associations;

L. "physical harm" means an injury to the body that causes pain or incapacitation;

M. "program" means the medical assistance program authorized under Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq. and implemented under Section 27-2-12 NMSA 1978;

N. "provider" means any person who has applied to participate or who participates in the program as a supplier of treatment, services or goods;

O. "psychological harm" means emotional or psychological damage of such a nature as to cause fear, humiliation or distress or to impair a person's ability to enjoy the normal process of his life;

P. "recipient" means any individual who receives or requests benefits under the program;

Q. "records" means any medical or business documentation, however recorded, relating to the treatment or care of any recipient, to services or goods provided to any recipient or to reimbursement for treatment, services or goods, including any documentation required to be retained by regulations of the program; and

R. "unit" means the medicaid fraud control unit or any other agency with power to investigate or prosecute fraud and abuse of the program.

History: Laws 1989, ch. 286, § 2; 1997, ch. 98, § 2.

30-44-3. Power to investigate and enforce civil remedies and prosecute criminal actions.

A. The attorney general, the district attorneys, the unit and the department have the power and authority to investigate violations of the Medicaid Fraud Act and bring actions to enforce the civil remedies established in the Medicaid Fraud Act.

B. The attorney general, the district attorneys and those attorneys who are employees of the unit to whom the attorney general or a district attorney has, by appointment made through a joint powers agreement or other agreement for that purpose, delegated criminal prosecutorial responsibility, shall have the power and authority to prosecute persons for the violation of criminal provisions of the Medicaid Fraud Act and for criminal offenses that are not defined in the Medicaid Fraud Act, but that involve or are directly related to the use of medicaid program funds or services provided through medicaid programs.

History: Laws 1989, ch. 286, § 3; 1991, ch. 79, § 1.

30-44-4. Falsification of documents; defined; penalties.

A. Falsification of documents consists of:

(1) knowingly making or causing to be made a misrepresentation of a material fact required to be furnished under the program or knowingly failing or causing the failure to include a material fact required to be furnished under the program in any record required to be retained in connection with the program pursuant to the Medicaid Fraud Act or regulations issued by the department for the administration of the program, or both; or

(2) knowingly submitting or causing to be submitted false or incomplete information for the purpose of receiving benefits or qualifying as a provider.

B. Whoever commits the crime of falsification of documents is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1989, ch. 286, § 4.

30-44-5. Failure to retain records; defined; penalties.

A. Whoever receives payment for treatment, services or goods under the program shall retain all medical and business records relating to:

(1) the treatment or care of any recipient;

(2) services or goods provided to any recipient;

(3) rates paid by the department under the program on behalf of any recipient; and

(4) any records required to be maintained by regulation of the department for administration of the program.

B. Failure to retain records consists of intentionally failing to retain the records specified in Subsection A of this section for a period of at least five years from the date payment was received or knowingly destroying or causing those records to be destroyed within five years from the date payment was received.

C. Whoever commits the crime of failure to retain records:

(1) is guilty of a misdemeanor if the treatment, services or goods for which records were not retained amounts to not more than one thousand dollars ($1,000) and shall be sentenced pursuant to Section 31-19-1 NMSA 1978;

(2) is guilty of a fourth degree felony if the value of the treatment, services or goods for which records were not retained is more than one thousand dollars ($1,000) and shall be sentenced pursuant to the provisions of Section 13-18-15 [31-18-15] NMSA 1978; and

(3) is guilty of a misdemeanor if the records not retained were used in whole or in part to determine a rate of payment under the program and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

History: Laws 1989, ch. 286, § 5.

30-44-6. Obstruction of investigation; defined; penalty.

A. Obstruction of investigation consists of:

(1) knowingly providing false information to, or knowingly withholding information from, any person authorized under the Medicaid Fraud Act to investigate violations of that act or to enforce the criminal or civil remedies of that act where that information is material to the investigation or enforcement; or

(2) knowingly altering any document or record required to be retained pursuant to the Medicaid Fraud Act or any regulation issued by the department, or both, when the alteration is intended to mislead an investigation and concerns information material to that investigation.

B. Whoever commits obstruction of investigation is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1989, ch. 286, § 6.

30-44-7. Medicaid fraud; defined; investigation; penalties.

A. Medicaid fraud consists of:

(1) paying, soliciting, offering or receiving:

(a) a kickback or bribe in connection with the furnishing of treatment, services or goods for which payment is or may be made in whole or in part under the program, including an offer or promise to, or a solicitation or acceptance by, a health care official of anything of value with intent to influence a decision or commit a fraud affecting a state or federally funded or mandated managed health care plan;

(b) a rebate of a fee or charge made to a provider for referring a recipient to a provider;

(c) anything of value, intending to retain it and knowing it to be in excess of amounts authorized under the program, as a precondition of providing treatment, care, services or goods or as a requirement for continued provision of treatment, care, services or goods; or

(d) anything of value, intending to retain it and knowing it to be in excess of the rates established under the program for the provision of treatment, services or goods;

(2) providing with intent that a claim be relied upon for the expenditure of public money:

(a) treatment, services or goods that have not been ordered by a treating physician;

(b) treatment that is substantially inadequate when compared to generally recognized standards within the discipline or industry; or

(c) merchandise that has been adulterated, debased or mislabeled or is outdated;

