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HOUSE BILL 32

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Matthew McQueen

AN ACT

RELATING TO CRIME; INCREASING THE PENALTIES FOR CERTAIN CRIMES  
WHEN COMMITTED IN AN EVACUATION ZONE; DEFINING "EVACUATION  
ZONE".

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

SECTION 1. Section 30-1-12 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 1-13) is amended to read:

"30-1-12. DEFINITIONS.--As used in the Criminal Code:

A. "great bodily harm" means an injury to the  
person ~~[which]~~ that 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]~~ that is capable of

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1 producing death or great bodily harm, including but not  
2 restricted to any types of daggers, brass knuckles, switchblade  
3 knives, bowie knives, poniards, butcher knives, dirk knives and  
4 all such weapons with which dangerous cuts can be given or with  
5 which dangerous thrusts can be inflicted, including swordcanes,  
6 [~~and~~] any kind of sharp pointed canes, [~~also~~] slingshots, slung  
7 shots, bludgeons; or any other weapons with which dangerous  
8 wounds can be inflicted;

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

13 D. "another" or "other" means any other human being  
14 or legal entity, whether incorporated or unincorporated,  
15 including the United States, the state [~~of New Mexico~~] or any  
16 subdivision [~~thereof~~] of the state;

17 E. "person" means any human being or legal entity,  
18 incorporated or unincorporated, including the United States,  
19 the state [~~of New Mexico~~] or any subdivision [~~thereof~~] of the  
20 state;

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

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

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

12           I. "public officer" means any elected or appointed  
13 officer of the state or any of its political subdivisions,  
14 [~~and~~] whether or not [~~he~~] the public officer receives  
15 remuneration for [~~his~~] the public officer's services; [~~and~~]

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

19           K. "evacuation zone" means an area designated as an  
20 evacuation zone by local or state officials in response to a  
21 natural or industrial disaster, whether naturally occurring or  
22 human-caused, that poses a significant threat to public safety  
23 or property."

24           SECTION 2. Section 30-14-1 NMSA 1978 (being Laws 1963,  
25 Chapter 303, Section 14-1, as amended) is amended to read:

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1 "30-14-1. CRIMINAL TRESPASS.--

2 A. Criminal trespass consists of knowingly entering  
3 or remaining upon posted private property without possessing  
4 written permission from the owner or person in control of the  
5 land. The provisions of this subsection do not apply if:

6 (1) the owner or person in control of the land  
7 has entered into an agreement with the department of game and  
8 fish granting access to the land to the general public for the  
9 purpose of taking any game animals, birds or fish by hunting or  
10 fishing; or

11 (2) a person is in possession of a landowner  
12 license given to ~~him~~ the person by the owner or person in  
13 control of the land that grants access to that particular  
14 private land for the purpose of taking any game animals, birds  
15 or fish by hunting or fishing.

16 B. Criminal trespass also consists of knowingly  
17 entering or remaining upon the unposted lands of another  
18 knowing that such consent to enter or remain is denied or  
19 withdrawn by the owner or occupant ~~thereof~~ of the lands.  
20 Notice of no consent to enter shall be deemed sufficient notice  
21 to the public and evidence to the courts by the posting of the  
22 property at all vehicular access entry ways.

23 C. Criminal trespass also consists of knowingly  
24 entering or remaining upon lands owned, operated or controlled  
25 by the state or any of its political subdivisions knowing that

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1 consent to enter or remain is denied or withdrawn by the  
2 custodian [~~thereof~~] of the lands.

3 D. Any person who enters upon the lands of another  
4 without prior permission and injures, damages or destroys any  
5 part of the realty or its improvements, including buildings,  
6 structures, trees, shrubs or other natural features, is guilty  
7 of a misdemeanor and [~~he~~] shall be liable to the owner, lessee  
8 or person in lawful possession for civil damages in an amount  
9 equal to double the value of the damage to the property injured  
10 or destroyed.

11 E. [~~Whoever~~] Any person who commits criminal  
12 trespass is guilty of a misdemeanor, [~~Additionally~~] except  
13 that:

14 (1) any person who violates the provisions of  
15 Subsection A, B or C of this section, when in connection with  
16 hunting, fishing or trapping activity, shall have [~~his~~] the  
17 person's hunting or fishing license revoked by the state game  
18 commission for a period of not less than three years, pursuant  
19 to the provisions of Section 17-3-34 NMSA 1978; and

20 (2) any person who commits criminal trespass  
21 in an evacuation zone, if the person knows that the person is  
22 in an evacuation zone, is guilty of a fourth degree felony.

