

NEW MEXICO AND FEDERAL LAWS REGARDING SEXUAL AND DOMESTIC VIOLENCE OFFENSES 2014

CHAPTER 30 CRIMINAL OFFENSES ARTICLE 9: SEXUAL OFFENSES ARTICLE 4: KIDNAPPING & FALSE IMPRISONMENT

30-9-10. Definitions.

As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

A. "force or coercion" means:

- (1) the use of physical force or physical violence;
- (2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;
- (3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
- (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
- (5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion;

B. "great mental anguish" means psychological or emotional damage that requires psychiatric

or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C. "patient" means a person who seeks or obtains psychotherapy;

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. "position of authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. "psychotherapist" means a person who is or purports to be a:

- (1) licensed physician who practices psychotherapy;
- (2) licensed psychologist;

- (3) licensed social worker;
- (4) licensed nurse;
- (5) counselor;
- (6) substance abuse counselor;
- (7) psychiatric technician;
- (8) mental health worker;
- (9) marriage and family therapist;
- (10) hypnotherapist; or
- (11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. "psychotherapy" means professional treatment or assessment of a mental or an emotional illness, symptom or condition;

H. "school" means any public or private school, including the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the New Mexico behavioral health institute at Las Vegas and the Carrie Tingley crippled children's hospital, that offers a program of instruction designed to educate a person in a particular place, manner and subject area. "School" does not include a college or university; and

I. "spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.

30-9-11. Criminal sexual penetration.

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.

D. Criminal sexual penetration in the first degree consists of all sexual penetration perpetrated:

- (1) on a child under thirteen years of age; or
- (2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

- (1) by the use of force or coercion on a child thirteen to eighteen years of age;

- (2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;
- (3) by the use of force or coercion that results in personal injury to the victim;
- (4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;
- (5) in the commission of any other felony; or
- (6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978].

F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section. Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

- (1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child: or
- (2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.

30-9-12. Criminal sexual contact.

A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.

B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:

- (1) inadvertent;
- (2) casual social contact not intended to be sexual in nature; or
- (3) generally recognized by mental health professionals as being a legitimate element of psychotherapy.

C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:

- (1) by the use of force or coercion that results in personal injury to the victim;
- (2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or
- (3) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.

E. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

30-9-13. Criminal sexual contact of a minor.

A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:

- (1) on a child under thirteen years of age; or
- (2) on a child thirteen to eighteen years of age when:
 - (a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;
 - (b) the perpetrator uses force or coercion that results in personal injury to the child;
 - (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
 - (d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection

shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:

- (1) on a child under thirteen years of age; or
- (2) on a child thirteen to eighteen years of age when:
 - (a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;
 - (b) the perpetrator uses force or coercion which results in personal injury to the child;
 - (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or
 - (d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child.

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

- (1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or
- (2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

30-6-3. Contributing to delinquency of minor.

Contributing to the delinquency of a minor consists of any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of eighteen years.

Whoever commits contributing to the delinquency of a minor is guilty of a fourth degree felony.

30-9-14. Indecent exposure.

- A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.
- B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- C. Whoever commits indecent exposure is guilty of a misdemeanor.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.

30-9-14.1. Indecent dancing.

Indecent dancing consists of a person knowingly and intentionally exposing his intimate parts to public view while dancing or performing in a licensed liquor establishment.

"Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola, and "exposing" does not include any act in which the intimate part is covered by any nontransparent material.

Whoever commits indecent dancing is guilty of a petty misdemeanor.

A liquor licensee, his transferee or their lessee or agent who allows indecent dancing on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

30-9-14.2. Indecent waitering.

Indecent waitering consists of a person knowingly and intentionally exposing his intimate parts to public view while serving beverage or food in a licensed liquor establishment.

"Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola and "exposing" does not include any act in which the intimate part is covered by any nontransparent material.

Whoever commits indecent waitering is guilty of a petty misdemeanor.

A liquor licensee or his lessee or agent who allows indecent waitering on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978].

30-9-14.3. Aggravated indecent exposure.

A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:

- (1) exposure to a child less than eighteen years of age;
- (2) assault, as provided in Section 30-3-1 NMSA 1978;
- (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
- (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (5) battery, as provided in Section 30-3-4 NMSA 1978;
- (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or
- (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.

- B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

30-9-16. Testimony; limitations; in camera hearing.

A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct, shall not be admitted unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that, the court finds that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted.

30-9-17. Videotaped depositions of alleged victims who are under sixteen years of age; procedure; use in lieu of direct testimony.

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of Rule 611 of the New Mexico Rules of Evidence [Rule 11-611 NMRA]. Any videotaped deposition taken under the provisions of this act [this section] shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under

oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

- C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.
- D. The cost of such videotaping shall be paid by the state.
- E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

30-9-17.1. Victims; polygraph examinations; prohibited actions.

A law enforcement officer, prosecuting attorney or other government official shall not ask or require an adult, youth or child victim of a sexual offense provided in Sections 30-9-11 through 30-9-13 NMSA 1978 to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation, charging or prosecution of the offense. The victim's refusal to submit to a polygraph examination or other truth-telling device shall not prevent the investigation, charging or prosecution of the offense.

30-9-18. Alleged victims who are under thirteen years of age; psychological evaluation.

In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, if the alleged victim is under thirteen years of age, the court may hold an evidentiary hearing to determine whether to order a psychological evaluation of the alleged victim on the issue of competency as a witness. If the court determines that the issue of competency is in sufficient doubt that the court requires expert assistance, then the court may order a psychological evaluation of the alleged victim, provided however, that if a psychological evaluation is ordered it shall be conducted by only one psychologist or psychiatrist selected by the court who may be utilized by either or both parties; further provided that if the alleged victim has been evaluated on the issue of competency during the course of investigation by a psychologist or psychiatrist selected in whole or in part by law enforcement officials, the psychological evaluation, if any, shall be conducted by a psychologist or psychiatrist selected by the court upon the recommendation of the defense.

30-9-19. Sexual assault; submission of DNA samples by law enforcement and laboratories.

- A. Samples from biological material collected pursuant to a medical examination of a sexual assault victim shall be submitted by the investigating law enforcement agency to that agency's servicing laboratory for DNA testing. Records derived from DNA testing that qualify for insertion into CODIS shall be submitted by the servicing laboratory to the administrative center.
- B. As used in this section:
 - (1) "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system pursuant to the provisions of the DNA Identification Act [29-16-1 NMSA 1978];

- (2) "biological material" means material that is derived from a human body and includes bodily fluids, hair and skin cells;
- (3) "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;
- (4) "DNA" means deoxyribonucleic acid
- (5) "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples; and
- (6) "sample" means a sample of biological material sufficient for DNA testing.

30-9-20. Voyeurism prohibited; penalties.

A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:

- (1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or
- (2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony

C. As used in this section:

- (1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and
- (2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

30-4-1. Kidnapping.

A. Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

- (1) that the victim be held for ransom;
- (2) that the victim be held as a hostage or shield and confined against his will;
- (3) that the victim be held to service against the victim's will; or
- (4) to inflict death, physical injury or a sexual offense on the victim.

B. Whoever commits kidnapping is guilty of a first degree felony, except that he is guilty of a second degree felony when he voluntarily frees the victim in a safe place and does not inflict physical injury or a sexual offense upon the victim.

30-4-3. False imprisonment.

False imprisonment consists of intentionally confining or restraining another person without his consent and with knowledge that he has no lawful authority to do so. Whoever commits false imprisonment is guilty of a fourth degree felony.

30-10-3. Incest.

Incest consists of knowingly intermarrying or having sexual intercourse with persons within the following degrees of consanguinity: parents and children including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews.

Whoever commits incest is guilty of a third degree felony.

<p>FORCED PROSTITUTION, PROSTITUTION, AND HUMAN TRAFFICKING</p>
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30-9-2. Prostitution.

Prostitution consists of knowingly engaging in or offering to engage in a sexual act for hire. As used in this section "sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or anal opening of another, whether or not there is any emission. Whoever commits prostitution is guilty of a petty misdemeanor, unless such crime is a second or subsequent conviction, in which case such person is guilty of a misdemeanor.

30-9-3. Patronizing prostitutes.

Patronizing prostitutes consists of:

A. entering or remaining in a house of prostitution or any other place where prostitution is practiced, encouraged or allowed with intent to engage in a sexual act with a prostitute; or

B. knowingly hiring or offering to hire a prostitute, or one believed by the offer or to be a prostitute, to engage in a sexual act with the actor or another.

As used in this section, "a sexual act" means sexual intercourse, cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object of the genital or an anal opening of another whether or not there is any emission.

Whoever commits patronizing prostitutes is guilty of a petty misdemeanor, unless such crime is a second or subsequent conviction, in which case such person is guilty of a misdemeanor.

30-9-4. Promoting prostitution.

Promoting prostitution consists of any person, acting other than as a prostitute or patron of a prostitute:

- A. knowingly establishing, owning, maintaining or managing a house of prostitution or a place where prostitution is practiced, encouraged or allowed, or participating in the establishment, ownership, maintenance or management thereof;
- B. knowingly entering into any lease or rental agreement for any premises which a person partially or wholly owns or controls, knowing that such premises are intended for use as a house of prostitution or as a place where prostitution is practiced, encouraged or allowed;
- C. knowingly procuring a prostitute for a house of prostitution or for a place where prostitution is practiced encouraged or allowed;
- D. knowingly inducing another to become a prostitute;
- E. knowingly soliciting a patron for a prostitute or for a house of prostitution or for any place where prostitution is practiced, encouraged or allowed;
- F. knowingly procuring a prostitute for a patron and receiving compensation therefore,
- G. knowingly procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of promoting that person's engaging in prostitution;
- H. knowingly procuring through promises, threats, duress or fraud any person to come into the state or causing a person to leave the state for the purpose of prostitution; or
- I. under pretense of marriage, knowingly detaining a person or taking a person into the state or causing a person to leave the state for the purpose of prostitution.

Whoever commits promoting prostitution is guilty of a fourth degree felony.

30-9-4.1. Accepting earnings of a prostitute.

Accepting the earnings of a prostitute consists of accepting, receiving, levying or appropriating money or anything of value, without consideration, from the proceeds of the earnings of a person engaged in prostitution with the knowledge that the person is engaged in prostitution and that the earnings are derived from engaging in prostitution, or knowingly owning or knowingly managing a house or other place where prostitution is practiced or allowed and living or deriving support or maintenance, in whole or in part, from the earnings or proceeds of a person engaged in prostitution at that house or place.

Whoever commits accepting the earnings of a prostitute is guilty of a fourth degree felony.

30-52-1. Human trafficking.

- A. Human trafficking consists of a person knowingly:
 - (1) recruiting, soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity;
 - (2) recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or
 - (3) benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

- B. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to enforce the provisions of this section.

- C. Whoever commits human trafficking is guilty of a third degree felony; except if the victim is under the age of:
 - (1) sixteen, the person is guilty of a second degree felony; or
 - (2) thirteen, the person is guilty of a first degree felony.

- D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

- E. In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.

- F. A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages in accordance with Section 31-17-1 NMSA 1978.

- G. As used in this section:
 - (1) "coercion" means:
 - (a) causing or threatening to cause harm to any person;
 - (b) using or threatening to use physical force against any person;
 - (c) abusing or threatening to abuse the law or legal process;
 - (d) threatening to report the immigration status of any person to governmental authorities; or
 - (e) knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person; and
 - (2) "commercial sexual activity" means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.

30-52-2. Human trafficking; benefits and services for human trafficking victims. (2013)

A. Human trafficking victims found in the state shall be eligible for benefits and services from the state until the victim qualifies for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000; provided that the victim cooperates in the investigation or prosecution of the person charged with the crime of human trafficking. Benefits and services shall be provided to eligible human trafficking victims as quickly as can reasonably be arranged regardless of immigration status and shall include, when appropriate to a particular case:

- (1) case management;
- (2) emergency temporary housing;
- (3) health care;
- (4) mental health counseling;
- (5) drug addiction screening and treatment;
- (6) language interpretation, translation services and English language instruction;
- (7) job training, job placement assistance and post-employment services for job retention;
- (8) child care;
- (9) advocacy services;
- (10) state-funded cash assistance;
- (11) food assistance;
- (12) services to assist the victim and the victim's family members; and
- (13) other general assistance services and benefits as determined by the children, youth and families department or the human services department.