(3) presenting or causing to be presented for allowance or payment with intent that a claim be relied upon for the expenditure of public money any false, fraudulent, excessive, multiple or incomplete claim for furnishing treatment, services or goods; or

(4) executing or conspiring to execute a plan or action to:

(a) defraud a state or federally funded or mandated managed health care plan in connection with the delivery of or payment for health care benefits, including engaging in any intentionally deceptive marketing practice in connection with proposing, offering, selling, soliciting or providing any health care service in a state or federally funded or mandated managed health care plan; or

(b) obtain by means of false or fraudulent representation or promise anything of value in connection with the delivery of or payment for health care benefits that are in whole or in part paid for or reimbursed or subsidized by a state or federally funded or mandated managed health care plan. This includes representations or statements of financial information, enrollment claims, demographic statistics, encounter data, health services available or rendered and the qualifications of persons rendering health care or ancillary services.

B. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud as described in Paragraph (1) or (3) of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud as described in Paragraph (2) or (4) of Subsection A of this section when the value of the benefit, treatment, services or goods improperly provided is:

(1) not more than one hundred dollars ($100) is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) more than one hundred dollars ($100) but not more than two hundred fifty dollars ($250) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) more than two hundred fifty dollars ($250) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) shall be guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) more than twenty thousand dollars ($20,000) shall be guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud when the fraud results in physical harm or psychological harm to a recipient is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud when the fraud results in great physical harm or great psychological harm to a recipient is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Except as otherwise provided for in this section regarding the payment of fines by an entity, whoever commits medicaid fraud when the fraud results in death to a recipient is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. If the person who commits medicaid fraud is an entity rather than an individual, the entity shall be subject to a fine of not more than fifty thousand dollars ($50,000) for each misdemeanor and not more than two hundred fifty thousand dollars ($250,000) for each felony.

H. The unit shall coordinate with the human services department [health care authority department], department of health and children, youth and families department

to develop a joint protocol establishing responsibilities and procedures, including prompt and appropriate referrals and necessary action regarding allegations of program fraud, to ensure prompt investigation of suspected fraud upon the medicaid program by any provider. These departments shall participate in the joint protocol and enter into a memorandum of understanding defining procedures for coordination of investigations of fraud by medicaid providers to eliminate duplication and fragmentation of resources. The memorandum of understanding shall further provide procedures for reporting to the legislative finance committee the results of all investigations every calendar quarter. The unit shall report to the legislative finance committee a detailed disposition of recoveries and distribution of proceeds every calendar quarter.

History: Laws 1989, ch. 286, § 7; 1997, ch. 98, § 3; 2003, ch. 291, § 1.

30-44-8. Civil penalties; created; enumerated; presumption; limitation of action.

A. Any person who receives payment for furnishing treatment, services or goods under the program, which payment the person is not entitled to receive by reason of a violation of the Medicaid Fraud Act, shall, in addition to any other penalties or amounts provided by law, be liable for:

(1) payment of interest on the amount of the excess payments at the maximum legal rate in effect on the date the payment was made, for the period from the date payment was made to the date of repayment to the state;

(2) a civil penalty in an amount of up to three times the amount of excess payments;

(3) payment of a civil penalty of up to ten thousand dollars ($10,000) for each false or fraudulent claim submitted or representation made for providing treatment, services or goods; and

(4) payment of legal fees and costs of investigation and enforcement of civil remedies.

B. Interest amounts, legal fees and costs of enforcement of civil remedies assessed under this section shall be remitted to the state treasurer for deposit in the general fund.

C. Any penalties and costs of investigation recovered on behalf of the state shall be remitted to the state treasurer for deposit in the general fund except an amount not to exceed two hundred fifty thousand dollars ($250,000) in fiscal year 2004, one hundred twenty-five thousand dollars ($125,000) in fiscal year 2005 and seventy-five thousand dollars ($75,000) in fiscal year 2006 may be retained by the unit and expended, consistent with federal regulations and state law, for the purpose of carrying out the unit's duties.

D. A criminal action need not be brought against a person as a condition precedent to enforcement of civil liability under the Medicaid Fraud Act.

E. The remedies under this section are separate from and cumulative to any other administrative and civil remedies available under federal or state law or regulation.

F. The department may adopt regulations for the administration of the civil penalties contained in this section.

G. No action under this section shall be brought after the expiration of five years from the date the action accrues.

History: 1989, ch. 286, § 8; 1997, ch. 98, § 4; 2004, ch. 54, § 1.

ARTICLE 45
Computer Crimes

30-45-1. Short title.

This act [30-45-1 to 30-45-7 NMSA 1978] may be cited as the "Computer Crimes Act".

History: Laws 1989, ch. 215, § 1.

30-45-2. Definitions.

