

SENATE BILL 34

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Craig W. Brandt

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CRIME; HJC→~~MAKING A THREAT OF A SHOOTING UNLAWFUL.~~←HJC HJC→INCREASING THE STATUTE OF LIMITATIONS FOR SECOND DEGREE MURDER; INCREASING THE PENALTIES FOR SECOND DEGREE MURDER AND ATTEMPTED SECOND DEGREE MURDER; CREATING THE CRIME OF CRIMINAL THREAT; CLARIFYING EXCEPTIONS FOR UNLAWFUL POSSESSION OF A HANDGUN BY A PERSON; CLARIFYING THE PENALTY FOR RECEIPT, TRANSPORTATION OR POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE BY A SERIOUS VIOLENT FELON; ADDING PENALTIES

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FOR AGGRAVATED FLEEING A LAW ENFORCEMENT OFFICER; CLARIFYING  
NONCAPITAL FELONY SENTENCING PROVISIONS; PROVIDING FOR A  
SENTENCING ENHANCEMENT WHEN A FIREARM IS POSSESSED DURING THE  
COMMISSION OF A DRUG TRANSACTION OR SERIOUS VIOLENT OFFENSE;  
CLARIFYING THAT A FIREARM POSSESSED DURING THE COMMISSION OF A  
DRUG TRANSACTION OR SERIOUS VIOLENT OFFENSE MAY BE SEIZED;  
CREATING THE CRIME OF OPERATING A CHOP SHOP; CREATING THE CRIME  
OF CRIMINAL DAMAGE TO PROPERTY BY THEFT OR ATTEMPTED THEFT OF  
REGULATED MATERIAL; PROHIBITING A SECONDHAND METAL DEALER FROM  
PURCHASING OR RECEIVING REGULATED MATERIAL NOT LAWFULLY  
POSSESSED; PROVIDING PENALTIES. ←HJC

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

HJC → ~~SECTION 1. Section 30-20-16 NMSA 1978 (being Laws  
1975, Chapter 285, Section 1, as amended) is amended to read:~~

~~"30-20-16. BOMB SCARES AND SHOOTING THREATS UNLAWFUL.--~~

~~A. Making a bomb scare consists of falsely 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.~~

HJC → Sfl6 → ~~B. Making a shooting threat consists of~~  
HJC → Sfl2 → ~~falsely and maliciously~~ ← Sfl2  
Sfl2 → ~~intentionally~~ ← Sfl2 ← HJC HJC → ~~falsely and maliciously~~ ← HJC  
HJC → Sfl5 → ~~stating~~ ← Sfl5 Sfl5 → ~~communicating~~ ← Sfl5 ← HJC  
HJC → ~~stating~~ ← HJC ~~to another person that the person making the~~

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~~threat SJC or another person SJC intends to bring a firearm to a property HJC Sfl3 or Sfl3 Sfl3 and Sfl3 HJC HJC or HJC use the firearm with the intent to: Sfl6~~

~~Sfl6 B. Making a shooting threat consists of intentionally communicating to another person that they intend to bring a firearm to a property and use the firearm with the intent to: Sfl6 HJC~~

~~HJC B. Making a shooting threat consists of falsely and maliciously stating to another person that the person making the threat HJC or another person HJC intends to bring a firearm to a property or use the firearm with the intent to: HJC~~

~~(1) place a person or group of persons in fear of great bodily harm;~~

~~(2) prevent or interrupt the occupation or use of a public building; or~~

~~(3) cause a response to the threat by HJC Sfl1 an Sfl1 Sfl1 a Sfl1 Sfl1 law enforcement Sfl1 HJC HJC an HJC official or volunteer agency organized to deal with emergencies.~~

~~{B.} C. Whoever commits making a bomb scare HJC SJC or shooting threat SJC HJC HJC or shooting threat HJC is guilty of a fourth degree felony.~~

~~HJC SJC D. Whoever commits making a shooting threat is guilty of a misdemeanor. SJC HJC~~