B. A human trafficking victim advocate shall be provided immediately upon identification by law enforcement of a human trafficking victim.

C. Before providing benefits and services pursuant to Subsection A of this section, law enforcement shall certify to the human services department and the children, youth and families department that a person is:

- (1) a victim of human trafficking; and
- (2) cooperating in the investigation or prosecution of the person charged with the crime of human trafficking.

D. A victim's ability to cooperate shall be determined by the court, if that issue is raised by a human trafficking victim advocate. The victim is not required to cooperate if the court determines that the victim is unable to cooperate due to physical or psychological trauma. Benefits and services shall continue unless the court rejects the victim's claim regarding inability to cooperate. A victim who is younger than eighteen years of age is eligible for benefits and services without a finding by the court. Any court proceeding regarding the victim's ability to cooperate shall be held in camera. The human trafficking victim advocate shall be allowed to attend the proceeding. The record of any such proceeding shall be sealed.

E. The attorney general shall coordinate plans developed by state and local law enforcement agencies to provide a human trafficking victim or the victim's family members protection from retaliatory action immediately upon identifying the presence in the state of a victim who offers state or local law enforcement agencies information regarding a perpetrator of human trafficking.

F. The prosecuting authority shall take all reasonable steps within its authority to provide a human trafficking victim with:

- (1) all necessary documentation required pursuant to federal law for an adjustment of immigration status that applies to that victim; and
- (2) assistance in accessing civil legal services providers who are able to petition for adjustment of immigration status on behalf of the victim.

G. As used in this section:

- (1) "human trafficking victim" means a person subjected to human trafficking; and
- (2) "human trafficking victim advocate" means a person provided by a state or nonprofit agency with experience in providing services for victims of crime.

<p>CRIMINAL OFFENSES CHAPTER 30, ARTICLE 6: CHILD ABUSE & ARTICLE 6A: SEXUAL EXPLOITATION OF CHILDREN</p>
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30-6-1. Abandonment or abuse of a child.

A. As used in this section:

- (1) "child" means a person who is less than eighteen years of age;
- (2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and
- (3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. A person who commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case the person is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act [24-22-1 NMSA 1978] shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

- (1) placed in a situation that may endanger the child's life or health;
- (2) tortured, cruelly confined or cruelly punished; or
- (3) exposed to the inclemency of the weather.

E. A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first degree felony.

F. A person who commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. A person who commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. A person who commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

K. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital.

30-6-4. Obstruction of reporting or investigation of child abuse or neglect.

Obstruction of reporting or investigation of child abuse or neglect consists of:

A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting, pursuant to Section 32-1-15 NMSA 1978 [repealed], child abuse or neglect, including child sexual abuse; or

B. knowingly obstructing, delaying, interfering with or denying access to a law enforcement officer or child protective services social worker in the investigation of a report of child abuse or sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a misdemeanor.

30-6A-1. Short title.

Sections 1 through 4 [30-6A-1 to 30-6A-4 NMSA 1978] of this act may be cited as the "Sexual Exploitation of Children Act".

30-6A-2. Definitions.

As used in the Sexual Exploitation of Children Act [30-6A-1 NMSA 1978]:

A. "prohibited sexual act" means:

- (1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
- (2) bestiality;
- (3) masturbation;
- (4) sadomasochistic abuse for the purpose of sexual stimulation; or
- (5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

B. "visual or print medium" means:

- (1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or
- (2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

C. "performed publicly" means performed in a place that is open to or used by the public;

D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and

E. "obscene" means any material, when the content if taken as a whole:

- (1) appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;
- (2) portrays a prohibited sexual act in a patently offensive way; and
- (3) lacks serious literary, artistic, political or scientific value.

30-6A-3. Sexual exploitation of children.

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.

C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony.

E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

F. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.

G. The penalties provided for in this section shall be in addition to those set out in Section 309-11 NMSA 1978.

30-6A-4. Sexual exploitation of children by prostitution.

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

B. Any person hiring or offering to hire a child over the age of thirteen and under the age of sixteen to engage in any prohibited sexual act is guilty of a second degree felony.

C. Any parent, legal guardian or person having custody or control of a child under sixteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a third degree felony.

30-9-1. Enticement of child.

Enticement of child consists of:

- A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 to 30-9-9 NMSA 1978] of the Criminal Code; or
- B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.

Whoever commits enticement of child is guilty of a misdemeanor.

<p>CHAPTER 30, ARTICLE 37: SEXUALLY ORIENTED MATERIALS HARMFUL TO MINORS</p>

30-37-1. Definitions.

As used in this act:

- A. "minor" means any unmarried person who has not reached his eighteenth birthday;
- B. "nudity" means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state;
- C. "sexual conduct" means act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;
- D. "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
- E. "sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;
- F. "harmful to minors" means that quality of any description of representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:
 - (1) predominantly appeals to the prurient, shameful or morbid interest of minors; and
 - (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (3) is utterly without redeeming social importance for minors; and
- G. "knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of: (1) the character and content of any material described herein, which is reasonably susceptible of examination by the defendant; (2) the age of the minor.

30-37-2. Offenses; books; pictures.

It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or

B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

30-37-2.1. Offenses; retail display.

A. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the cover of which depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement and which is harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such books, magazines or printed materials may be displayed behind an opaque covering which conceals the depiction of nudity, sado-masochistic abuse, sexual conduct or sexual excitement, provided that those books, magazines or printed materials are not within the convenient reach of minors who may frequent the retail establishment.

B. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the content of which exploits, is devoted to or is principally made up of descriptions or depictions of nudity, sado-masochistic abuse, sexual conduct or sexual excitement and which are harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

30-37-3. Offenses; motion pictures; plays.

It is unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

30-37-3.1. Outdoor theaters; offenses.

A. It is unlawful for the owner or operator of an outdoor motion picture theater to show or exhibit any motion picture which in whole or in part depicts unclothed sexual conduct in an outdoor theater unless the exhibitor can prove that the outdoor screen on which the picture is to be shown cannot be seen by any minor who has not taken extraordinary

measures to view the screen or who is not within the area provided for those persons who have been admitted by a ticket or pass.

- B. As used in this section, "unclothed sexual conduct" means an act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's unclothed genitals, pubic area or buttocks.
- C. The notice provisions of Section 30-37-4 NMSA 1978 shall not apply to this section.

30-37-3.2. Child solicitation by electronic communication device.

- A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child. Whoever commits child solicitation by computer is guilty of a fourth degree felony.
- B. Whoever commits child solicitation by electronic communication device is guilty of a:
 - (1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or
 - (2) third degree felony if the child is under thirteen years of age
- C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:
 - (1) third degree felony if the child is at least thirteen but under sixteen years of age; or
 - (2) second degree felony if the child is under thirteen years of age.
- D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.
- E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.
- F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

30-37-3.3. Criminal sexual communication with a child; penalty.

- A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.

- B. Whoever commits sexual communication with a child is guilty of a fourth degree felony.
- C. As used in this section:
 - (1) "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and
 - (2) "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

30-37-4. Notice; prosecution.

- A. No prosecution based under this act shall be commenced unless the district attorney of the county in which the offense occurs shall have previously determined that the matter or performance is harmful to minors and the defendant shall have received actual or constructive notice of such determination. Persons shall be presumed to have constructive notice of such determination on the fifth business day following publication of a notice of such determination in a newspaper of general circulation in the county in which the prosecution takes place.
- B. Any person adversely affected by such determination may, at any time within thirty days after such notice is given, seek a judicial determination of its correctness. The court shall, unless otherwise agreed by the parties, render judgment not later than two court days following trial. Filing of an action under this section shall stay prosecution until a judicial determination is rendered, but no appeal shall have such effect unless so ordered by the trial court.
- C. No criminal action shall be commenced in any other judicial district within this state during the pendency of the civil action authorized by Subsection B of Section 4 [this section] regarding the same matter, exhibition or performance.

30-37-5. Exclusions; defenses.

No person shall be guilty of violating the provisions of this act:

- A. where such person had reasonable cause to believe that the minor involved had reached his eighteenth birthday, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor had reached his eighteenth birthday; or
- B. if the minor was accompanied by his parent or guardian, or the parent or guardian has in writing waived the application of this act either generally or with reference to the particular transaction; or
- C. where such person had reasonable cause to believe that the person was the parent or guardian of the minor; or
- D. where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

30-37-6. Offenses by minor.

A. It is unlawful for any minor to falsely represent to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that such minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 [30-37-2 NMSA 1978] of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 [30-37-3 NMSA 1978] of this act.

B. It is unlawful for any person to knowingly make a false representation to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that he is the parent or guardian of any minor, or that any minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 [30-37-2 NMSA 1978] of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 [30-37-3 NMSA 1978] of this act.

30-37-7. Penalties.

A. A person violating Section 30-37-2, 30-37-2.1, 30-37-3 or 30-37-3.1 NMSA 1978 is guilty of a misdemeanor

B. Any person violating the provisions of Section 30-37-6 NMSA 1978 shall be guilty of a petty misdemeanor.

30-37-8. Uniform application.

In order to provide for the uniform application of this act to all minors within this state, it is intended that the sole and only regulation of the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to, or exhibition of, any performance described in Section 3 [30-37-3 NMSA 1978], shall be under this act, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to any performance described in Section 3 [30-37-3 NMSA 1978], including but not limited to criminal offenses, classification of suitable matter or performances for minors, or licenses or taxes respecting the sale, distribution, exhibition or provision of matter regulated under this act. All such laws, ordinances, regulations, taxes or licenses, whether enacted before or after this act, shall be or become void, unenforceable and of no effect upon the effective date of this act.

30-37-9. Legislative findings and purpose.

The legislature finds that children do not have the judgment necessary to protect themselves from harm and that the legislature has the inherent power to control commercial conduct within this state for the protection of minors in a manner that reaches beyond the scope of its authority to protect adults. The legislature also finds that regulation of content at outdoor theaters does not deprive adults from viewing that content at indoor theaters.

30-37-10. Offenses; certain tie-in arrangements unlawful.

A. It is unlawful for any person offering for sale, selling or distributing books, magazines or other printed material to require, as a condition for any such sale or delivery, that the purchaser or receiver of the delivery purchase or accept the delivery of any other book, magazine or other printed matter which contains sexually oriented material harmful to minors as defined in Subsection F of Section 30-37-1 NMSA 1978. Nothing in this subsection prohibits the sale or purchase on a voluntary basis of books, magazines or other printed material containing sexually oriented material.

B. Any person violating the provisions of Subsection A of this section shall be guilty of a misdemeanor.

CHAPTER 32A CHILDREN'S CODE, ART. 4: ABUSE & NEGLECT ACT

32A-4-2. Definitions.

As used in the Abuse and Neglect Act:

A. "abandonment" includes instances when the parent, without justifiable cause:

- (1) left the child without provision for the child's identification for a period of fourteen days; or
- (2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:
 - (a) three months if the child was under six years of age at the commencement of the three-month period; or
 - (b) six months if the child was over six years of age at the commencement of the six-month period;

B. "abused child" means a child:

- (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
- (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
- (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
- (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
- (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:

- (1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
- (2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;
- (3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
- (4) had parental rights over a sibling of the child terminated involuntarily;

D. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

E. "neglected child" means a child:

- (1) who has been abandoned by the child's parent, guardian or custodian;
- (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
- (3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;
- (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
- (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code [32A-1-1 NMSA 1978] shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

F. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

- (1) there is not a justifiable explanation for the condition or death;
- (2) the explanation given for the condition is at variance with the degree or nature of the condition;
- (3) the explanation given for the death is at variance with the nature of the death; or
- (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

G. "sexual abuse" includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

H. "sexual exploitation" includes but is not limited to:

- (1) allowing, permitting or encouraging a child to engage in prostitution;
- (2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
- (3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law; and

I. "transition plan" means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation.

32A-4-3. Duty to report child abuse and child neglect; responsibility to investigate child abuse or neglect; penalty.