As used in the Computer Crimes Act:

A. "access" means to program, execute programs on, intercept, instruct, communicate with, store data in, retrieve data from or otherwise make use of any computer resources, including data or programs of a computer, computer system, computer network or database;

B. "computer" includes an electronic, magnetic, optical or other high-speed data processing device or system performing logical, arithmetic or storage functions and includes any property, data storage facility or communications facility directly related to or operating in conjunction with such device or system. The term does not include an automated typewriter or typesetter or a single display machine in and of itself, designed and used solely within itself for word processing, or a portable hand-held calculator, or any other device which might contain components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended;

C. "computer network" means the interconnection of communication lines and circuits with a computer or a complex consisting of two or more interconnected computers;

D. "computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from a computer system;

E. "computer property" includes a financial instrument, data, databases, computer software, computer programs, documents associated with computer systems and computer programs, or copies, whether tangible or intangible, and data while in transit;

F. "computer service" includes computer time, the use of the computer system, computer network, computer programs or data prepared for computer use, data contained within a computer network and data processing and other functions performed, in whole or in part, by the use of computers, computer systems, computer networks or computer software;

G. "computer software" means a set of computer programs, procedures and associated documentation concerned with the operation and function of a computer system;

H. "computer system" means a set of related or interconnected computer equipment, devices and software;

I. "data" means a representation of information, knowledge, facts, concepts or instructions which are prepared and are intended for use in a computer, computer system or computer network;

J. "database" means any data or other information classified, processed, transmitted, received, retrieved, originated, switched, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer system, computer network or computer software; and

K. "financial instrument" includes any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction, authorization mechanism, marketable security or any other computerized representation thereof.

History: Laws 1989, ch. 215, § 2.

30-45-3. Computer access with intent to defraud or embezzle.

A person who knowingly and willfully accesses or causes to be accessed a computer, computer system, computer network or any part thereof with the intent to

obtain, by means of embezzlement or false or fraudulent pretenses, representations or promises, money, property or anything of value, when the:

A. money, property or other thing has a value of two hundred fifty dollars ($250) or less, is guilty of a petty misdemeanor;

B. money, property or other thing has a value of more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500), is guilty of a misdemeanor;

C. money, property or other thing has a value of more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500), is guilty of a fourth degree felony;

D. money, property or other thing has a value of more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000), is guilty of a third degree felony; or

E. money, property or other thing has a value of more than twenty thousand dollars ($20,000), is guilty of a second degree felony.

History: Laws 1989, ch. 215, § 3; 2006, ch. 29, § 22.

30-45-4. Computer abuse.

A person who knowingly, willfully and without authorization, or having obtained authorization, uses the opportunity the authorization provides for purposes to which the authorization does not extend:

A. directly or indirectly alters, changes, damages, disrupts or destroys any computer, computer network, computer property, computer service or computer system, when the:

(1) damage to the computer property or computer service has a value of two hundred fifty dollars ($250) or less, is guilty of a petty misdemeanor;

(2) damage to the computer property or computer service has a value of more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500), is guilty of a misdemeanor;

(3) damage to the computer property or computer service has a value of more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500), is guilty of a fourth degree felony;

(4) damage to the computer property or computer service has a value of more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000), is guilty of a third degree felony; or

(5) damage to the computer property or computer service has a value of more than twenty thousand dollars ($20,000), is guilty of a second degree felony; or

B. directly or indirectly introduces or causes to be introduced data that the person knows to be false into a computer, computer system, computer network, computer software, computer program, database or any part thereof with the intent of harming the property or financial interests or rights of another person is guilty of a fourth degree felony.

History: Laws 1989, ch. 215, § 4; 2006, ch. 29, § 23.

30-45-5. Unauthorized computer use.

A person who knowingly, willfully and without authorization, or having obtained authorization, uses the opportunity the authorization provides for purposes to which the authorization does not extend, directly or indirectly accesses, uses, takes, transfers, conceals, obtains, copies or retains possession of any computer, computer network, computer property, computer service, computer system or any part thereof, when the:

A. damage to the computer property or computer service has a value of two hundred fifty dollars ($250) or less, is guilty of a petty misdemeanor;

B. damage to the computer property or computer service has a value of more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500), is guilty of a misdemeanor;

C. damage to the computer property or computer service has a value of more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500), is guilty of a fourth degree felony;

D. damage to the computer property or computer service has a value of more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000), is guilty of a third degree felony; or

E. damage to the computer property or computer service has a value of more than twenty thousand dollars ($20,000), is guilty of a second degree felony.

History: Laws 1989, ch. 215, § 5; 2006, ch. 29, § 24.

30-45-6. Prosecution.

A. Prosecution pursuant to the Computer Crimes Act shall not prevent any prosecutions pursuant to any other provisions of the law where such conduct also constitutes a violation of that other provision.

B. A person found guilty of violating any provision of the Computer Crimes Act shall, in addition to any other punishment, be ordered to make restitution for any financial loss sustained by anyone injured as the direct result of the commission of the crime. Restitution shall be imposed in addition to incarceration, forfeiture or fine, and not in lieu thereof, and may be made a condition of probation. The defendant's present and future ability to make such restitution shall be considered. In an extraordinary case, the court may determine that the interests of those injured and justice would not be served by ordering restitution. In such a case, the court shall make and enter specific written findings on the record substantiating the extraordinary circumstance presented upon which the court determined not to order restitution. In all other cases, the court shall determine the amount and method of restitution.

History: Laws 1989, ch. 215, § 6.

30-45-7. Forfeiture of property.