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~~[C.] HJC→SJC→D.←SJC SJC→E.←SJC←HJC HJC→D.←HJC 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.~~

~~[D.] HJC→SJC→E.←SJC SJC→F.←SJC←HJC HJC→E.←HJC~~

~~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.~~

~~HJC→Sf14→[E.] SJC→F.←SJC SJC→G.←SJC This section~~

~~shall not be construed to limit a court's authority to order restitution to a victim of the offense of making a bomb scare or shooting threat pursuant to other provisions of law."←Sf14←HJC~~

~~HJC→[E.] F. This section shall not be construed to~~

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~~limit a court's authority to order restitution to a victim of the offense of making a bomb scare or shooting threat pursuant to other provisions of law."~~←HJC←HJC

HJC→SECTION 1. Section 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 1-8, as amended) is amended to read:

"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

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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 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 [or], 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."

SECTION 2. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] CRIMINAL THREAT--PENALTY.--

A. A criminal threat consists of a statement or other form of expression made for the purpose of causing or in reckless disregard of the risk of causing the evacuation, lockdown or disruption of regular, ongoing activities at a public or non-public preschool, school or institution of higher learning, an occupied dwelling, a place of business or public building, a place of assembly or a facility or vehicle of public transportation and communicating an intent to:

(1) inflict unlawful physical injury against a

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person;

(2) cause unlawful damage to property of

another; or

(3) commit any other unlawful act of violence.

B. Whoever commits a criminal threat is guilty of a fourth degree felony.

C. If a criminal threat results in the evacuation, lockdown or disruption of regular, ongoing activities at a public or non-public preschool, school or institution of higher learning, an occupied dwelling, place of business or public building, a place of assembly or a public transportation facility or vehicle, the court, in its discretion, may order a person convicted for the offense of criminal threat to reimburse any person, business, nonprofit organization or public agency for economic harm caused by that offense.

D. As used in this section, "economic harm" means any direct, incidental or consequential financial damage caused by a criminal threat and includes:

(1) wages, salaries or other compensation that was lost as a result of the commission of the offense;

(2) the cost of all wages, salaries or other compensation for the time that employees were prevented from working as a result of the commission of the crime; and

(3) overhead costs incurred for any period of

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evacuation or lockdown.

E. Nothing in this section shall be construed to limit a court's authority to order that restitution be paid to a victim of the offense pursuant to other provisions of law."

SECTION 3. Section 30-7-2.2 NMSA 1978 (being Laws 1994, Chapter 22, Section 2) is amended to read:

"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 ~~his~~ the person's possession or knowingly transporting a handgun, except when the person is:

(1) in attendance at a hunter's safety course or ~~a~~ 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

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internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of [1954] 1986, as amended or renumbered;

(5) engaging in legal hunting or trapping activities;

(6) traveling, with an unloaded handgun in [his] 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 [his] 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 [which] 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."

SECTION 4. Section 30-7-16 NMSA 1978 (being Laws 1981,

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Chapter 225, Section 1, as amended) is amended to read:

"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 [~~and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act~~].

C. A serious violent felon that is found to be in possession of a firearm shall be guilty of a second degree felony.

[~~C-~~] D. Any person subject to an order of

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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.

~~[D-]~~ 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

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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; ~~and~~

(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 or an equivalent offense under the laws of the United States or of any state or an offense found to be a serious violent offense pursuant to the provisions of Subparagraph (o) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978;

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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."

SECTION 5. Section 30-22-1.1 NMSA 1978 (being Laws 2003, Chapter 260, Section 5) is amended to read:

"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 [his] 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 ~~[appropriately marked law enforcement vehicle]~~ 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.

B. Whoever commits aggravated fleeing a law

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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.

D. Whoever commits aggravated fleeing a law enforcement officer that results in great bodily harm to another person is guilty of a second degree felony."

SECTION 6. Section 30-28-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 28-1) is amended to read:

"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

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a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, the basic sentence of imprisonment is nine years;

~~[C.]~~ D. if the crime attempted is a third degree felony, the person committing such attempt is guilty of a fourth degree felony; and

~~[D.]~~ 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."