23 F. [~~Whoever~~] Any person who knowingly removes,  
24 tampers with or destroys any "no trespass" sign is guilty of a  
25 petty misdemeanor, except that, when the damage to the sign

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1 amounts to more than one thousand dollars (\$1,000), [~~he or she~~]  
2 the person is guilty of a misdemeanor and shall be subject to  
3 imprisonment in the county jail for a definite term less than  
4 one year or a fine not more than one thousand dollars (\$1,000)  
5 or to both such imprisonment and fine in the discretion of the  
6 judge.

7 G. This section, as amended, shall be published in  
8 all issues of "Big Game Hunt Proclamation" as published by the  
9 department of game and fish."

10 SECTION 3. Section 30-14-8 NMSA 1978 (being Laws 1981,  
11 Chapter 34, Section 2) is amended to read:

12 "30-14-8. BREAKING AND ENTERING.--

13 A. Breaking and entering consists of the  
14 unauthorized entry of any vehicle, watercraft, aircraft,  
15 dwelling or other structure, movable or immovable, where entry  
16 is obtained by fraud or deception, or by the breaking or  
17 dismantling of any part of the vehicle, watercraft, aircraft,  
18 dwelling or other structure, or by the breaking or dismantling  
19 of any device used to secure the vehicle, watercraft, aircraft,  
20 dwelling or other structure.

21 B. [~~Whoever~~] Any person who commits breaking and  
22 entering is guilty of a fourth degree felony, except that any  
23 person who commits breaking and entering in an evacuation zone,  
24 if the person knows that the person is in an evacuation zone,  
25 is guilty of a third degree felony."

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1           SECTION 4. Section 30-15-1 NMSA 1978 (being Laws 1963,  
2 Chapter 303, Section 15-1) is amended to read:

3           "30-15-1. CRIMINAL DAMAGE TO PROPERTY.--

4           A. Criminal damage to property consists of  
5 intentionally damaging any real or personal property of another  
6 without the consent of the owner of the property. [~~Whoever~~]

7           B. Any person who commits criminal damage to  
8 property is guilty of a petty misdemeanor, except that [~~when~~]:

9                   (1) if the criminal damage to property is  
10 committed in an evacuation zone, and the person knows that the  
11 person is in an evacuation zone, the person is guilty of a  
12 misdemeanor;

13                   (2) if the damage to the property amounts to  
14 more than one thousand dollars (\$1,000), [~~he~~] the person is  
15 guilty of a fourth degree felony; and

16                   (3) if the damage to the property amounts to  
17 more than one thousand dollars (\$1,000) and the criminal damage  
18 to property is committed in an evacuation zone, and the person  
19 knows that the person is in an evacuation zone, the person is  
20 guilty of a third degree felony."

21           SECTION 5. Section 30-16-1 NMSA 1978 (being Laws 1963,  
22 Chapter 303, Section 16-1, as amended) is amended to read:

23           "30-16-1. LARCENY.--

24           A. Larceny consists of the stealing of anything of  
25 value that belongs to another.

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1           B. ~~[Whoever]~~ Any person who commits larceny when  
2 the value of the property stolen is two hundred fifty dollars  
3 (\$250) or less is guilty of a petty misdemeanor, except that,  
4 if the larceny is committed in an evacuation zone, and the  
5 person knows that the person is in an evacuation zone, the  
6 person is guilty of a misdemeanor.

7           C. ~~[Whoever]~~ Any person who commits larceny when  
8 the value of the property stolen is over two hundred fifty  
9 dollars (\$250) but not more than five hundred dollars (\$500) is  
10 guilty of a misdemeanor, except that, if the larceny is  
11 committed in an evacuation zone, and the person knows that the  
12 person is in an evacuation zone, the person is guilty of a  
13 fourth degree felony.

14           D. ~~[Whoever]~~ Any person who commits larceny when  
15 the value of the property stolen is over five hundred dollars  
16 (\$500) but not more than two thousand five hundred dollars  
17 (\$2,500) is guilty of a fourth degree felony, except that, if  
18 the larceny is committed in an evacuation zone, and the person  
19 knows that the person is in an evacuation zone, the person is  
20 guilty of a third degree felony.

21           E. ~~[Whoever]~~ Any person who commits larceny when  
22 the value of the property stolen is over two thousand five  
23 hundred dollars (\$2,500) but not more than twenty thousand  
24 dollars (\$20,000) is guilty of a third degree felony.

25           F. Any person who commits larceny in an evacuation



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1 zone, if the person knows that the person is in an evacuation  
2 zone, when the value of the property stolen is over two  
3 thousand five hundred dollars (\$2,500) is guilty of a second  
4 degree felony.

5 [F.—Whoever] G. Any person who commits larceny  
6 when the value of the property stolen is over twenty thousand  
7 dollars (\$20,000) is guilty of a second degree felony.