A. The following are subject to forfeiture:

(1) all computer property, equipment or products of any kind that have been used, manufactured, acquired or distributed in violation of the Computer Crimes Act;

(2) all materials, products and equipment of any kind that are used or intended for use in manufacturing, using, accessing, altering, disrupting, copying, concealing, destroying, transferring, delivering, importing or exporting any computer property or computer service in violation of the Computer Crimes Act;

(3) all books, records and research products and materials involving formulas, microfilm, tapes and data that are used or intended for use in violation of the Computer Crimes Act;

(4) all conveyances, including aircraft, vehicles or vessels, that are used or intended for use to transport or in any manner to facilitate the transportation of property described in this subsection for the purpose of violating the Computer Crimes Act;

(5) all property, real, personal or mixed, that has been used or intended for use, maintained or acquired in violation of the Computer Crimes Act; and

(6) all money or proceeds that constitute an instrumentality or derive from a violation of the Computer Crimes Act.

B. The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture pursuant to Subsection A of this section.

History: Laws 1989, ch. 215, § 7; 2002, ch. 4, § 18.

ARTICLE 46
Ticket Scalping

30-46-1. Ticket scalping.

A. Ticket scalping consists of selling, offering for sale or attempting to sell any ticket, privilege, license, admission or pass to any college athletic event at a price greater than the price charged at the place of admission or printed on the ticket.

B. The sale of each ticket, privilege, license, admission or pass in violation of this section shall constitute a separate offense.

C. Nothing in this section shall prohibit charging a fee for services rendered in connection with the sale of a ticket privilege, license, admission or pass to an event if the fee is permitted pursuant to a contract between the ticket seller and the sponsor or promoter of the event.

D. Whoever commits ticket scalping is guilty of a misdemeanor and upon conviction shall be punished by a fine up to five hundred dollars ($500) or by imprisonment for a definite term of less than one year, or both.

History: Laws 1989, ch. 142, § 1.

ARTICLE 47
Resident Abuse and Neglect

30-47-1. Short title.

This act [30-47-1 to 30-47-10 NMSA 1978] may be cited as the "Resident Abuse and Neglect Act".

History: Laws 1990, ch. 55, § 1.

30-47-2. Purpose.

The purpose of the Resident Abuse and Neglect Act is to provide meaningful deterrents and remedies for the abuse, neglect or exploitation of care facility residents and to provide an effective system for reporting instances of abuse, neglect or exploitation.

History: Laws 1990, ch. 55, § 2.

30-47-3. Definitions.

As used in the Resident Abuse and Neglect Act:

A. "abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

(1) physical contact that harms or is likely to harm a resident of a care facility;

(2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a resident;

(3) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;

(4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;

(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident; or

(6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident;

B. "care facility" means a hospital; skilled nursing facility; intermediate care facility; care facility for individuals with developmental or intellectual disabilities; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or outpatient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care, sheltered care or nursing care for one or more persons; a resident's or care provider's home in which personal care, sheltered care or nursing care is provided; adult daycare center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home, but does not include a care facility located at or performing services for any correctional facility;

C. "department" means the human services department [health care authority department] or its successor, contractor, employee or designee;

D. "great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care;

E. "great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time;

F. "neglect" means, subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

(1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident; or

(3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident;

G. "person" means any individual, corporation, partnership, unincorporated association or other governmental or business entity;

H. "physical harm" means an injury to the body that causes substantial pain or incapacitation; and

I. "resident" means any person who resides in a care facility or who receives treatment from a care facility.

History: Laws 1990, ch. 55, § 3; 2010, ch. 93, § 1; 2023, ch. 113, § 9.

30-47-4. Abuse of a resident; criminal penalties.

A. Whoever commits abuse of a care facility resident that results in no harm to the resident is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978.

B. Whoever commits abuse of a resident that results in physical harm or great psychological harm to the resident is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever commits abuse of a resident that results in great physical harm to the resident is guilty of a third degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Whoever commits abuse of a resident that results in the death of the resident is guilty of a second degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1990, ch. 55, § 4.

30-47-5. Neglect of a resident; criminal penalties.

A. Whoever commits neglect of a resident that results in no harm to the resident is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978.

B. Whoever commits neglect of a resident that results in physical harm or great psychological harm to the resident is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever commits neglect of a resident that results in great physical harm to the resident is guilty of a third degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Whoever commits neglect of a resident that results in the death of the resident is guilty of a second degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

History: Laws 1990, ch. 55, § 5.

30-47-6. Exploitation; criminal penalties.

A. Exploitation of a resident's property consists of the act or process, performed intentionally, knowingly or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

B. Whoever commits exploitation of a resident's property when the value of the property exploited is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor.

C. Whoever commits exploitation of a resident's property when the value of the property exploited is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor.

D. Whoever commits exploitation of a resident's property when the value of the property exploited is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony.

E. Whoever commits exploitation of a resident's property when the value of the property exploited is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony.

F. Whoever commits exploitation of a resident's property when the value of the property exploited is over twenty thousand dollars ($20,000) is guilty of a second degree felony.

History: Laws 1990, ch. 55, § 6; 2006, ch. 29, § 25.

30-47-7. Religious practitioners; exception.

No resident who is being treated by a duly accredited religious practitioner shall be considered for that reason alone, abused or neglected.

History: Laws 1990, ch. 55, § 7.

30-47-8. Treatment in compliance with the Uniform Health-Care Decisions Act.

A. Nothing in the Resident Abuse and Neglect Act shall be construed to preclude health care in accordance with the Uniform Health-Care Decisions Act [Chapter 24, Article 7A NMSA 1978], and it shall be an affirmative defense to any charge brought under the Resident Abuse and Neglect Act that the acts complained of were in accordance with the Uniform Health-Care Decisions Act.

