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SENATE BILL 517

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Phil A. Griego

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; 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 ENTRY UPON AND DAMAGE TO PROPERTY. --

A. Criminal damage to property consists of
entering upon, vandalizing, firing a weapon upon or
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~~

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[bracketed material] = delete

1 ~~property amounts to more than one thousand dollars (\$1,000),~~
2 ~~he is guilty of a fourth degree felony.]~~

3 B. As used in this section:

4 (1) "personal property" includes but is not
5 limited to motor vehicles, trailers, equipment, improvements,
6 furniture, fixtures, campers, trucks, buses, motor homes,
7 livestock, pets and unattached outbuildings;

8 (2) "real property" includes but is not
9 limited to land, lots, apartments, commercial buildings,
10 stores, industrial buildings, single-family dwellings and any
11 structures affixed to the land, including fences, lawns, crops
12 and water facilities; and

13 (3) "vandalism" includes but is not limited
14 to damage to or destruction of real or personal property,
15 graffiti, harm or impairment to real or personal property, or
16 interfering with or harming the constructive use or peaceful
17 enjoyment of real or personal property that the offender has
18 entered upon or damaged.

19 C. Whoever commits criminal damage to property
20 when the damage to the property is one thousand dollars
21 (\$1,000) or less is guilty of a petty misdemeanor and shall be
22 required to perform at least sixty hours of court-ordered
23 community service. If a person is convicted a second time for
24 a violation of this section within a twenty-four-month period
25 following the first conviction, the person is guilty of a

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1 misdeemeanor and shall be required to perform at least one
2 hundred hours of court-ordered community service and pay a
3 fine of not less than two thousand dollars (\$2,000).

4 D. Whoever commits criminal damage to property
5 when the damage to the property is more than one thousand
6 dollars (\$1,000) is guilty of a fourth degree felony.

7 E. In addition to criminal penalties set forth in
8 this subsection, a person who commits criminal damage to
9 property shall be required to provide restitution and pay
10 punitive damages to the owner of the real or personal
11 property. A conviction for committing criminal damage to
12 property shall create a conclusive presumption that the
13 offender damaged the owner of the real or personal property,
14 including the owner's peaceful enjoyment of or constructive
15 use of the property.

16 F. Any vehicle, tool or equipment used to commit
17 criminal damage to property is subject to forfeiture.
18 Property subject to forfeiture under this section may be
19 seized by a law enforcement officer upon an order of the
20 district court in the county having jurisdiction over the
21 offense. Seizure without a court order may occur if:

- 22 (1) the seizure is incident to an arrest; or
23 (2) the law enforcement officer has probable
24 cause to believe that the property was used to commit criminal
25 damage to property.

underscored material = new
[bracketed material] = delete

1 G. In the event of seizure pursuant to this
2 section, proceedings shall be instituted within thirty days
3 from the date of seizure. A proceeding brought pursuant to
4 this section shall be in rem. The claim shall not be filed
5 against the owner or any other person and shall be filed only
6 as a civil case. Property taken or detained pursuant to the
7 provisions of this section shall not be subject to replevin,
8 but is deemed to be in the custody of the agency employing the
9 enforcing law enforcement officer, subject only to the orders
10 and decrees of the district court. When property is seized
11 pursuant to this section, the agency seizing it shall remove
12 the property to a place designated by the agency for
13 disposition in accordance with law. Property forfeited due to
14 a conviction for committing criminal damage to property shall
15 be sold at public auction pursuant to a court order. The
16 proceeds of the court-ordered sale of forfeited property shall
17 be used to pay restitution to the victims of the criminal
18 acts. If any proceeds remain after payment of restitution,
19 the proceeds shall be forwarded to the state treasurer for
20 credit to the crime victims reparation fund.

21 H. A conviction pursuant to the provisions of this
22 section shall not preclude any civil action that might be
23 brought under New Mexico law. "