- A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:
- (1) a local law enforcement agency;
 - (2) the department; or
 - (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.
- B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.
- C. The recipient of the report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child-care facilities.
- D. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by a local law enforcement officer trained in the investigation of child abuse and neglect. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.
- E. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act [32A-4-1 NMSA 1978].
- F. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

32A-4-4. Complaints; referral; preliminary inquiry.

- A. Reports alleging neglect or abuse shall be referred to the department, which shall conduct an investigation to determine the best interests of the child with regard to any

action to be taken. The name and information regarding the person making the report shall not be disclosed absent the consent of the informant or a court order.

B. During the investigation of a complaint alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. A representative of the department shall at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made, in a manner that is consistent with laws protecting the rights of the informant. The parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the report was made.

C. After completion of the investigation on a neglect or abuse report, the department shall either recommend or refuse to recommend the filing of a petition.

D. When a child is taken into custody, the department shall file a petition within two days. If a petition is not filed in a timely manner, the child shall be released to the child's parent, guardian or custodian.

32A-4-5. Admissibility of report in evidence; immunity of reporting person; investigation of report.

A. In any proceeding alleging neglect or abuse under the Children's Code [32A-1-1 NMSA 1978] resulting from a report required by Section 32-4-3 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32-4-3 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the public official, any school personnel or other person who has the duty to report child abuse pursuant to Section 32-4-3 NMSA 1978 shall permit a member of a law enforcement agency, including tribal police officers, an employee of the district attorney's office, an investigative interviewer for a program described in Subsection E of this section or an employee of the department, to interview a child with respect to a report without the permission of the child's parent or guardian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. An investigation may be conducted by law enforcement, the district attorney's office, a program described in Subsection E of this section and the department. Interviews shall be conducted in a manner and place that protects the child and family from unnecessary trauma and embarrassment. The investigating entity shall conduct the

investigation in a manner that will protect the privacy of the child and the family, with the paramount consideration being the safety of the child.

E. If a community has a program for child abuse investigation that includes an investigation interview of the alleged victim, the investigation may be conducted at a site designated by the community program.

F. Prior to interviewing a child, the department shall notify the parent or guardian of the child who is being interviewed, unless the department determines that notification would adversely affect safety of the child about whom the report has been made or compromise the investigation.

30-6-4. Obstruction of reporting or investigation of child abuse or neglect.

Obstruction of reporting or investigation of child abuse or neglect consists of:

A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting, pursuant to Section 32-1-15 NMSA 1978, child abuse or neglect, including child sexual abuse; or

B. knowingly obstructing, delaying, interfering with or denying access to a law enforcement officer or child protective services social worker in the investigation of a report of child abuse or sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a misdemeanor.

VICTIMS RIGHTS ACT (NM CONSTITUTION & STATUTES), JUDICIAL RULES OF EVIDENCE & PROCEDURE FOR VICTIMS RIGHTS, LEGAL PRIVILEGES, VICTIM TESTIMONY, REMEDIES IN TRAFFICKING CASES, WARRANT/ENTRY INTO SAFEHOUSES, VICTIM RAPE SHIELD RULE
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NM CONSTITUTION, Article II, Sec. 24. [Victim's rights.]

A. A victim of arson resulting in bodily injury, aggravated arson, aggravated assault, aggravated battery, dangerous use of explosives, negligent use of a deadly weapon, murder, voluntary manslaughter, involuntary manslaughter, kidnapping, criminal sexual penetration, criminal sexual contact of a minor, homicide by vehicle, great bodily injury by vehicle or abandonment or abuse of a child or that victim's representative shall have the following rights as provided by law:

- (1) the right to be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- (2) the right to timely disposition of the case;
- (3) the right to be reasonably protected from the accused throughout the criminal justice process;
- (4) the right to notification of court proceedings;

- (5) the right to attend all public court proceedings the accused has the right to attend;
- (6) the right to confer with the prosecution;
- (7) the right to make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- (8) the right to restitution from the person convicted of the criminal conduct that caused the victim's loss or injury;
- (9) the right to information about the conviction, sentencing, imprisonment, escape or release of the accused;
- (10) the right to have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause; and
- (11) the right to promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property.

B. A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of Subsection A of Section 24 of Article 2 of the constitution of New Mexico.

C. The provisions of this amendment shall not take effect until the legislature enacts laws to implement this amendment. (As added November 3, 1992.)

Cross references. — For victim restitution, see 31-17-1 NMSA 1978.

For the Crime Victims Reparation Act, see 31-22-1 NMSA 1978 et seq.

For crime victim immunity, see 31-23-1 NMSA 1978.

For Victim Counselor Confidentiality Act, see 31-25-1 NMSA 1978 et seq.

For the Victims of Crime Act, see 31-26-1 NMSA 1978 et seq.

31-26-1. Short title.

Chapter 31, Article 26 NMSA 1978 may be cited as the "Victims of Crime Act".

31-26-2. Purpose of act.

Recognizing the state's concern for victims of crime, it is the purpose of the Victims of Crime Act [31-26-1 NMSA 1978] to assure that:

- A. the full impact of a crime is brought to the attention of a court;
- B. victims of violent crimes are treated with dignity, respect and sensitivity at all stages of the criminal justice process;
- C. victims' rights are protected by law enforcement agencies, prosecutors and judges as vigorously as are the rights of criminal defendants; and
- D. the provisions of Article 2, Section 24 of the constitution of New Mexico are implemented in statute.

31-26-3. Definitions.

As used in the Victims of Crime Act [31-26-1 NMSA 1978]:

- A. "court" means magistrate court, metropolitan court, children's court, district court, the court of appeals or the supreme court;
- B. "criminal offense" means:
- (1) negligent arson resulting in death or bodily injury, as provided in Subsection B of Section 30-17-5 NMSA 1978;
 - (2) aggravated arson, as provided in Section 30-17-6 NMSA 1978;
 - (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
 - (4) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
 - (5) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
 - (6) negligent use of a deadly weapon, as provided in Section 30-7-4 NMSA 1978;
 - (7) murder, as provided in Section 30-2-1 NMSA 1978;
 - (8) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (9) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;
 - (10) kidnapping, as provided in Section 30-4-1 NMSA 1978;
 - (11) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
 - (12) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;
 - (13) armed robbery, as provided in Section 30-16-2 NMSA 1978;
 - (14) homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;
 - (15) great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
 - (16) abandonment or abuse of a child, as provided in Section 30-6-1 NMSA 1978;
 - (17) stalking or aggravated stalking, as provided in the Harassment and Stalking Act [303A-1 NMSA 1978];
 - (18) aggravated assault against a household member, as provided in Section 30-3-13 NMSA 1978;
 - (19) assault against a household member with intent to commit a violent felony, as provided in Section 30-3-14 NMSA 1978;
 - (20) battery against a household member, as provided in Section 30-3-15 NMSA 1978; or

(21) aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;

- C. "court proceeding" means a hearing, argument or other action scheduled by and held before a court;
- D. "family member" means a spouse, child, sibling, parent or grandparent;
- E. "formally charged" means the filing of an indictment, the filing of a criminal information pursuant to a bind-over order, the filing of a petition or the setting of a preliminary hearing;
- F. "victim" means an individual against whom a criminal offense is committed. "Victim" also means a family member or a victim's representative when the individual against whom a criminal offense was committed is a minor, is incompetent or is a homicide victim; and
- G. "victim's representative" means an individual designated by a victim or appointed by the court to act in the best interests of the victim.

31-26-4. Victim's rights.

A victim shall have the right to:

- A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- B. timely disposition of the case;
- C. be reasonably protected from the accused throughout the criminal justice process;
- D. notification of court proceedings;
- E. attend all public court proceedings the accused has the right to attend;
- F. confer with the prosecution;
- G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;
- I. information about the conviction, sentencing, imprisonment, escape or release of the accused;
- J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;

- K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and
- L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender.

31-26-5. Exercise of rights; requirements for victim.

A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act [3126-1 NMSA 1978] only if he:

- A. reports the criminal offense within five days of the occurrence or discovery of the criminal offense, unless the district attorney determines that the victim had a reasonable excuse for failing to do so;
- B. provides the district attorney with current and updated information regarding the victim's name, address and telephone number; and
- C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.

31-26-6. When rights and duties take effect; termination of rights and duties.

The rights and duties established pursuant to the provisions of the Victims of Crime Act [3126-1 NMSA 1978] take effect when an individual is formally charged by a district attorney for allegedly committing a criminal offense against a victim. Those rights and duties remain in effect until final disposition of the court proceedings attendant to the charged criminal offense.

31-26-7. Designation or appointment of victim's representative.

- A. A victim may designate a victim's representative to exercise all rights provided to the victim pursuant to the provisions of the Victims of Crime Act [31-26-1 NMSA 1978]. A victim may revoke his designation of a victim's representative at any time.
- B. When a victim is deceased, incompetent or unable to designate a victim's representative, the court may appoint a victim's representative for the victim. If a victim regains his competency, he may revoke the court's appointment of a victim's representative.
- C. When the victim is a minor, the victim's parent or grandparent may exercise the victim's rights; provided, that when the person accused of committing the criminal offense against the victim is the parent or grandparent of the victim, the court may appoint a victim's representative for the victim.

31-26-8. Procedures for providing victims with preliminary information; law enforcement agencies.

The law enforcement agency that investigates a criminal offense shall:

- A. inform the victim of medical services and crisis intervention services available to victims;
- B. provide the victim with the police report number for the criminal offense and a copy of the following statement: "If within thirty days you are not notified of an arrest in your case, you may call (telephone number for the law enforcement agency) to obtain information on the status of your case."; and
- C. provide the victim with the name of the district attorney for the judicial district in which the criminal offense was committed and the address and telephone number for that district attorney's office.

31-26-9. Procedures for providing victims with notice of rights and information regarding prosecution of a criminal offense; district attorneys.

- A. Within seven working days after a district attorney files a formal charge against the accused for a criminal offense, the district attorney shall provide the victim of the criminal offense with:
 - (1) a copy of Article 2, Section 24 of the constitution of New Mexico, regarding victims' rights;
 - (2) a copy of the Victims of Crime Act [31-26-1 NMSA 1978]
 - (3) a copy of the charge filed against the accused for the criminal offense;
 - (4) a clear and concise statement of the procedural steps generally involved in prosecuting a criminal offense; and
 - (5) the name of a person within the district attorney's office whom the victim may contact for additional information regarding prosecution of the criminal offense.
- B. The district attorney's office shall provide the victim with oral or written notice, in a timely fashion, of a scheduled court proceeding attendant to the criminal offense.

31-26-10. Procedures for providing victims with notice of a court proceeding; courts; district attorneys.

A court shall provide a district attorney's office with oral or written notice no later than seven working days prior to a scheduled court proceeding attendant to a criminal offense, unless a shorter notice period is reasonable under the circumstances. The district attorney's office shall convey the information concerning the scheduled court proceeding to the victim, as provided in Subsection B of Section 9 [31-26-9 NMSA 1978] of the Victims of Crime Act.

31-26-10.1. Crime victim presence at court proceedings; plea agreement notification

- A. At any scheduled court proceeding, the court shall inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in § 31-26-4 NMSA 1978. If the

victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall:

- (1) reschedule the hearing; or
- (2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and
- (3) order the district attorney to notify the victim of the rescheduled hearing.

B. The provisions of this section shall not limit the district attorney's ability to exercise prosecutorial discretion on behalf of the state in a criminal case.

C. The provisions of this section shall not require the court to continue or reschedule any proceedings if it would result in a violation of a jurisdictional rule.

31-26-11. Procedures when an inmate or delinquent child escapes; corrections department; children, youth and families department.

A. The corrections department or the children, youth and families department shall immediately notify the sentencing judge or the children's court judge, the district attorney of the judicial district from which the inmate or delinquent child was committed and the probation officer who authored the presentence report when an inmate or delinquent child: (1) escapes from a correctional facility or juvenile justice facility under the jurisdiction of the corrections department or the children, youth and families department; or (2) convicted in New Mexico of a capital, first degree or second degree felony and transferred to a facility under the jurisdiction of another state escapes from that facility.