B. To establish an affirmative defense under Subsection A of this section, the person shall show substantial compliance with the provisions of the Uniform Health-Care Decisions Act.

History: Laws 1990, ch. 55, § 8; 1997, ch. 168, § 11.

30-47-9. Reporting requirements; failure to report; crime created; criminal penalty; discrimination or retaliation for filing a report prohibited.

A. Any person paid in whole or part for providing to a resident any treatment, care, good, service or medication who has reasonable cause to believe that the resident has been abused, neglected or exploited shall report the abuse, neglect or exploitation in accordance with the provisions of Section 27-7-30 NMSA 1978.

B. Any person required to make a report pursuant to Subsection A of this section who fails to do so is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

C. In addition to those persons required to report pursuant to Subsection A of this section, any other person shall make a report if the person has reasonable cause to believe that a patient or resident of a facility has been abused, neglected or exploited.

D. Any person making a report pursuant to Subsection C of this section shall not be liable in any civil or criminal action based on the report if it was made in good faith.

E. No facility shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by the Resident Abuse and Neglect Act, or testifies, or is about to testify, in any proceeding

about the abuse, neglect or exploitation of a resident in that facility. For the purposes of this section, "retaliate" includes transferring to another facility, without just cause, over the objection of the resident or the resident's guardian, any resident who has reported an incident pursuant to this section.

History: Laws 1990, ch. 55, § 9.

30-47-10. Regulatory authority.

The department shall issue rules and regulations as necessary to implement the reporting provisions of the Resident Abuse and Neglect Act.

History: Laws 1990, ch. 55, § 10.

ARTICLE 48
Smokeless Tobacco Products (Repealed.)

30-48-1. Repealed.

30-48-2. Repealed.

30-48-3. Repealed.

30-48-4. Repealed.

30-48-5. Repealed.

30-48-6. Repealed.

30-48-7. Repealed.

ARTICLE 49
Tobacco Products, E-Cigarettes and Nicotine Liquid Containers (Repealed)

30-49-1. Repealed.

History: Laws 1993, ch. 244, § 1; 2015, ch. 98, § 1; repealed by Laws 2020, ch. 46, § 26.

30-49-2. Repealed.

History: Laws 1993, ch. 244, § 2; 2015, ch. 98, § 2; repealed by Laws 2020, ch. 46, § 26.

30-49-3. Repealed.

History: Laws 1993, ch. 244, § 3; 2015, ch. 98, § 3; repealed by Laws 2020, ch. 46, § 26.

30-49-4. Repealed.

History: Laws 1993, ch. 244, § 4; repealed by Laws 2020, ch. 46, § 26.

30-49-5. Repealed.

History: Laws 1993, ch. 244, § 5; 2015, ch. 98, § 4; repealed by Laws 2020, ch. 46, § 26.

30-49-6. Repealed.

History: Laws 1993, ch. 244, § 6; 2015, ch. 98, § 5; repealed by Laws 2020, ch. 46, § 26.

30-49-7. Repealed.

History: Laws 1993, ch. 244, § 7; 2003, ch. 364, § 1; 2015, ch. 98, § 6; repealed by Laws 2020, ch. 46, § 26.

30-49-8. Repealed.

History: Laws 1993, ch. 244, § 8; 2015, ch. 98, § 7; repealed by Laws 2020, ch. 46, § 26.

30-49-9. Repealed.

History: Laws 1993, ch. 244, § 9; 2015, ch. 98, § 8; repealed by Laws 2020, ch. 46, § 26.

30-49-10. Repealed.

History: Laws 1993, ch. 244, § 10; 2015, ch. 98, § 9; repealed by Laws 2020, ch. 46, § 26.

30-49-11. Repealed.

History: Laws 1993, ch. 244, § 11; 2015, ch. 98, § 10; repealed by Laws 2020, ch. 46, § 26.

30-49-12. Repealed.

History: Laws 1993, ch. 244, § 12; 2015, ch. 98, § 11; repealed by Laws 2020, ch. 46, § 26.

30-49-13. Repealed.

History: Laws 2015, ch. 98, § 12; repealed by Laws 2020, ch. 46, § 26.

ARTICLE 50
Fraudulent Telemarketing

30-50-1. Short title.

This act [30-50-1 to 30-50-4 NMSA 1978] may be cited as the "Fraudulent Telemarketing Act".

History: Laws 1995, ch. 37, § 1.

30-50-2. Purpose.

The purpose of the Fraudulent Telemarketing Act is to protect consumers from fraudulent telemarketing.

History: Laws 1995, ch. 37, § 2.

30-50-3. Definitions.

As used in the Fraudulent Telemarketing Act:

A. "telemarketing" means:

(1) being employed by or associating with any company, organization, sole proprietorship or economic venture that uses the telephone on a regular basis as a primary instrument to obtain money from the people to whom information is transmitted by telephone communication; or

(2) representing oneself to a person from whom money is requested as being associated with any company, organization, sole proprietorship or economic venture that can be reasonably understood as using the telephone on a regular basis as a

primary instrument to obtain money from the people to whom information is transmitted by telephone communication; and

B. "telephone communication" means any communication by words, fax, computer modem, video or other type of transmission that is carried in whole or in part through the local, long distance or cellular telephone network.