SECTION 7. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES-- BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. ~~[If a person is convicted of]~~ As used in a statute that establishes a noncapital felony, the following defined felony classifications and associated basic [sentence] sentences of imprisonment [is] are as follows:

~~(1) for a first degree felony resulting in the death of a child, life imprisonment;~~

~~(2) for a first degree felony for aggravated eriminal sexual penetration, life imprisonment;~~

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~~(3) for a first degree felony, eighteen years imprisonment;~~

~~(4) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;~~

~~(5) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;~~

~~(6) for a second degree felony for sexual exploitation of children, twelve years imprisonment;~~

~~(7) for a second degree felony, nine years imprisonment;~~

~~(8) for a third degree felony resulting in the death of a human being, six years imprisonment;~~

~~(9) for a third degree felony for a sexual offense against a child, six years imprisonment;~~

~~(10) for a third degree felony for sexual exploitation of children, eleven years imprisonment;~~

~~(11) for a third degree felony, three years imprisonment;~~

~~(12) for a fourth degree felony for sexual exploitation of children, ten years imprisonment; or~~

~~(13) for a fourth degree felony, eighteen months imprisonment.]~~

FELONY CLASSIFICATION

BASIC SENTENCE

first degree felony resulting in the death of a child

life imprisonment

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<u>first degree felony for aggravated</u>	
<u>criminal sexual penetration</u>	<u>life imprisonment</u>
<u>first degree felony</u>	<u>eighteen years</u>
	<u>imprisonment</u>
<u>second degree felony resulting in</u>	
<u>the death of a human being</u>	<u>eighteen years</u>
	<u>imprisonment</u>
<u>second degree felony for a sexual</u>	
<u>offense against a child</u>	<u>fifteen years</u>
	<u>imprisonment</u>
<u>second degree felony for sexual</u>	
<u>exploitation of children</u>	<u>twelve years</u>
	<u>imprisonment</u>
<u>second degree felony</u>	<u>nine years imprisonment</u>
<u>third degree felony resulting in</u>	
<u>the death of a human being</u>	<u>six years imprisonment</u>
<u>third degree felony for a sexual</u>	
<u>offense against a child</u>	<u>six years imprisonment</u>
<u>third degree felony for sexual</u>	
<u>exploitation of children</u>	<u>eleven years</u>
	<u>imprisonment</u>
<u>third degree felony</u>	<u>three years imprisonment</u>
<u>fourth degree felony for sexual</u>	
<u>exploitation of children</u>	<u>ten years imprisonment</u>

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fourth degree felony

eighteen months

imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.

C. A period of parole shall be imposed only for felony convictions wherein a person is sentenced to imprisonment of more than one year, unless the parties to a proceeding agree that a period of parole should be imposed. If a period of parole is imposed, the court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. If imposed, the period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the

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provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);

(2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars (\$17,500);

(3) for a first degree felony, fifteen thousand dollars (\$15,000);

(4) for a second degree felony resulting in

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the death of a human being, twelve thousand five hundred dollars (\$12,500);

(5) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);

(6) for a second degree felony for sexual exploitation of children, five thousand dollars (\$5,000);

(7) for a second degree felony, ten thousand dollars (\$10,000);

(8) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);

(9) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000);

(10) for a third degree felony for sexual exploitation of children, five thousand dollars (\$5,000);

(11) for a third or fourth degree felony, five thousand dollars (\$5,000); or

(12) for a fourth degree felony for sexual exploitation of children, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37

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and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

SECTION 8. Section 31-18-16 NMSA 1978 (being Laws 1977, Chapter 216, Section 5, as amended) is amended to read:

"31-18-16. POSSESSION, BRANDISHING OR DISCHARGE OF FIREARM--ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

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A. When a separate finding of fact by the court or jury shows that a firearm was possessed in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year, except that when the offender is a serious youthful offender or a youthful offender who received an adult sentence, the sentence imposed by this subsection may be increased by one year.