B. The district attorney shall immediately notify any person known to reside in his district who was a victim of the criminal or delinquent offense for which the inmate or delinquent child was committed.

31-26-12. Procedures when an inmate is released from incarceration; adult parole board; corrections department; procedures when a delinquent child is released from custody; juvenile parole board; children, youth and families department; district attorneys.

A. The adult parole board and the children, youth and families department shall provide a copy of their respective regular release dockets to each district attorney in the state at least ten working days before the docket is considered. The district attorney shall notify any person known to reside in the district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

B. The adult parole board or the children, youth and families department shall provide a copy of a supplemental, addendum or special docket to each district attorney at least five working days before the release docket is considered.

C. Following consideration of a release docket by the adult parole board or the children, youth and families department, the board and department shall promptly notify each district attorney of recommendations for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in the district attorney's district who

was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

D. In the case of an inmate scheduled to be released from incarceration without parole or prior to parole for any reason, or a delinquent child scheduled to be released from custody, the corrections department or the children, youth and families department shall notify each district attorney at least fifteen working days before the inmate's or delinquent child's release. The district attorney shall notify any person known to reside in the district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

31-26-13. Disclaimer.

Nothing in the Victims of Crime Act [31-26-1 NMSA 1978] creates a cause of action on behalf of a person against a public employer, public employee, public agency, the state or any agency responsible for the enforcement of rights or provision of services set forth in that act.

31-26-14. Effect of noncompliance.

A person accused or convicted of a crime against a victim shall have no standing to object to any failure by any person to comply with the provisions of the Victims of Crime Act [31-26-1 NMSA 1978].

Rule 6-113 (Magistrate Courts). Victim's rights.

A. The court shall respect all rights of victims of crimes enumerated and filed as specified in the Victims of Crime Act, Sections 31-26-1 to 31-26-14 NMSA 1978.

B. At any scheduled court proceeding, the court shall inquire whether any victim entitled to notice of the proceeding, under Article II, Section 24, is present. If the victim is present, the court shall ascertain that the victim has been informed of the right to

- (1) be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;
- (2) timely disposition of the case;
- (3) be reasonably protected from the accused throughout the criminal justice process;
- (4) notification of court proceedings;
- (5) attend all public court proceedings the accused has the right to attend;
- (6) confer with the prosecution;
- (7) make a statement to the court at sentencing and at any post-sentencing hearings for the accused;
- (8) restitution from the person convicted of the criminal offense that caused the victim's loss or injury;
- (9) information about the conviction, sentencing, imprisonment, escape or release of the accused;
- (10) have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work with good cause;

- (11) promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; and
- (12) be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender.

C. If the victim is not present, the court shall inquire of the district attorney whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, unless doing so would result in a violation of a jurisdictional rule, the court shall

- (1) reschedule the hearing; or
- (2) continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and
- (3) order the district attorney to notify the victim of the rescheduled hearing.

Rule 5-401. Bail.

A. Right to bail; recognizance or unsecured appearance bond. Pending trial, any person bailable under Article 2, Section 13 of the New Mexico Constitution, shall be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount set by the court, subject to any release conditions imposed pursuant to Paragraph C of this rule, unless the court makes a written finding that such release will not reasonably assure the appearance of the person as required.

B. Secured bonds. If the court makes a written finding that release on personal recognizance or upon execution of an unsecured appearance bond will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, in addition to any release conditions imposed pursuant to Paragraph D of this rule, the court shall order the pretrial release of such person subject to the first of the following types of secured bonds which will reasonably assure the appearance of the person as required and the safety of any person and the community:

- (1) the execution of a bail bond in a specified amount executed by the person and secured by a deposit of cash of ten percent (10%) of the amount set for bail or secured by such greater or lesser amount as is reasonably necessary to assure the appearance of the person as required. The cash deposit may be made by or assigned to a paid surety licensed under the Bail Bondsmen Licensing Law provided such paid surety also executes a bail bond for the full amount of the bail set;
- (2) the execution of a bail bond by the defendant or by unpaid sureties in the full amount of the bond and the pledging of real property as required by Rule 5-401A NMRA; or
- (3) the execution of a bail bond with licensed sureties as provided in Rule 5-401B NMRA or execution by the person of an appearance bond and deposit with the clerk of the court, in cash, of one-hundred percent (100%) of the amount of the bail set, such deposit to be returned as provided in this rule.

Any bail, property or appearance bond shall be substantially in the form approved by the Supreme Court.

C. Factors to be considered in determining conditions of release. The court shall, in determining the type of bail and which conditions of release will reasonably assure appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including:
 - (a) the person's character and physical and mental condition;
 - (b) the person's family ties;
 - (c) the person's employment status, employment history and financial resources;
 - (d) the person's past and present residences;
 - (e) the length of residence in the community;
 - (f) any facts tending to indicate that the person has strong ties to the community;
 - (g) any facts indicating the possibility that the person will commit new crimes if released;
 - (h) the person's past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court proceedings; and
 - (i) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal or completion of an offense under federal, state or local law;
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release; and
- (5) any other facts tending to indicate the person is likely to appear.

D. Additional conditions; conditions to assure orderly administration of justice. The court, upon release of the defendant or any time thereafter, may enter an order, that such person's release be subject to:

- (1) the condition that the person not commit a federal, state or local crime during the period of release; and
- (2) the least restrictive of, or combination of, the following conditions the court finds will reasonably assure the appearance of the person as required, the safety of any other person and the community and the orderly administration of justice:
 - (a) a condition that the person remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the court that the person will appear as required and will not pose a danger to the safety of any other person or the community;
 - (b) a condition that the person maintain employment, or, if unemployed, actively seek employment;
 - (c) a condition that the person maintain or commence an educational program;
 - (d) a condition that the person abide by specified restrictions on personal associations, place of abode or travel;
 - (e) a condition that the person avoid all contact with an alleged **victim** of the crime and with a potential witness who may testify concerning the offense;
 - (f) a condition that the person report on a regular basis to a designated pretrial services agency or other agency agreeing to supervise the defendant;
 - (g) a condition that the person comply with a specified curfew;
 - (h) a condition that the person refrain from possessing a firearm, destructive device or other dangerous weapon;
 - (i) a condition that the person refrain from excessive or any use of alcohol and any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;
 - (j) a condition that the person undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
 - (k) a condition that the person submit to a urine analysis or alcohol test upon request of a person designated by the court;

- (l) a condition that the person return to custody for specified hours following release for employment, schooling, or other limited purposes;
- (m) a condition that the person satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

E. Explanation of conditions by court. The release order of the court shall:

- (1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct;
- (2) advise the person of:
 - (a) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;
 - (b) the consequences for violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and
 - (c) the consequences of intimidating a witness, **victim** or informant or otherwise obstructing justice; and
- (3) unless the defendant is released on personal recognizance, set forth the circumstances which require that conditions of release be imposed.

F. Detention. Upon motion by the state to detain a person without bail pending trial, the court shall hold a hearing to determine whether bail may be denied pursuant to Article 2, § 1 of the New Mexico Constitution.

G. Review of conditions of release. A person for whom bail is set by the district court and who after twenty-four (24) hours from the time of transfer to a detention facility continues to be detained as a result of the person's inability to meet the bail set, shall, upon motion, be entitled to have a hearing to review the amount of bail set. Unless the release order is amended and the person is thereupon released, the court shall state in the record the reasons for continuing the amount of bail set. A person who is ordered released on a condition which requires that the person return to custody after specified hours, upon application, shall be entitled to have a hearing to review the conditions imposed. Unless the requirement is removed and the person is thereupon released on another condition, the court shall state in the record the reason for the continuation of the requirement. A hearing to review conditions of release pursuant to this paragraph shall be held by the district court.

H. Amendment of conditions. The court ordering the release of a person on any condition specified in this rule may amend its order at any time to increase the amount of bail set or impose additional or different conditions of release. If such amendment of the release order results in the detention of the person as a result of the person's inability to meet such conditions or in the release of the person on a condition requiring the person to return to custody after specified hours, the provisions of Paragraph G of this rule shall apply.

I. Record of hearing. A record shall be made of any hearing held by the district court pursuant to this rule.

J. Return of cash deposit. If a person has been released by executing an appearance bond and depositing a cash deposit set pursuant to Subparagraph (1) or (3) of Paragraph B of this rule, when the conditions of the appearance bond have been performed and the defendant's guilt for whom bail was required has been adjudicated by the Court, the clerk shall return the sum which has been deposited to the person who deposited the sum, or that person's personal representatives or assigns.

K. Cases pending in magistrate or metropolitan court. A person charged with an offense which is not within magistrate or metropolitan court trial jurisdiction and who has not been bound over to the district court may file a petition any time after the person's arrest with the clerk of the district court for release pursuant to this rule. Jurisdiction of the magistrate or metropolitan court to release the accused shall be terminated upon the filing of a petition for release in the district court. Upon the filing of the petition, the district court may:

- (1) continue the bail set and any condition of release imposed by the magistrate or metropolitan court;
- (2) impose any bail or condition of release authorized by Paragraphs A, B or D of this rule;
- (3) continue any revocation of release imposed pursuant to Rule 5-403 NMRA; or
- (4) after a hearing, revoke the release of a defendant pursuant to Subparagraph (2) of Paragraph A of Rule 5-403 NMRA.

L. Release from custody by designee. Any or all of the provisions of this rule, except the provisions of Paragraphs F, G and K of this rule, may be carried out by responsible persons designated in writing by the chief judge of the district court. No person shall be qualified to serve as a designee if such person or such person's spouse is:

- (1) related within the second degree of blood or marriage to a paid surety who is licensed to sell property or corporate bonds within this state; or
- (2) employed by a jail or detention facility unless designated in writing by the chief judge of the judicial district in which the jail or detention facility is located.

M. Bind over in district court. The bond shall remain in the magistrate or metropolitan court, except that it shall be transferred to the district court upon indictment or bind over to that court.

N. Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the Rules of Evidence.

O. Forms. Instruments required by this rule shall be substantially in the form approved by the Supreme Court.

P. Judicial discretion. Action by any court on any matter relating to bail shall not preclude the statutory or constitutional disqualification of a judge.

Rule 11-404. Character evidence; crimes or other acts.

A. Character evidence.

- (1) Prohibited uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
- (2) Exceptions for a defendant or victim in a criminal case. The following exceptions apply in a criminal case:
 - (a) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
 - (b) subject to the limitations in Rule 11-413 NMRA, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may
 - (i) offer evidence to rebut it, and
 - (ii) offer evidence of the defendant's same character trait, and
 - (c) in a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
- (3) Exceptions for a witness. Evidence of a witness's character may be admitted under Rules 11-607, 11-608, and 11-609 NMRA.

B. Crimes, wrongs, or other acts.

(1) Prohibited uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted uses; notice in a criminal case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case, the prosecution must

(a) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial, and

(b) do so before trial – or during trial if the court, for good cause, excuses lack of pretrial notice.

11-412. Sex crimes; testimony; limitations; in camera hearing.

A. Prohibited uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

(1) evidence offered to prove that a victim engaged in other sexual behavior, or

(2) evidence offered to prove a victim's sexual predisposition.

B. Exceptions. The court may admit evidence of the victim's past sexual conduct that is material and relevant to the case when the inflammatory or prejudicial nature does not outweigh its probative value.

C. Procedure to determine admissibility.

(1) Motion. If the defendant intends to offer evidence under Rule 11-412(B) NMRA, the defendant must file a written motion before trial. If the defendant discovers new information during trial, the defendant shall immediately bring the information to the attention of the court outside the presence of the jury.

(2) Hearing. Before admitting evidence under this rule, the court shall conduct an in camera hearing to determine whether such evidence is admissible.

(3) Order. If the court determines that the proposed evidence is admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted. Unless the court orders otherwise, the motion, order, related materials, and the record of the hearing must remain sealed.

Rule 11-506. Communications to clergy.

A. Definitions. As used in this rule:

(1) a "member of the clergy" is a minister, priest, rabbi or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that person;

(2) a communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy as a spiritual adviser.