History: Laws 1995, ch. 37, § 3.

30-50-4. Fraudulent telemarketing; penalties.

A person who knowingly and willfully engages in telemarketing to or from a telephone located in New Mexico with the intent to embezzle or to obtain money, property or any thing of value by fraudulent pretenses, representations or promises in the course of a telephone communication, when the:

A. money, property or thing has a value of two hundred fifty dollars ($250) or less, is guilty of a petty misdemeanor;

B. money, property or thing has a value of more than two hundred fifty dollars ($250) but not more than five hundred dollars ($500), is guilty of a misdemeanor;

C. money, property or thing has a value of more than five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500), is guilty of a fourth degree felony;

D. money, property or thing has a value of more than two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000), is guilty of a third degree felony; or

E. money, property or thing has a value of more than twenty thousand dollars ($20,000), is guilty of a second degree felony.

History: Laws 1995, ch. 37, § 4; 2006, ch. 29, § 26.

ARTICLE 51
Money Laundering

30-51-1. Short title.

Sections 1 through 5 [30-51-1 to 30-51-5 NMSA 1978] of this act may be cited as the "Money Laundering Act".

History: Laws 1998, ch. 113, § 1.

30-51-2. Definitions.

As used in the Money Laundering Act:

A. "financial institution" means:

(1) a bank, credit union, trust company or thrift institution or an agency or branch thereof;

(2) a broker or dealer in securities or commodities;

(3) an investment banker;

(4) an investment company;

(5) an issuer, redeemer or cashier of traveler's checks, checks, money orders or similar instruments;

(6) an operator of a credit card system;

(7) an insurance company;

(8) a dealer in precious metals, stones or jewels;

(9) a pawnbroker;

(10) a loan or finance company;

(11) a travel agency;

(12) a licensed sender of money;

(13) a telegraph company;

(14) a business engaged in vehicle sales, including automobile, airplane and boat sales;

(15) a currency exchange;

(16) a person involved in real estate closings and settlements; or

(17) an agency or authority of a state or local government carrying out a duty or power of a business described in this subsection;

B. "financial transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition of any monetary instrument or the movement of funds by wire or other means;

C. "monetary instrument" means coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, investment securities in bearer form or in such other form that title passes upon delivery of the security and negotiable instruments in bearer form or in such other form that title passes upon delivery of the instrument;

D. "person" means an individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, unincorporated organization or group or other entity;

E. "proceeds" means property that is acquired, delivered, produced or realized, whether directly or indirectly, by an act or omission;

F. "property" means anything of value, including real, personal, tangible or intangible property; and

G. "specified unlawful activity" means an act or omission, including any initiatory, preparatory or completed offense or omission, committed for financial gain that is punishable as a felony under the laws of New Mexico or, if the act occurred outside New Mexico, would be punishable as a felony under the laws of the state in which it occurred and under the laws of New Mexico.

History: Laws 1998, ch. 113, § 2.

30-51-3. Reports filed with the department of public safety; criminal penalties.

A. A financial institution in New Mexico that is required to file a report regarding a financial transaction under the provisions of the federal Currency and Foreign Transactions Reporting Act and the regulations promulgated pursuant to that act shall file a duplicate of that report with the department of public safety; provided, a financial institution that makes a timely filing with an appropriate federal agency shall be deemed to have satisfied the reporting requirements of this subsection.

B. A person engaged in a trade or business in New Mexico who, in the course of the trade or business, receives more than ten thousand dollars ($10,000) in cash in one financial transaction or two or more related financial transactions, and is required to file a report under the provisions of 26 U.S.C. Section 6050I and regulations promulgated pursuant to that section, shall file a duplicate of that report with the department of public safety; provided, a person who makes a timely filing with an appropriate federal agency shall be deemed to have satisfied the reporting requirements of this subsection.

C. A financial institution, a person engaged in a trade or business or an officer, employee or agent of either who files or keeps a record pursuant to the provisions of this section or who communicates or discloses information or records pursuant to the provisions of this section shall not be liable to its customer or to any person for any loss or damage caused in whole or in part by the making, filing or governmental use of the report or information contained in the report.

D. Any person who releases information received pursuant to the provisions of this section, except in the proper discharge of his official duties, is guilty of a misdemeanor.

E. A person who knowingly:

(1) fails to file a report with the department of public safety required pursuant to the provisions of this section is subject to a fine of not more than ten percent of the value of the financial transaction required to be reported or five thousand dollars ($5,000), whichever is greater; or

(2) provides any false or inaccurate information or knowingly conceals any material fact in a report required pursuant to Subsections A and B of this section is guilty of a fourth degree felony.

F. Notwithstanding any other provision of law, a violation of this section constitutes a separate, punishable offense for each transaction or exemption.

G. Any report, record, information, analysis or request obtained by the department of public safety or other agency pursuant to the provisions of this section is not a public record as defined in Section 14-3-2 NMSA 1978 and is not subject to disclosure pursuant to the provisions of Section 14-2-1 NMSA 1978.

H. A financial institution or person required to file a report pursuant to the provisions of Subsection A or B of this section shall, at the request of the department of public safety, provide the department with access to a copy of the report during the period of time that the financial institution or person is required to maintain the report.

History: Laws 1998, ch. 113, § 3.

30-51-4. Prohibited activity; criminal penalties; civil penalties.

