HOUSE BILL 662

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Brian K. Moore

AN ACT

RELATING TO CRIMES; CHANGING THE ELEMENTS OF THE OFFENSE OF CRIMINAL DAMAGE TO PROPERTY; INCREASING PENALTIES; PROVIDING FOR FORFEITURE AND SEIZURE OF PROPERTY USED TO COMMIT CRIMINAL DAMAGE TO PROPERTY; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 30-15-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 15-1) is amended to read:

"30-15-1. CRIMINAL DAMAGE TO PROPERTY--PENALTIES-- RESTITUTION--CONCLUSIVE PRESUMPTION.--

A. Criminal damage to property consists of entering upon and intentionally damaging, firing a weapon upon and intentionally damaging or otherwise intentionally damaging [any] the real or personal property of another without the consent of the owner of the property.

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1   [Whoever] If a person commits criminal damage to property

2   and the damage to the property amounts to one thousand dollars

3   ($1,000) or less, the person is guilty of a petty misdemeanor,

4   [except that when the damage to the property amounts to more

5   than one thousand dollars ($1,000), he is guilty of a fourth

6   degree felony] and may be required to perform at least sixty

7   hours of court-ordered community service. If a person commits

8   criminal damage to property a second time within a twenty-

9   four-month period following the first conviction, the person

10   is guilty of a misdemeanor and may be required to perform at

11   least one hundred hours of court-ordered community service and

12   pay a fine of not less than two thousand dollars ($2,000).

13   B.   If a person commits criminal damage to property

14   and the damage to the property amounts to more than one

15   thousand dollars ($1,000), the person is guilty of a fourth

16   degree felony and shall be sentenced in accordance with

17   Section 31-18-15 NMSA 1978.

18   C.   If a person commits criminal damage to

19   property, the person may be required to provide restitution

20   and pay punitive damages to the owner of the property.

21   D.   A conviction for committing the offense of

22   criminal damage to property shall create a conclusive

23   presumption in a civil action for damages that the offender

24   damaged the owner of the property, including the owner's

25   peaceful enjoyment or constructive use of the property."

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1   Section 2.   A new section of the Criminal Code, Section

2   30-15-1.2 NMSA 1978, is enacted to read:

3   "30-15-1.2.   [NEW MATERIAL] SEIZURE AND FORFEITURE OF

4   PROPERTY--PROCEDURE--EXCEPTION.--

5   A.   Property, including a vehicle, equipment or

6   tool, used to commit the offense of criminal damage to

7   property pursuant to Section 30-15-1 NMSA 1978 is subject to

8   seizure and forfeiture.

9   B.   Property subject to seizure and forfeiture

10   pursuant to this section may be seized by a law enforcement

11   officer:

12   (1)   upon an order of the district court in

13   the county having jurisdiction over the offense; or

14   (2)   without a court order if:

15   (a)   the seizure is incident to an

16   arrest; or

17   (b)   the law enforcement officer has

18   probable cause to believe that the property was used to commit

19   the offense of criminal damage to property.

20   C.   In the event of a seizure of property pursuant

21   to Subsection B of this section, proceedings in accordance

22   with the Rules of Civil Procedure for the District Courts and

23   Subsection D of this section shall be instituted promptly.

24   D.   A proceeding brought pursuant to this section

25   shall be in rem.   The claim shall not be filed against the

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1   owner of the seized property or another person and shall be

2   filed only as a civil case.   Property seized pursuant to the

3   provisions of this section shall not be subject to replevin,

4   but is deemed to be in the custody of the agency employing the

5   law enforcement officer who seized the property, subject only

6   to an order and decree of the district court.   The agency

7   having custody of the property seized shall remove the

8   property to a place designated by that agency for disposition

9   in accordance with law.   Property forfeited due to a

10 conviction for committing the offense of criminal damage to

11 property shall be sold at public auction pursuant to a court

12 order.   Proceeds from the sale of the forfeited property shall

13 be used to pay restitution to the victim of the criminal act.

14 If, after payment of restitution, proceeds remain from the

15 sale of the forfeited property, those proceeds shall be

16 forwarded to the state treasurer for credit to the crime

17 victims reparation fund pursuant to Section 31-22-21 NMSA

18 1978.

19   E.   No property shall be subject to forfeiture if

20 the owner of the property establishes that the offense of

21 criminal damage to property pursuant to Section 30-15-1 NMSA

22 1978 was committed without his knowledge or consent.

23 Forfeiture of a motor vehicle encumbered by a recorded bona

24 fide security interest shall be subject to the interest of the

25 secured party if the secured party did not have knowledge of

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1   or did not consent to its use to commit the offense of

2   criminal damage to property pursuant to Section 30-15-1 NMSA

3   1978."

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