C. Who may claim the privilege. The privilege may be claimed by the person or by the person's guardian, conservator or, upon death, personal representative. The member of the clergy may claim the privilege on behalf of the person. The authority to claim the privilege is presumed in the absence of evidence to the contrary.

30-52-1.1. Human trafficking; civil remedy for human trafficking victims. (2013)

A. A human trafficking victim may bring a civil action in any court of competent jurisdiction against an alleged human trafficker for actual damages, compensatory damages, punitive damages, injunctive relief or any other appropriate relief. Where the court finds that a defendant's actions were willful and malicious, the court may award treble damages to the plaintiff. A prevailing plaintiff is also entitled to recover reasonable attorney fees and costs.

B. A civil action pursuant to this section shall be forever barred unless the action is filed within ten years from the date on which:

- (1) the defendant's human trafficking actions occurred; or
- (2) the victim attains eighteen years of age if the victim was a minor when the defendant's actions occurred.

30-52-1.2. Sealing of records of human trafficking victims. (2013)

A. On petition to the district court, a person who is a victim of human trafficking who has been charged with crimes arising out of the actions of someone charged with human trafficking may have all legal and law enforcement records of the charges and convictions in the person's case sealed. The court may issue an order sealing records and files if the court finds:

- (1) the petitioner is a victim of human trafficking;
- (2) the charge or conviction is for a non-homicide crime; and
- (3) the petitioner's involvement in the offense was due to duress, coercion, use of force, threat to or fraud committed against the petitioner by a person who has committed human trafficking involving the petitioner.

B. Reasonable notice of the petition shall be given to the district attorney or prosecutor who filed the original case and to the law enforcement agency that has custody of the law enforcement files and records for the case.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement agencies and the petitioner shall respond to an inquiry that no record exists with respect to the petitioner for the referenced case. Copies of the sealed order shall be sent by the court to the district attorney or prosecutor who filed the original case, and each law enforcement agency shall be named in the order.

D. Inspection of files and records or release of information in the records included in the sealing order may be permitted by the court only upon subsequent order of the court on a showing of good cause after notice to all parties to the original petition.

30-22-2.1. Entry into domestic violence safe house or shelter; search warrant.

A. It is not a violation of Section 30-22-1 or Section 30-22-4 NMSA 1978 for a person who is a member, resident, employee or volunteer of or is otherwise associated with a domestic violence safe house or shelter to request that a law enforcement officer show a valid search warrant before allowing the officer to enter the domestic violence safe house or shelter. Nothing in this section shall prevent a law enforcement officer from executing a valid search warrant.

B. Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry.

5-504. Videotaped depositions; testimony of certain minors who are victims of sexual offenses.

A. When allowed. Upon motion, and after notice to opposing counsel, at any time after the filing of the indictment, information or complaint in district court charging a criminal sexual penetration or criminal sexual contact on a child under sixteen (16) years of age, the district court may order the taking of a videotaped deposition of the victim, upon a showing that the child may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm. The district judge must attend any deposition taken pursuant to this paragraph and shall provide such protection of the child as the judge deems necessary.

B. Use at trial. At the trial of a defendant charged with criminal sexual penetration or criminal sexual contact on a child under sixteen (16) years of age, any part or all of the videotaped deposition of a child under sixteen (16) years of age taken pursuant to Paragraph A of this rule, may be shown to the trial judge or the jury and admitted as evidence as an additional exception to the hearsay rule of the Rules of Evidence if:

- (1) the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm;
- (2) the deposition was presided over by a district judge and the defendant was present and was represented by counsel or waived counsel; and
- (3) the defendant was given an adequate opportunity to cross-examine the child, subject to such protection of the child as the judge deems necessary.

C. Additional use at trial. In addition to the use of a videotaped deposition as permitted by Paragraph B of this rule, a videotaped deposition may be used for any of the reasons set forth in Paragraph N of Rule 5-503.

40-13-11. Substitute address.

- A. A victim of domestic abuse, or the victim's representative pursuant to Section 31-26-3 NMSA 1978, who has good reason to believe that the victim's safety is at risk may apply to the secretary of state for the use of the secretary of state as a substitute address. The application shall be on a form provided by the secretary of state and shall include:
- (1) a statement that the secretary of state is acting as an agent of the victim for purposes of the forwarding of mail;
 - (2) a mailing address for forwarding received mail and a telephone number where the victim can be contacted by the secretary of state;
 - (3) payment of a seventy-five-dollar (\$75.00) application fee, which may be waived if the applicant is indigent; and
 - (4) the signature of the victim or the victim's representative.
- B. The secretary of state shall maintain a confidential record of applications for a substitute address and forward any mail received on behalf of a victim of domestic abuse to the new mailing address provided on the application.

40-13-12. Limits on internet publication.

A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes.

30-9-15. Corroboration.

The testimony of a victim need not be corroborated in prosecutions under Sections 2 through 5 [30-9-11 to 30-9-14 NMSA 1978] of this act and such testimony shall be entitled to the same weight as the testimony of victims of other crimes under the Criminal Code.

30-1-15. Alleged victims of domestic abuse, stalking or sexual assault; forbearance of costs.

- A. An alleged victim of an offense specified in Subsection B of this section is not required to bear the cost of:
- (1) the prosecution of a misdemeanor or felony domestic violence offense, including costs associated with filing a criminal charge against an alleged perpetrator of the offense;
 - (2) the filing, issuance or service of a warrant;
 - (3) the filing, issuance or service of a witness subpoena; or

(4) the filing, issuance, registration or service of a protection order.

B. The provisions of Subsection A of this section apply to:

(1) alleged victims of domestic abuse as defined in Section 40-13-2 NMSA 1978;

(2) sexual offenses described in Sections 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;

(3) crimes against household members described in Sections 30-3-12 through 30-3-16 NMSA 1978;

(4) harassment, stalking and aggravated stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978; and

(5) the violation of an order of protection that is issued pursuant to the Family Violence Protection Act [40-13-1 NMSA 1978] or entitled to full faith and credit.

47-8-33. – J. Breach of agreement by resident and relief by owner. (domestic violence subsection)

J. In any action for possession under Subsection I of this section, it shall be a defense that the resident is a victim of domestic violence. If the resident has filed for or secured a temporary domestic violence restraining order as a result of the incident that is the basis for the termination notice or as a result of a prior incident, the writ of restitution shall not issue. In all other cases where domestic violence is raised as a defense, the court shall have the discretion to evict the resident accused of the violation, while allowing the tenancy of the remainder of the residents to continue undisturbed.

59A-23E-11. Group health plan; group health insurance; prohibiting discrimination based on health status against individual participants and beneficiaries in eligibility to enroll.

A. Except as provided in Subsection B of this section, a group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall not establish rules for eligibility or continued eligibility of any individual to enroll or continue to participate in a health plan based on any of the following health status related factors in relation to the individual or a dependent of the individual:

(1) health status;

(2) medical condition, including both physical and mental illnesses;

(3) claims experience;

(4) receipt of health care;

(5) medical history;

(6) genetic information;

(7) evidence of insurability, including conditions arising out of acts of domestic violence; or

(8) disability.

- B. To the extent consistent with the provisions of Section 59A-23E-3 NMSA 1978, the provisions of Subsection A of this section do not require a group health plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the plan or coverage or to prevent the plan or coverage from establishing limitations or restrictions on the amount, level, extent or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

CHAPTER 34: VICTIM COSTS, DUAL ARREST POLICIES, POLICE TRAINING

Be It Enacted By The Legislature Of The State Of New Mexico:

Section 1. A new section of the Criminal Code is enacted to read:

"Alleged victims of domestic abuse, stalking or sexual assault--forbearance of costs.--

- A. An alleged victim of an offense specified in Subsection B of this section is not required to bear the cost of:
- (1) filing a criminal charge against an alleged perpetrator of the offense;
 - (2) the issuance or service of a warrant;
 - (3) the issuance or service of a witness subpoena; or
 - (4) the issuance or service of a protection order.
- B. The provisions of Subsection A of this section apply to alleged victims of domestic abuse as defined in Section 40-13-2 NMSA 1978 and:
- (1) sexual offenses described in Sections 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978;
 - (2) crimes against household members described in Sections 30-3-12 through 30-3-16 NMSA 1978;
 - (3) harassment, stalking and aggravated stalking described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978; and
 - (4) the violation of an order of protection described in Subsection E of Section 40-13-6 NMSA 1978."

Section 2. A new section of the Family Violence Protection Act is enacted to read:

"Legislative findings--state policy--dual arrests.--The legislature finds that domestic abuse incidents are complex and require special training on the part of law enforcement officers to respond appropriately to domestic abuse incidents. The state of New Mexico discourages dual arrests of persons involved in incidents of domestic abuse. A law

enforcement officer, in making arrests for domestic abuse, shall seek to identify and shall consider whether one of the parties acted in self defense."

Section 3. A new section of the Law Enforcement Training Act is enacted to read:

"Domestic abuse incident training.--Domestic abuse incident training shall be included in the curriculum of each basic law enforcement training class. Domestic abuse incident training shall be included as a component of in-service training each year for certified police officers."

Section 4. Emergency.--It is necessary for the public peace, health and safety that this act take effect immediately.

Senate Bill 294, and House Judiciary Committee Substitute For House Bill 242As Amended
With Emergency Clause
Signed/Effective March 4, 2002

<p>VICTIM COUNSELOR CONFIDENTIALITY ACT</p>
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31-25-1. Short title.

This act [31-25-1 to 31-25-6 NMSA 1978] may be cited as the "Victim Counselor Confidentiality Act".

31-25-2. Definitions.

As used in the Victim Counselor Confidentiality Act:

- A. "confidential communication" means any information exchanged between a victim and a victim counselor in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process and which is disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a sexual assault or family violence;
- B. "victim" means a person who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence;
- C. "victim counseling" means assessment, diagnosis and treatment to alleviate the adverse emotional or psychological impact of a sexual assault or family violence on the victim. Victim counseling includes crisis intervention;

D. "victim counseling center" means a private organization or unit of a government agency which has as one of its primary purposes the treatment of victims for any emotional or psychological condition resulting from a sexual assault or family violence; and

E. "victim counselor" means any employee or supervised volunteer of a victim counseling center or other agency, business or organization that provides counseling to victims who is not affiliated with a law enforcement agency or the office of a district attorney, has successfully completed forty hours of academic or other formal victim counseling training or has had a minimum of one year of experience in providing victim counseling and whose duties include victim counseling.

31-25-3. Confidential communications; information; privileged.

A. A victim, a victim counselor without the consent of the victim or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party shall not be compelled to provide testimony or to produce records concerning confidential communications for any purpose in any criminal action or other judicial, legislative or administrative proceeding.

B. A victim counselor or a victim shall not be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location or telephone number of a safe house, abuse shelter or other facility that provided temporary emergency shelter to the victim of the offense or occurrence that is the subject of a judicial, legislative or administrative proceeding unless the facility is a party to the proceeding.

31-25-4. Waiver.

A. A victim does not waive the protections afforded by the Victim Counselor Confidentiality Act by testifying in court about the crime; provided that if the victim partially discloses the contents of a confidential communication in the course of his testimony, then either party to the action may request the court to rule that justice requires the protections of that act be waived to the extent they apply to that portion of the communication. Waiver shall apply only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.

B. A victim counselor shall not have authority to waive the protections afforded to a victim under the Victim Counselor Confidentiality Act; provided that if a victim brings suit against a victim counselor or the agency, business or organization in which the victim counselor was employed or served as a volunteer at the time of the counseling relationship and the suit alleges malpractice during the counseling relationship, the victim counselor may testify or produce records regarding confidential communications with the victim without liability for those actions.

31-25-5. Interpretation.

The Victim Counselor Confidentiality Act shall not be construed to relieve a victim counselor of a duty to report suspected child abuse or neglect pursuant to Section 32-1-15 NMSA 1978 [repealed], to report any evidence that the victim is about to commit a crime or to limit any testimonial privileges available to any person pursuant to other provisions of law.

31-25-6. Rules.

The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of the Victim Counselor Confidentiality Act.