A. It is unlawful for a person who knows that the property involved in a financial transaction is, or was represented to be, the proceeds of a specified unlawful activity to:

(1) conduct, structure, engage in or participate in a financial transaction that involves the property, knowing that the financial transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property or to avoid a transaction reporting requirement under state or federal law;

(2) conduct, structure, engage in or participate in a financial transaction that involves the property for the purpose of committing or furthering the commission of any other specified unlawful activity;

(3) transport the property with the intent to further a specified unlawful activity, knowing that the transport is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership or control of the monetary instrument or to avoid a transaction reporting requirement under state or federal law; or

(4) make the property available to another person by means of a financial transaction or by transporting the property, when he knows that the property is intended for use by the other person to commit or further the commission of a specified unlawful activity.

B. A person who violates any provision of Subsection A of this section is guilty of a:

(1) second degree felony if the illegal financial transaction involves more than one hundred thousand dollars ($100,000);

(2) third degree felony if the illegal financial transaction involves over fifty thousand dollars ($50,000) but not more than one hundred thousand dollars ($100,000);

(3) fourth degree felony if the illegal financial transaction involves over ten thousand dollars ($10,000) but not more than fifty thousand dollars ($50,000); or

(4) misdemeanor if the illegal financial transaction involves ten thousand dollars ($10,000) or less.

C. In addition to any criminal penalty, a person who violates any provision of Subsection A of this section is subject to a civil penalty of three times the value of the property involved in the transaction.

D. Nothing contained in the Money Laundering Act precludes civil or criminal remedies provided by the Racketeering Act [Chapter 30, Article 42 NMSA 1978] or the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or by any other New Mexico law. Those remedies are in addition to and not in lieu of remedies provided in the Money Laundering Act.

History: Laws 1998, ch. 113, § 4.

30-51-5. Attorney fees; exception.

No provision of the Money Laundering Act shall apply to a financial transaction involving the bona fide fees an attorney accepts for representing a client in a criminal investigation or a proceeding arising from a criminal investigation.

History: Laws 1998, ch. 113, § 5.

ARTICLE 52
Human Trafficking

30-52-1. Human trafficking.

A. Human trafficking consists of a person knowingly:

(1) 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;

(2) recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or

(3) 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.

B. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to enforce the provisions of this section.

C. Whoever commits human trafficking is guilty of a third degree felony; except if the victim is under the age of:

(1) sixteen, the person is guilty of a second degree felony; or

(2) thirteen, the person is guilty of a first degree felony.

D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

E. In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.

F. A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages in accordance with Section 31-17-1 NMSA 1978.

G. As used in this section:

(1) "coercion" means:

(a) causing or threatening to cause harm to any person;

(b) using or threatening to use physical force against any person;

(c) abusing or threatening to abuse the law or legal process;

(d) threatening to report the immigration status of any person to governmental authorities; or

(e) knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person; and

(2) "commercial sexual activity" means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.

History: Laws 2008, ch. 17, § 1.

30-52-1.1. Human trafficking; civil remedy for human trafficking victims.

A. A human trafficking victim may bring a civil action in any court of competent jurisdiction against an alleged human trafficker for actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. Where the court finds that a defendant's actions were willful and malicious, the court may award treble damages to the plaintiff. A prevailing plaintiff is also entitled to recover reasonable attorney fees and costs.

B. A civil action pursuant to this section shall be forever barred unless the action is filed within ten years from the date on which:

(1) the defendant's human trafficking actions occurred; or

(2) the victim attains eighteen years of age if the victim was a minor when the defendant's actions occurred.

History: Laws 2013, ch. 200, § 1.

30-52-1.2. Sealing of records of human trafficking victims.

A. On petition to the district court, a person who is a victim of human trafficking who has been charged with crimes arising out of the actions of someone charged with human trafficking may have all legal and law enforcement records of the charges and convictions in the person's case sealed. The court may issue an order sealing records and files if the court finds:

(1) the petitioner is a victim of human trafficking;

(2) the charge or conviction is for a non-homicide crime; and

(3) the petitioner's involvement in the offense was due to duress, coercion, use of force, threat to or fraud committed against the petitioner by a person who has committed human trafficking involving the petitioner.

B. Reasonable notice of the petition shall be given to the district attorney or prosecutor who filed the original case and to the law enforcement agency that has custody of the law enforcement files and records for the case.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement agencies and the petitioner shall respond to an inquiry that no record exists with respect to the petitioner for the referenced case. Copies of the sealed order shall be sent by the court to the district attorney or prosecutor who filed the original case, and each law enforcement agency shall be named in the order.

D. Inspection of files and records or release of information in the records included in the sealing order may be permitted by the court only upon subsequent order of the court on a showing of good cause after notice to all parties to the original petition.

History: Laws 2013, ch. 200, § 2.

30-52-2. Human trafficking; benefits and services for human trafficking victims.

A. Human trafficking victims found in the state shall be eligible for benefits and services from the state until the victim qualifies for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000; provided that the victim cooperates in the investigation or prosecution of the person charged with the crime of human trafficking. Benefits and services shall be provided to eligible human trafficking victims as quickly as can reasonably be arranged regardless of immigration status and shall include, when appropriate to a particular case:

(1) case management;

(2) emergency temporary housing;

(3) health care;

(4) mental health counseling;

(5) drug addiction screening and treatment;

(6) language interpretation, translation services and English language instruction;

(7) job training, job placement assistance and post-employment services for job retention;

(8) child care;

(9) advocacy services;

(10) state-funded cash assistance;

(11) food assistance;

(12) services to assist the victim and the victim's family members; and

(13) other general assistance services and benefits as determined by the children, youth and families department or the human services department [health care authority department].

