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SENATE BILL 630

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

INTRODUCED BY

Patrick H. Lyons

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. --

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.

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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 Section 2. A new section of the Criminal Code, Section
22 30-15-1.2 NMSA 1978, is enacted to read:

23 "30-15-1.2. [NEW MATERIAL] SEIZURE AND FORFEITURE OF
24 PROPERTY-- PROCEDURE-- EXCEPTION. --

25 A. Property, including a vehicle, equipment or

1 tool, used to commit the offense of criminal damage to
2 property pursuant to Section 30-15-1 NMSA 1978 is subject to
3 seizure and forfeiture.

4 B. Property subject to seizure and forfeiture
5 pursuant to this section may be seized by a law enforcement
6 officer:

7 (1) upon an order of the district court in
8 the county having jurisdiction over the offense; or

9 (2) without a court order if:

10 (a) the seizure is incident to an
11 arrest; or

12 (b) the law enforcement officer has
13 probable cause to believe that the property was used to commit
14 the offense of criminal damage to property.

15 C. In the event of a seizure of property pursuant
16 to Subsection B of this section, proceedings in accordance
17 with the Rules of Civil Procedure for the District Courts and
18 Subsection D of this section shall be instituted promptly.

19 D. A proceeding brought pursuant to this section
20 shall be in rem. The claim shall not be filed against the
21 owner of the seized property or another person and shall be
22 filed only as a civil case. Property seized pursuant to the
23 provisions of this section shall not be subject to replevin,
24 but is deemed to be in the custody of the agency employing the
25 law enforcement officer who seized the property, subject only

1 to an order and decree of the district court. The agency
2 having custody of the property seized shall remove the
3 property to a place designated by that agency for disposition
4 in accordance with law. Property forfeited due to a
5 conviction for committing the offense of criminal damage to
6 property shall be sold at public auction pursuant to a court
7 order. Proceeds from the sale of the forfeited property shall
8 be used to pay restitution to the victim of the criminal act.
9 If, after payment of restitution, proceeds remain from the
10 sale of the forfeited property, those proceeds shall be
11 forwarded to the state treasurer for credit to the crime
12 victims reparation fund pursuant to Section 31-22-21 NMSA
13 1978.

14 E. No property shall be subject to forfeiture if
15 the owner of the property establishes that the offense of
16 criminal damage to property pursuant to Section 30-15-1 NMSA
17 1978 was committed without his knowledge or consent.
18 Forfeiture of a motor vehicle encumbered by a recorded bona
19 fide security interest shall be subject to the interest of the
20 secured party if the secured party did not have knowledge of
21 or did not consent to its use to commit the offense of
22 criminal damage to property pursuant to Section 30-15-1 NMSA
23 1978. "