<p>ADULT PROTECTIVE SERVICES ACT: CHAPTER 27 PUBLIC ASSISTANCE, ARTICLE 7 ADULT PROTECTIVE SERVICES</p>
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27-7-16. Definitions.

As used in the Adult Protective Services Act [27-7-14 NMSA 1978]:

- A. "ability to consent" means an adult's ability to understand and appreciate the nature and consequences of proposed protective services or protective placement, including benefits, risks and alternatives to the proposed services or placement and to make or communicate an informed decision;
- B. "abuse" means:
 - (1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish;
 - (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of an adult; or
 - (3) sexual abuse, including criminal sexual contact, incest and criminal sexual penetration;
- C. "adult" means a person eighteen years of age or older;
- D. "caretaker" means a facility, provider or individual that has assumed the responsibility for the care of an adult;
- E. "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of an incapacitated adult;
- F. "court" means the district court having jurisdiction;

- G. "department" means the aging and long-term services department;
- H. "emergency" means that an adult is living in conditions that present a substantial risk of death or immediate and serious physical harm to the adult or others;
- I. "exploitation" means an unjust or improper use of an adult's money or property for another person's profit or advantage, pecuniary or otherwise;
- J. "facility" means a hospital, nursing home, residential care facility, group home, foster care home, assisted living facility or other facility licensed by the state, but does not include a jail, prison or detention facility;
- K. "guardian" means a person who has qualified to provide for the care, custody or control of an incapacitated adult pursuant to testamentary or court appointment, but excludes one who is a guardian ad litem;
- L. "incapacitated adult" means any adult with a mental, physical or developmental condition that substantially impairs the adult's ability to provide adequately for the adult's own care or protection;;
- M. "multidisciplinary team" means a team composed of diverse professionals who meet periodically to consult on or enhance appropriate community responses to abuse, neglect or exploitation of adults;;
- N. "neglect" means the failure of the caretaker of an adult to provide for the basic needs of the adult, such as clothing, food, shelter, supervision and care for the physical and mental health of that adult; "neglect" includes self-neglect;
- O. "protected adult" means an adult for whom a guardian or conservator has been appointed or other protective order has been made or an abused, neglected or exploited adult who has consented to protective services or protective placement;
- P. "protective placement" means the placement of an adult with a provider or in a facility or the transfer of an adult from one provider or facility to another;
- Q. "protective services" means the services furnished by the department or its delegate, as described in Section 27-7-21 NMSA 1978;
- R. "provider" means a private-residence or health care worker or an unlicensed residential or nonresidential entity that provides personal, custodial or health care;
- S. "self-neglect" means an act or omission by an incapacitated adult that results in the deprivation of essential services or supports necessary to maintain the incapacitated adult's minimal mental, emotional or physical health and safety;
- T. "substantiated" means a determination, based on a preponderance of collected and assessed credible information, that abuse, neglect or exploitation of an incapacitated or protected adult has occurred; and.
- U. "surrogate" means a person legally authorized to act on an adult's behalf.

27-7-30. Duty to report.

A. Any person, including financial institutions, having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited shall immediately report that information to the department.

B. The report required in Subsection A of this section may be made orally or in writing. The report shall include the name, age and address of the adult, the name and address of any other person responsible for the adult's care, the nature and extent of the adult's condition, the basis of the reporter's knowledge and other relevant information.

C. Any person failing or refusing to report, or obstructing or impeding any investigation, as required by Subsection A of this section is guilty of a misdemeanor.

D. The department may assess a civil penalty not to exceed ten thousand dollars (\$10,000) per violation against a person that violates the provisions of Subsection A of this section or obstructs or impedes any investigation as required pursuant to Subsection A of this section. The department may assess and collect the penalty, after notice and an opportunity for hearing before a hearing officer designated by the department to hear the matter, upon a determination that a person violated the provisions of Subsection A of this section or obstructed or impeded any investigation as required pursuant to this section. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum. Additionally, if the violation is against a person covered by the Personnel Act [10-9-1 NMSA 1978], the department shall refer the matter to the agency employing the person for disciplinary action. Any party may appeal a final decision by the department to the court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

27-7-31. Immunity.

Any person making a report pursuant to Section 27-7-30 NMSA 1978, testifying in any judicial proceeding arising from the report or participating in a required evaluation pursuant to the Adult Protective Services Act [27-7-14 NMSA 1978] or any law enforcement officer carrying out his responsibilities under that act or any person providing records or information as required under that act shall be immune from civil or criminal liability on account of that report, testimony or participation, unless the person acted in bad faith or with a malicious purpose.

CHAPTER 30, ARTICLE 47: RESIDENT ABUSE AND NEGLECT

30-47-2. Purpose.

The purpose of the Resident Abuse and Neglect Act [30-47-1 NMSA 1978] is to provide meaningful deterrents and remedies for the abuse, neglect or exploitation of care facility residents and to provide an effective system for reporting instances of abuse, neglect or exploitation.

30-47-3. Definitions.

As used in the Resident Abuse and Neglect Act [30-47-1 NMSA 1978]:

A. "abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including:

- (1) physical contact that harms or is likely to harm a resident of a care facility;
- (2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a resident;
- (3) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;
- (4) medically inappropriate conduct that causes or is likely to cause physical harm to a resident;
- (5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident;
- (6) an unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident;

B. "care facility" means a hospital; skilled nursing facility; intermediate care facility; care facility for the mentally retarded; psychiatric facility; rehabilitation facility; kidney disease treatment center; home health agency; ambulatory surgical or out-patient facility; home for the aged or disabled; group home; adult foster care home; private residence that provides personal care, sheltered care or nursing care for one or more persons; adult day care center; boarding home; adult residential shelter care home; and any other health or resident care related facility or home but does not include a care facility located at or performing services for any correctional facility;

C. "department" means the human services department or its successor, contractor, employee or designee;

D. "great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care;

E. "great physical harm" means physical harm of a type that causes physical loss of a bodily member or organ or functional loss of a bodily member or organ for a prolonged period of time;

F. "neglect" means, subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent:

- (1) failure to provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident;
- (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident; or
- (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a resident;

G. "person" means any individual, corporation, partnership, unincorporated association or other governmental or business entity;

H. "physical harm" means an injury to the body that causes substantial pain or incapacitation; and

I. "resident" means any person who resides in a care facility or who receives treatment from a care facility.

30-47-4. Abuse of a resident; criminal penalties.

A. Whoever commits abuse of a care facility resident that results in no harm to the resident is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978.

B. Whoever commits abuse of a resident that results in physical harm or great psychological harm to the resident is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever commits abuse of a resident that results in great physical harm to the resident is guilty of a third degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Whoever commits abuse of a resident that results in the death of the resident is guilty of a second degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-47-5. Neglect of a resident; criminal penalties.

A. Whoever commits neglect of a resident that results in no harm to the resident is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978.

B. Whoever commits neglect of a resident that results in physical harm or great psychological harm to the resident is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever commits neglect of a resident that results in great physical harm to the resident is guilty of a third degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. Whoever commits neglect of a resident that results in the death of the resident is guilty of a second degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-47-6. Exploitation; criminal penalties.

A. Exploitation of a resident's property consists of the act or process, performed intentionally, knowingly or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

B. Whoever commits exploitation of a resident's property when the value of the property exploited is two hundred fifty dollars (\$250) or less is guilty of a petty misdemeanor.

C. Whoever commits exploitation of a resident's property when the value of the property exploited is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a misdemeanor.

D. Whoever commits exploitation of a resident's property when the value of the property exploited is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony.

E. Whoever commits exploitation of a resident's property when the value of the property exploited is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.

F. Whoever commits exploitation of a resident's property when the value of the property exploited is over twenty thousand dollars (\$20,000) is guilty of a second degree felony.

30-47-9. Reporting requirements; failure to report; crime created; criminal penalty; discrimination or retaliation for filing a report prohibited.

A. Any person paid in whole or part for providing to a resident any treatment, care, good, service or medication who has reasonable cause to believe that the resident has been abused, neglected or exploited shall report the abuse, neglect or exploitation in accordance with the provisions of Section 27-7-30 NMSA 1978.

B. Any person required to make a report pursuant to Subsection A of this section who fails to do so is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

C. In addition to those persons required to report pursuant to Subsection A of this section, any other person shall make a report if the person has reasonable cause to believe that a patient or resident of a facility has been abused, neglected or exploited.

D. Any person making a report pursuant to Subsection C of this section shall not be liable in any civil or criminal action based on the report if it was made in good faith.

E. No facility shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by the Resident Abuse and Neglect Act [30-47-1 NMSA 1978], or testifies, or is about to testify, in any proceeding about the abuse, neglect or exploitation of a resident in that facility. For the purposes of this section, "retaliate" includes transferring to another facility, without just cause, over the objection of the resident or the resident's guardian, any resident who has reported an incident pursuant to this section.

24-10D-1. Short title.

This act [24-10D-1 to 24-10D-5 NMSA 1978] may be cited as the "Sexual Assault Survivors Emergency Care Act".

24-10D-2. Definitions.

As used in the Sexual Assault Survivors Emergency Care Act [24-10D-1 NMSA 1978]:

- A. "department" means the department of health;
- B. "emergency care for sexual assault survivors" means medical examinations, procedures and services provided by a hospital to a sexual assault survivor following an alleged sexual assault;
- C. "emergency contraception" means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse;
- D. "hospital" means a facility providing emergency or urgent health care;
- E. "medically and factually accurate and objective" means verified or supported by the weight of research conducted in compliance with accepted scientific methods and standards; published in peer-reviewed journals; and recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field of obstetrics and gynecology, such as the American college of obstetricians and gynecologists;
- F. "sexual assault" means the crime of criminal sexual penetration; and
- G. "sexual assault survivor" means a female who alleges or is alleged to have been sexually assaulted and who presents as a patient to a hospital.

24-10D-3. Emergency care for sexual assault survivors; standard of care

A. A hospital that provides emergency care for sexual assault survivors shall:

- (1) provide each sexual assault survivor with medically and factually accurate and objective written and oral information about emergency contraception;
- (2) orally and in writing inform each sexual assault survivor of her option to be provided emergency contraception at the hospital; and
- (3) provide emergency contraception at the hospital to each sexual assault survivor who requests it.

B. The provision of emergency contraception pills shall include the initial dose that the sexual assault survivor can take at the hospital as well as the subsequent dose that the sexual assault survivor may self-administer twelve hours following the initial dose.

CHAPTER 31 CRIMINAL PROCEDURE, ARTICLE 18: SENTENCING

31-18-15. Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is 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 criminal sexual penetration, life imprisonment;
- (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, nine years imprisonment;
- (7) for a third degree felony resulting in the death of a human being, six years imprisonment;
- (8) for a third degree felony for a sexual offense against a child, six years imprisonment;
- (9) for a third degree felony, three years imprisonment; or
- (10) for a 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 [31-18-12 NMSA 1978].

C. 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 3121-10 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. 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 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, 31-18-16.1 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 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, ten thousand dollars (\$ 10,000);
- (7) for a third degree felony resulting in the death of a human being, five thousand dollars (\$ 5,000);
- (8) for a third degree felony for a sexual offense against a child, five thousand dollars (\$ 5,000); or
- (9) for a third or fourth degree felony, 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 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.

31-18-15.2. Definitions.

As used in the Criminal Sentencing Act:

- A. "serious youthful offender" means an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder; and
- B. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:
- (1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:
 - (a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

- (b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (c) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;
- (e) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;
- (f) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;
- (g) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
- (h) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (i) robbery, as provided in Section 30-16-2 NMSA 1978;
- (j) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;
- (k) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or
- (l) abuse of a child that results in great bodily harm or death to the child, as provided in Section 30-6-1 NMSA 1978;
- (2) fourteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees is not considered a prior adjudication for the purposes of this paragraph; or
- (3) fourteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978.

31-18-16. Use of firearm; alteration of basic sentence; suspension and deferral limited.