B. A human trafficking victim advocate shall be provided immediately upon identification by law enforcement of a human trafficking victim.

C. Before providing benefits and services pursuant to Subsection A of this section, law enforcement shall certify to the human services department [health care authority department] and the children, youth and families department that a person is:

(1) a victim of human trafficking; and

(2) cooperating in the investigation or prosecution of the person charged with the crime of human trafficking.

D. A victim's ability to cooperate shall be determined by the court, if that issue is raised by a human trafficking victim advocate. The victim is not required to cooperate if the court determines that the victim is unable to cooperate due to physical or psychological trauma. Benefits and services shall continue unless the court rejects the victim's claim regarding inability to cooperate. A victim who is younger than eighteen years of age is eligible for benefits and services without a finding by the court. Any court proceeding regarding the victim's ability to cooperate shall be held in camera. The human trafficking victim advocate shall be allowed to attend the proceeding. The record of any such proceeding shall be sealed.

E. The attorney general shall coordinate plans developed by state and local law enforcement agencies to provide a human trafficking victim or the victim's family members protection from retaliatory action immediately upon identifying the presence in

the state of a victim who offers state or local law enforcement agencies information regarding a perpetrator of human trafficking.

F. The prosecuting authority shall take all reasonable steps within its authority to provide a human trafficking victim with:

(1) all necessary documentation required pursuant to federal law for an adjustment of immigration status that applies to that victim; and

(2) assistance in accessing civil legal services providers who are able to petition for adjustment of immigration status on behalf of the victim.

G. As used in this section:

(1) "human trafficking victim" means a person subjected to human trafficking; and

(2) "human trafficking victim advocate" means a person provided by a state or nonprofit agency with experience in providing services for victims of crime.

History: Laws 2008, ch. 17, § 2; 2013, ch. 200, § 3.

30-52-2.1. Posting information about the national human trafficking resource center hotline.

A. An employer subject to the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978], a person licensed pursuant to Sections 60-6A-2 through 60-6A-5 NMSA 1978, a health facility licensed pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978] and a state or local government agency that manages a transportation facility, including a highway rest area, shall post a sign containing the following notice in English and in Spanish and in any other written language where ten percent or more of the workers or users of a covered facility speak that language:

"NOTICE ON HUMAN TRAFFICKING: OBTAINING FORCED LABOR OR SERVICES IS A CRIME UNDER NEW MEXICO AND FEDERAL LAW. IF YOU OR SOMEONE YOU KNOW IS A VICTIM OF THIS CRIME, CONTACT THE FOLLOWING: IN NEW MEXICO, CALL OR TEXT 505-GET-FREE (505-438-3733); OR CALL THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER HOTLINE TOLL-FREE AT 1-888-373-7888 FOR HELP. YOU MAY ALSO SEND THE TEXT "HELP" OR "INFO" TO BEFREE ("233733"). YOU MAY REMAIN ANONYMOUS, AND YOUR CALL OR TEXT IS CONFIDENTIAL.".

B. The sign shall be at least eight and one-half inches high and eleven inches wide. It shall be displayed in a conspicuous manner in the employer's business facility, in the licensees' licensed facilities or in the transportation facility clearly visible to the public and employees of the employer or licensees. The English language and Spanish

language portions and any other written language portions of the sign shall be equal in size.

C. The director of the labor relations division of the workforce solutions department shall provide employers under the Minimum Wage Act with information about the notice required by this section and shall provide a version of the notice on its public access internet web site for employers to download or print.

D. The regulation and licensing department; the children, youth and families department; and the department of health shall each provide their respective licensees with information about the notice required by this section and shall provide a version of the notice on their respective public access internet web sites for licensees to download or print.

E. When necessary, a department shall update the relevant telephone and texting numbers provided in the version of the notice posted on its public access internet web site.

History: Laws 2014, ch. 75, § 1.

30-52-3. Terminated.

History: Laws 2008, ch. 17, § 3.

ARTICLE 53
Disruption of Communication and Utility Services

30-53-1. Creation of a safety hazard or disruption of communications and utilities services by theft or intentional damage.

A. Any person who by the theft of, or by intentionally damaging, communications or public utility equipment, whether customer - or utility-owned, creates a public safety hazard or causes a disruption of communications services or public utility services to ten or more households, customers or subscribers or causes monetary damage equal to or greater than one thousand dollars ($1,000) in value of equipment shall be guilty of a:

(1) misdemeanor for a first and second offense, punishable pursuant to Section 31-19-1 NMSA 1978; or

(2) fourth degree felony for third and subsequent offenses, punishable pursuant to Section 31-18-15 NMSA 1978.

B. As used in this section, "equipment" means utility system materials, including communications towers and associated material, telephone lines, railroad and other industrial safety communication devices or systems, electric towers, electric transformers, metering equipment, electric grounding wires and electric and natural gas transmission and distribution facilities.

History: Laws 2014, ch. 30, § 1.