8 [G.—Whoever] H. Any person who commits larceny  
9 when the property of value stolen is livestock is guilty of a  
10 third degree felony regardless of its value.

11 [H.—Whoever] I. Any person who commits larceny  
12 when the property of value stolen is a firearm is guilty of a  
13 fourth degree felony when its value is less than two thousand  
14 five hundred dollars (\$2,500)."

15 SECTION 6. Section 30-16-3 NMSA 1978 (being Laws 1963,  
16 Chapter 303, Section 16-3, as amended) is amended to read:

17 "30-16-3. BURGLARY.--Burglary consists of the  
18 unauthorized entry of any vehicle, watercraft, aircraft,  
19 dwelling or other structure, movable or immovable, with the  
20 intent to commit any felony or theft therein.

21 A. Any person who, without authorization, enters a  
22 dwelling house with intent to commit any felony or theft  
23 therein is guilty of a third degree felony, except that, if the  
24 dwelling house is located in an evacuation zone, and the person  
25 knows that the dwelling house is located in an evacuation zone,

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1 the person is guilty of a second degree felony.

2 B. Any person who, without authorization, enters  
3 any vehicle, watercraft, aircraft or other structure, movable  
4 or immovable, with intent to commit any felony or theft therein  
5 is guilty of a fourth degree felony, except that, if the  
6 vehicle, watercraft, aircraft or other structure, movable or  
7 immovable, is located in an evacuation zone, and the person  
8 knows that the vehicle, watercraft, aircraft or other  
9 structure, movable or immovable, is located in an evacuation  
10 zone, the person is guilty of a third degree felony."

11 SECTION 7. Section 30-16-4 NMSA 1978 (being Laws 1963,  
12 Chapter 303, Section 16-4) is amended to read:

13 "30-16-4. AGGRAVATED BURGLARY.--

14 A. Aggravated burglary consists of the unauthorized  
15 entry of [~~any~~] a vehicle, watercraft, aircraft, dwelling or  
16 other structure, movable or immovable, with intent to commit  
17 [~~any~~] a felony or theft [~~therein~~] in it and the person  
18 [~~either~~]:

19 [~~A-~~] (1) is armed with a deadly weapon;

20 [~~B-~~] (2) after entering, arms himself or  
21 herself with a deadly weapon; or

22 [~~G-~~] (3) commits a battery upon [~~any~~] a person  
23 while in [~~such~~] the place or in entering or leaving [~~such~~] the  
24 place.

25 [~~Whoever~~] B. Any person who commits aggravated

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1 burglary is guilty of a second degree felony, except that, if  
2 the aggravated burglary is in an evacuation zone, and the  
3 person knows that the person is in an evacuation zone, the  
4 person is guilty of a first degree felony."

5 SECTION 8. Section 30-16D-1 NMSA 1978 (being Laws 1978,  
6 Chapter 35, Section 91, as amended by Laws 2009, Chapter 253,  
7 Section 1 and by Laws 2009, Chapter 261, Section 1) is amended  
8 to read:

9 "30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR  
10 VEHICLE.--

11 A. Unlawful taking of a vehicle or motor vehicle  
12 consists of a person taking any vehicle or motor vehicle as  
13 defined by the Motor Vehicle Code intentionally and without  
14 consent of the owner. [~~Whoever~~]

15 B. Any person who commits unlawful taking of a  
16 vehicle or motor vehicle is guilty of a:

17 (1) fourth degree felony for a first offense;

18 (2) third degree felony for a first offense  
19 committed in an evacuation zone, if the person knows that the  
20 person is in an evacuation zone;

21 [~~(2)~~] (3) third degree felony for a second  
22 offense;

23 (4) second degree felony for a second or  
24 subsequent offense committed in an evacuation zone, if the  
25 person knows that the person is in an evacuation zone; and

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1                    [~~3~~] (5) second degree felony for a third or  
2 subsequent offense.

3                    [~~B~~] C. The consent of the owner of the vehicle or  
4 motor vehicle to its taking shall not in any case be presumed  
5 or implied because of the owner's consent on a previous  
6 occasion to the taking of the vehicle or motor vehicle by the  
7 same or a different person.

8                    [~~G~~] D. Nothing in this section shall be construed  
9 to prohibit the holder of a lien duly recorded with the motor  
10 vehicle division of the taxation and revenue department from  
11 taking possession of a vehicle to which possession the  
12 lienholder is legally entitled under the provisions of the  
13 instrument evidencing the lien. A holder of a duly recorded  
14 lien who takes possession of a vehicle without the knowledge of  
15 the owner of the vehicle shall immediately notify the local  
16 police authority of the fact that the holder has taken  
17 possession of the vehicle."

18                    **SECTION 9. EFFECTIVE DATE.**--The effective date of the  
19 provisions of this act is July 1, 2018.