~~[A.]~~ B. When a separate finding of fact by the court or jury shows that a firearm was brandished in the commission of a noncapital felony, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by three years, except that when the offender is a serious youthful offender or a youthful offender that received an adult sentence, the sentence imposed by this subsection may be increased by one year.

C. When a separate finding of fact by the court or jury shows that a firearm was discharged in the commission of a noncapital felony, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by five years, except that when the offender is a serious youthful offender or a youthful offender who received an adult sentence, the sentence imposed by this subsection may

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be increased by three years.

~~[B.]~~ D. For a ~~[second or subsequent noncapital felony in which a firearm is brandished]~~ separate offense resulting in a second or subsequent finding of fact by the court or jury of possession, brandishing or discharge of a firearm in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the [basic] sentence [of imprisonment prescribed in Section 31-18-15 NMSA 1978] shall be increased by ~~[five]~~ three years, except that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by three years.

~~[C.]~~ E. If the case is tried before a jury and if a prima facie case has been established showing that a firearm was possessed, brandished [in the commission of the offense] or discharged in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court ~~[and if a prima facie case has been established showing that a firearm was brandished in the commission of the offense]~~, the court shall decide the issue and shall make a separate finding of fact thereon.

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F. When a separate finding of fact by the court or jury shows that a firearm was possessed, brandished or discharged in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the firearm is subject to seizure and forfeiture as an instrumentality pursuant to the provisions of the Forfeiture Act.

[D-] G. As used in this section:

(1) "brandished" means displaying or making a firearm known to another person while the firearm is present on the person of the offending party with intent to intimidate or injure a person;

(2) "in relation to a drug transaction" means participating or attempting to participate in the trafficking of a controlled substance pursuant to Section 30-31-20 NMSA 1978, distribution of a controlled substance to a minor pursuant to Section 30-31-21 NMSA 1978 or distribution of a controlled or counterfeit substance pursuant to Section 30-31-22 NMSA 1978 as a seller, purported seller, buyer, purported buyer or as an accomplice; and

(3) "serious violent offense" means an offense enumerated in Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978."

SECTION 9. A new section of the Criminal Code is enacted to read:

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Amendments: new = →bold, blue, highlight↔  
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**"[NEW MATERIAL] 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, 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."**

**SECTION 10. A new section of the Criminal Code is enacted to read:**

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"[NEW MATERIAL] 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

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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."

SECTION 11. Section 57-30-2.4 NMSA 1978 (being Laws 2012, Chapter 29, Section 16 and Laws 2012, Chapter 33, Section 16) is amended to read:

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"57-30-2.4. RESTRICTED TRANSACTIONS--ADDITIONAL  
DOCUMENTATION REQUIRED.--

A. A secondhand metal dealer shall not purchase any of the following without written documentation indicating that the seller is the rightful owner or has permission from the rightful owner ~~[or]~~ and that the material was otherwise lawfully obtained:

(1) infrastructure grade regulated material that has been burned to remove insulation, unless the seller can produce written proof that the regulated material was lawfully burned;

(2) regulated material where the manufacturer's make, model, serial or personal identification number or other identifying marks engraved or etched upon the material have been conspicuously removed or altered;

(3) regulated material marked with the name, initials or otherwise identified as the property of an electrical company, a telephone company, a cable company, a water company or other utility company, a railroad or a governmental entity;

(4) a utility access cover;

(5) a water meter cover;

(6) a road or bridge guard rail;

(7) a highway or street sign;

(8) a traffic directional or control sign or

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signal;

(9) a metal beer keg that is clearly marked as being the property of the beer manufacturer; or

(10) a catalytic converter that is not part of an entire motor vehicle.

B. The department shall promulgate rules that more specifically describe the type of documentation required before a secondhand metal dealer may engage in a transaction described in this section.

C. A secondhand metal dealer shall not purchase or otherwise receive any regulated material that the secondhand metal dealer knows is not lawfully possessed by the person offering to sell or provide the regulated material." ←HJC

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