- A. When a separate finding of fact by the court or jury shows that a firearm was used 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 one year, and the sentence imposed by this subsection shall be the first year served and shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by one year.
- B. For a second or subsequent noncapital felony in which a firearm is used, the basic sentence of imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be increased by three years, and the sentence imposed by this subsection shall be the first three years served and shall not be suspended or deferred; provided, 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. If the case is tried before a jury and if a prima facie case has been established showing that a firearm was used in the commission of the 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 used in the commission of the offense, the court shall decide the issue and shall make a separate finding of fact thereon.

31-18-17. Habitual offenders; alteration of basic sentence.

- A. A person convicted of a noncapital felony in this state whether within the Criminal Code [30-1-1 NMSA 1978] or the Controlled Substances Act [30-31-1 NMSA 1978] or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall

be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection.

- B. A person convicted of a noncapital felony in this state whether within the Criminal Code or Controlled Substance Act or not who has incurred two prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by four years. The sentence imposed by this subsection shall not be suspended or deferred.
- C. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and his basic sentence shall be increased by eight years. The sentence imposed by this subsection shall not be suspended or deferred.
- D. As used in this section, "prior felony conviction" means:
 - (1) a conviction, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for a prior felony committed within New Mexico whether within the Criminal Code or not, but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978; or
 - (2) a prior felony, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony, whichever is later, for which the person was convicted other than an offense triable by court martial if:
 - (a) the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico;
 - (b) the offense was punishable, at the time of conviction, by death or a maximum term of imprisonment of more than one year; or
 - (c) the offense would have been classified as a felony in this state at the time of conviction.
- E. As used in this section, "nonviolent felony offense" means application of force, threatened use of force or a deadly weapon was not used by the offender in the commission of the offense.

31-18-23. Three violent felony convictions; mandatory life imprisonment; exception.

- A. When a defendant is convicted of a third violent felony, and each violent felony conviction is part of a separate transaction or occurrence, and at least the third violent felony conviction is in New Mexico, the defendant shall, in addition to the sentence imposed for the third violent conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.
- B. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the third violent felony conviction, pursuant to the provisions of Section 31-18-24 NMSA 1978.
- C. For the purpose of this section, a violent felony conviction incurred by a defendant before the defendant reaches the age of eighteen shall not count as a violent felony conviction.

- D. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent felony for the purposes of the Criminal Sentencing Act if that crime would be considered a violent felony in New Mexico.
- E. As used in the Criminal Sentencing Act:
- (1) "great bodily harm" means an injury to the person that creates a high probability of death or that causes serious disfigurement or that results in permanent loss or impairment of the function of any member or organ of the body; and
 - (2) "violent felony" means:
 - (a) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;
 - (b) shooting at or from a motor vehicle resulting in great bodily harm, as provided in Subsection B of Section 30-3-8 NMSA 1978;
 - (c) kidnapping resulting in great bodily harm inflicted upon the victim by the victim's captor, as provided in Subsection B of Section 30-4-1 NMSA 1978;
 - (d) criminal sexual penetration, as provided in Subsection C or D or Paragraph (5) or (6) of Subsection E of Section 30-9-11 NMSA 1978; and
 - (e) robbery while armed with a deadly weapon resulting in great bodily harm as provided in Section 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA 1978.

31-18-25. Two violent sexual offense convictions; mandatory life imprisonment; exception.

- A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment imposed for the second violent sexual offense conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.
- B. Notwithstanding the provisions of Subsection A of this section, when a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and the victim of each violent sexual offense was less than thirteen years of age at the time of the offense, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall be punished by a sentence of life imprisonment without the possibility of parole.
- C. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the second violent sexual offense conviction, pursuant to the provisions of Section 31-18-26 NMSA 1978.
- D. For the purposes of this section, a violent sexual offense conviction incurred by a defendant before he reaches the age of eighteen shall not count as a violent sexual offense conviction.
- E. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent sexual offense for the purposes of the Criminal Sentencing Act [31-1812 NMSA 1978] if the crime would be considered a violent sexual offense in New Mexico.
- F. As used in the Criminal Sentencing Act, "violent sexual offense" means:
- (1) criminal sexual penetration in the first degree, as provided in Subsection C of Section 30-9-11 NMSA 1978; or
 - (2) criminal sexual penetration in the second degree, as provided in Subsection D of Section 30-9-11 NMSA 1978.

31-18-26. Two violent sexual offense convictions; sentencing procedure.

- A. The court shall conduct a separate sentencing proceeding to determine any controverted question of fact regarding whether the defendant has been convicted of two violent sexual offenses. Either party to the sentencing proceeding may demand a jury sentencing proceeding.
- B. A jury sentencing proceeding shall be conducted as soon as practicable by the original trial judge before the original trial jury. A nonjury sentencing proceeding shall be conducted as soon as practicable by the original trial judge. In the case of a plea of guilty, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge or by the original trial jury, upon demand of the defendant
- C. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments. In a nonjury sentencing proceeding, or upon a plea of guilty when the defendant has not demanded a jury, the judge shall allow arguments and determine the verdict.

31-19-1. Sentencing authority [;] misdemeanors; imprisonment and fines; probation.

- A. Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.
- B. Where the defendant has been convicted of a crime constituting a petty misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than five hundred dollars (\$500) or to both such imprisonment and fine in the discretion of the judge.
- C. When the court has deferred or suspended sentence, it shall order the defendant placed on supervised or unsupervised probation for all or some portion of the period of deferment or suspension.

31-12-11. Court fees; deposit in the domestic violence treatment or intervention fund.

- A. In addition to any other fees collected in the district court, metropolitan court and magistrate court, those courts shall assess and collect from a person convicted of a penalty assessment misdemeanor, traffic violation, petty misdemeanor, misdemeanor or felony offense a "domestic violence offender treatment fee" of five dollars (\$5.00).
- B. Domestic violence offender treatment fees shall be deposited in the domestic violence offender treatment or intervention fund.

31-12-12. Domestic violence offender treatment or intervention fund created; appropriation; program requirements.

- A. The "domestic violence offender treatment or intervention fund" is created in the state treasury. All fees collected pursuant to the provisions of Section 31-12-11 NMSA 1978 shall be transmitted monthly to the department of finance and administration for credit to the domestic violence offender treatment or intervention fund.
- B. Balances in the domestic violence offender treatment or intervention fund are appropriated to the children, youth and families department to provide funds to domestic

violence offender treatment or intervention programs to defray the cost of providing treatment or intervention to domestic violence offenders. Unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

C. Payment out of the domestic violence offender treatment or intervention fund shall be made on vouchers issued and signed by the secretary of children, youth and families upon warrants drawn by the department of finance and administration.

D. In order to be eligible for money from the domestic violence offender treatment or intervention fund, a domestic violence offender treatment or intervention program shall include the following components in its program:

- (1) an initial assessment to determine if a domestic violence offender will benefit from participation in the program;
- (2) a written contract, which must be signed by the domestic violence offender, that sets forth:
 - (a) attendance and participation requirements;
 - (b) consequences for failure to attend or participate in the program; and
 - (c) a confidentiality clause that prohibits disclosure of information revealed during treatment or intervention sessions;
- (3) strategies to hold domestic violence offenders accountable for their violent behavior;
- (4) a requirement that group discussions are limited to members of the same gender;
- (5) an education component that:
 - (a) defines physical, emotional, sexual, economic and verbal abuse and techniques for stopping those forms of abuse; and
 - (b) examines gender roles, socialization, the nature of violence, the dynamics of power and control and the effects of domestic violence on children;
- (6) a requirement that a domestic violence offender not be under the influence of alcohol or drugs during a treatment or intervention session;
- (7) a requirement, except with respect to a domestic violence offender who is a voluntary participant in the program, that the program provide monthly written reports to the presiding judge or the domestic violence offender's probation or parole officer regarding:
 - (a) proof of the domestic violence offender's enrollment in the program
 - (b) progress reports that address the domestic violence offender's attendance, fee payments and compliance with other program requirements; and
 - (c) evaluations of progress made by the domestic violence offender and recommendations as to whether or not to require the offender's further participation in the program; and
- (8) a requirement that the term of the program be at least fifty-two weeks.

E. Counseling for couples shall not be a component of a domestic violence offender treatment or intervention program.

F. As used in this section, "domestic violence offender" means a person:

- (1) convicted for an offense pursuant to the provisions of the Crimes Against Household Members Act [30-3-10 NMSA 1978];
- (2) convicted for violating an order of protection granted by a court pursuant to the provisions of the Family Violence Protection Act [40-13-1 NMSA 1978];
- (3) referred to a domestic violence offender treatment or intervention program by a judge, a domestic violence special commissioner or the parole board; or
- (4) who voluntarily participates in a domestic violence offender treatment or intervention program.

CHAPTER 29, ART. 11: SEX CRIMES PROSECUTION & TREATMENT ACT

29-11-1. Short title.

This act [29-11-1 to 29-11-7 NMSA 1978] may be cited as the "Sexual Crimes Prosecution and Treatment Act".

29-11-2. Purpose.

The purpose of the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978] is to promote effective law enforcement and prosecution of sexual crimes and to provide medical and psychological assistance for victims of such crimes. Implementation of the Sexual Crimes Prosecution and Treatment Act will serve to assist existing community-based victim treatment programs, to provide interagency cooperation, training of law enforcement, criminal justice and medical personnel and to effect proper handling and testing of evidence in sexual crime offenses.

29-11-3. Definitions.

As used in the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978]:

- A. "administrator" means the director of the mental health division of the department of health, or such person or office as the administrator may designate to act in his stead;
- B. "evidence" means that evidence relating to the commission of a sexual crime;
- C. "medical and psychological treatment" includes that medical, mental or emotional treatment provided a victim of a sexual crime. In addition to the improved physical

and emotional condition of a victim, the treatment should result in the improved ability of a victim to make informed and rational choices about serving as a witness in the prosecution of a suspect of a sexual crime; and

- D. "sexual crime" includes any act which may be alleged to be a sexual offense or an attempted sexual offense under the provisions of Sections 30-9-10 through 30-9-16 and 30-103 NMSA 1978.

29-11-4. Fund created; administration.

- A. There is created in the state treasury the "sexual crimes prosecution and treatment fund". Money appropriated to the fund shall be used to carry out the purposes of the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978].
- B. The funds shall be administered by the administrator.

29-11-5. Sexual crimes prosecution and treatment program.

A. The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes; to develop strategies for prevention of such crimes; to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes; and to provide medical and psychological treatment to victims of such crimes. This plan shall include, but not be limited to:

- (1) education and training of law enforcement officers and criminal justice and medical personnel;
- (2) collection, processing and analysis of evidence which facilitates prosecution of suspects of sexual crimes; and
- (3) medical and psychological treatment of victims of such crimes.

B. The comprehensive plan shall be implemented throughout the state, and the administrator may contract with appropriate persons, entities, agencies or community-based programs to provide the services to be rendered pursuant to Subsection A of this section and may pay a reasonable fee for such services.

C. Nothing in this section shall be construed to require criminal prosecution of a suspect of a sexual crime by the victim to whom services are rendered pursuant to the provisions of the Sexual Crimes Prosecution and Treatment Act [29-11-1 NMSA 1978].

D. Training for law enforcement officers in the proper treatment of victims of sexual crimes and collection of evidence and coordination among agencies shall be incorporated in the regular training program for recruits by the New Mexico state police; the basic course taught by the New Mexico law enforcement academy or by other authorized law

enforcement agencies. Already-commissioned officers and sex-crime investigators shall receive advanced training through in-service programs.

29-11-6. Report.

By December 15 of each year, a report shall be filed with the governor and the legislative council by the administrator concerning all aspects of the sexual crimes prosecution and treatment program and specifically the administrator's conclusions and recommendations regarding the effectiveness of the sexual crimes prosecution and treatment program implemented throughout the state.

29-11-7. Free forensic medical exams for victims of sexual crimes.

The administrator shall:

- A. provide free forensic medical exams to victims of sexual crimes;
- B. arrange for victims of sexual crimes to obtain free forensic medical exams; or
- C. reimburse victims of sexual crimes for the cost of forensic medical exams, provided that:
 - (1) the reimbursement covers the full cost of the forensic medical exam, without any deductible requirement or limit on the amount of the reimbursement;
 - (2) the victim of a sexual crime is entitled to apply for reimbursement for a period of one year from the date of the forensic medical exam;
 - (3) reimbursement is provided not later than ninety days after the administrator receives written notification of the expense incurred by the victim for the forensic medical exam; and
 - (4) all victims of sexual crimes, including victims with limited or no English proficiency, are provided with information at the time of the forensic medical exam regarding how to obtain reimbursement for the cost of the exam.

CHAPTER 29, ARTICLE 11A: SEX OFFENDER REGISTRATION & NOTIFICATION ACT (SORNA)

29-11A-1. Short title.

Chapter 29, Article 11A NMSA 1978 may be cited as the "Sex Offender Registration and Notification Act".

29-11A-2. Findings; purpose.

A. The legislature finds that:

- (1) sex offenders pose a significant risk of recidivism; and
- (2) the efforts of law enforcement agencies to protect their communities from sex offenders are impaired by the lack of information available concerning convicted sex offenders who live within the agencies' jurisdictions.

B. The purpose of the Sex Offender Registration and Notification Act is to assist law enforcement agencies' efforts to protect their communities by:

- (1) requiring sex offenders who are residents of New Mexico to register with the county sheriff of the county in which the sex offender resides;
- (2) requiring sex offenders who are residents in other states, but who are employed in New Mexico or who attend school in New Mexico, to register with the county sheriff of the county in which the sex offender works or attends school;
- (3) requiring the establishment of a central registry for sex offenders; and
- (4) providing public access to information regarding certain registered sex offenders.

(1)

29-11A-3. Definitions. (2013)

As used in the Sex Offender Registration and Notification Act:

- A. "business day" means a day that is not a Saturday, a Sunday or a state holiday;
- B. "conviction" means a conviction in any court of competent jurisdiction and includes a deferred sentence, but does not include a conditional discharge;
- C. "department" means the department of public safety;
- D. "institution of higher education" means a:
 - (1) private or public post-secondary educational institution;
 - (2) trade school; or
 - (3) professional school;

E. "habitually lives" means any place where a sex offender lives for at least thirty days in any three-hundred-sixty-five-day period;

F. "out-of-state registrant" means any person who establishes a residence in New Mexico while the person is required to register as a sex offender in another state or territory;

G. "registration requirement" means any requirement set forth in Section 29-11A-4 NMSA 1978 that requires a sex offender to register; provide information, including a DNA sample; renew, revise or change registration information; or provide written notice or disclosure regarding the sex offender's status as a sex offender;

H. "sex offender" means a person who:

(1) is a resident of New Mexico who is convicted of a sex offense pursuant to state, federal, tribal or military law;

(2) changes residence to New Mexico, when that person has been convicted of a sex offense pursuant to state, federal, tribal or military law;

(3) does not have an established residence in New Mexico, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico and who has been convicted of a sex offense pursuant to state, federal, tribal or military law; or

(4) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, tribal or military law, but who is:

(a) employed full time or part time in New Mexico for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, including any employment or vocation, whether financially compensated, volunteered or for the purpose of government or educational benefit; or

(b) enrolled on a full-time or part-time basis in a private or public school or an institution of higher education in New Mexico;

I. "sex offense" means any of the following offenses or their equivalents in any other jurisdiction:

(1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(6) kidnapping, as provided in Section 30-4-1 NMSA 1978, when committed with the intent to inflict a sexual offense;

(7) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when committed with the intent to inflict a sexual offense;

(8) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(9) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(10) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is younger than eighteen years of age;

(11) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978, for convictions occurring on or after July 1, 2013;

(12) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(13) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (11) of this subsection, as provided in Section 30-28-1 NMSA 1978; and

J. "social networking site" means an internet web site that facilitates online social interaction by offering a mechanism for communication with other users, where such users are likely to include a substantial number of minors under the age of sixteen, and allowing users, through the creation of web pages, profiles or other means, to provide information about themselves that is available to the public or to other users.

29-11A-4. Registration of sex offenders; information required; criminal penalty for noncompliance. (2013)

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

B. A sex offender who is a resident of New Mexico shall initially register with the county sheriff no later than five business days after being released from the custody of the corrections department, a municipal or county jail or a federal, military or tribal correctional facility or detention center or being placed on probation or parole. A sex offender who changes residence to New Mexico shall register with the county sheriff no later than five business days after arrival in this state. When a sex offender initially registers with the county sheriff, the sex offender shall provide the following registration information:

- (1) the sex offender's legal name and any other names or aliases that the sex offender is using or has used;
- (2) the sex offender's date of birth;
- (3) the sex offender's social security number;
- (4) the sex offender's current physical and mailing address and the address of every place where the sex offender habitually lives;
- (5) the sex offender's place of employment;
- (6) the sex offense for which the sex offender was convicted;
- (7) the date and place of the sex offense conviction;
- (8) the sex offender's names, email addresses and monikers and other self-identifiers used on social networking sites, to be used only for law enforcement purposes;
- (9) the sex offender's landline and cellular telephone numbers and any other telephone numbers primarily used by the sex offender;
- (10) the sex offender's professional licenses;
- (11) the license plate or other identifier and the description of any vehicle owned or primarily operated by the sex offender, including aircraft and watercraft;
- (12) the name and address of any school or institution of higher education that the sex offender is attending; and
- (13) copies of the sex offender's passport and immigration documents.

C. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff for the county in which the sex offender is working or attending school or an institution of higher education.

D. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff no later than five business days after beginning work or school. When the sex offender registers with the county sheriff, the sex offender shall provide the following registration information:

- (1) the sex offender's legal name and any other names or aliases that the sex offender is using or has used;
- (2) the sex offender's date of birth;
- (3) the sex offender's social security number;
- (4) the sex offender's current physical and mailing address in the sex offender's state of residence and, if applicable, the address of the sex offender's place of lodging in New Mexico while working or attending school or an institution of higher education;
- (5) the sex offender's place of employment or the name of the school the sex offender is attending;
- (6) the sex offense for which the sex offender was convicted; and
- (7) the date and place of the sex offense conviction.

E. When a sex offender registers with a county sheriff, the sheriff shall obtain:

- (1) a photograph of the sex offender and a complete set of the sex offender's fingerprints and a palm print;
- (2) a physical description, including a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and
- (3) a DNA sample for inclusion in the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act [Chapter 29, Article 16 NMSA 1978].

F. When a sex offender who is registered changes any information required under this section, the sex offender shall send written notice of the change on a form approved by the department to the county sheriff no later than five business days after the change occurs.

G. When a sex offender who is registered changes residence to a new county in New Mexico, the sex offender shall register with the county sheriff of the new county no later than five business days after establishing the new residence. The sex offender shall also send written notice of the change in residence to the county sheriff with whom the sex offender last registered no later than five business days after establishing the new residence.

H. When a sex offender who is registered or required to register is homeless or does not have an established residence, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico, the sex offender shall register each address or temporary location with the county sheriff for each county in which the sex offender is living or temporarily located. The sex offender shall register no later than five business days after a change in living arrangements or temporary location.

I. When a sex offender who is registered or required to register is employed, begins a vocation or is enrolled as a student at an institution of higher education in New Mexico, the sex offender shall disclose the sex offender's status as a sex offender in writing to the county sheriff for the county in which the institution of higher education is located, the law enforcement entity responsible for the institution of higher education and the registrar for the institution of higher education no later than five business days after beginning employment, beginning a vocation or enrolling at the institution of higher education. The sex offender shall also send written notice of any change regarding employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar no later than five business days after the change in employment, vocation or enrollment status.

J. When a sex offender who is registered or required to register is employed or is enrolled as a student at a public or private school in New Mexico, the sex offender shall disclose the sex offender's status as a sex offender in writing to the county sheriff for the county in which the school is located and to the principal of the school no later than five business days after beginning

employment or enrolling at the school. The sex offender shall also send written notice of any change regarding employment or enrollment status at a school to the county sheriff and the principal no later than five business days after the change in employment or enrollment status.

K. When a sex offender who is registered or required to register is employed, begins a vocation or volunteers services, regardless of whether the sex offender receives payment or other compensation, the sex offender shall disclose the sex offender's status as a sex offender in writing to the sex offender's employer, supervisor or person similarly situated. The written disclosure shall be made immediately upon beginning employment, vocation or volunteer service.

L. Following initial registration pursuant to the provisions of this section:

(1) a sex offender required to register pursuant to the provisions of Subsection D of Section 29-11A-5 NMSA 1978 shall verify registration information with the county sheriff as provided in Subsection N of this section not less than once in each ninety-day period following the date of the sex offender's initial registration for the remainder of the sex offender's natural life;

(2) a sex offender required to register pursuant to the provisions of Subsection E of Section 29-11A-5 NMSA 1978 shall verify registration information with the county sheriff as provided in Subsection N of this section once every six months for a period of ten years; and

(3) an out-of-state registrant shall verify registration information with the county sheriff for whichever is the longer of:

(a) the duration of time remaining in the registrant's convicting jurisdiction and at the same frequency as required in that state or territory, but no less than once every six months; or

(b) the duration of time remaining that would be required for the equivalent offense in New Mexico.

M. Notwithstanding the provisions of Paragraph (2) of Subsection L of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in Subsection E of Section 29-11A-5 NMSA 1978, the sex offender shall verify registration information with the county sheriff as provided in Subsection N of this section not less than once in each ninety-day period following the date of the sex offender's initial registration for the remainder of the sex offender's natural life.

N. At least fifteen days prior to the time a sex offender is required to verify registration information, the department shall send a verification form to the sex offender, by first class mail, containing the sex offender's current registration information and a notice of the date that the sex offender's next verification is due. The sex offender shall appear in person at a location designated by the department to verify the information contained on the form, to change the information as necessary and to sign a statement under oath that the information is true and correct. The department may photograph the sex offender at that time if the sex offender's appearance is significantly different from the photograph already contained in the sex offender's file. If a sex offender does not receive a verification form before the time that the sex offender is required to verify registration pursuant to Subsection L of this section, the sex offender shall appear at a location designated by the department to verify registration information as required by this section.

O. The department shall establish a secure system that will permit a sex offender to notify the department electronically of any change in registration information.

P. A sex offender who willfully or knowingly fails to comply with the registration or verification requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly fails to comply with the registration or verification requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a

third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful failure to comply with any registration or verification requirement set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

Q. A sex offender who willfully or knowingly provides false information when complying with the registration or verification requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly provides false information when complying with the registration or verification requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful providing by a sex offender of false information with respect to the registration or verification requirements set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

29-11A-4.1. Procedures when a sex offender moves from New Mexico to another state.

A. If a sex offender intends to move from New Mexico to another state, no later than thirty days prior to moving to the other state, he shall:

- (1) notify the county sheriff of the county he resides in that he is moving to the other state; and
- (2) provide the county sheriff with a written notice that identifies the state to which the sex offender is moving.

B. Within five days of receiving a sex offender's written notice of intent to move to another state, the county sheriff shall transmit that information to the department of public safety. Within five days of receiving that information from a county sheriff, the department shall contact the state agency responsible for registering sex offenders in the state to which the sex offender is moving. The department shall provide that state agency with registration information regarding the sex offender. The department shall also obtain information regarding registration requirements for sex offenders in the state to which the sex offender is moving. The department shall provide the sex offender with written notification of the registration requirements in the state to which the sex offender is moving.

C. A sex offender who willfully fails to comply with the requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

29-11A-5. Local registry; central registry; administration by department of public safety; participation in the national sex offender registry; rules.

A. A county sheriff shall maintain a local registry of sex offenders in the sheriff's jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978].

B. The county sheriff shall forward:

- (1) registration information obtained from sex offenders to the department of public safety. The initial registration information and any new registration information subsequently obtained from a sex offender shall be forwarded by the county sheriff no later

than ten working days after the information is obtained from a sex offender. If the department of public safety receives information regarding a sex offender from a governmental entity other than a county sheriff, the department shall send that information to the sheriff for the county in which the sex offender resides; and

(2) samples of DNA obtained from sex offenders to the administrative center for the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act. [29-16-1 NMSA 1978].

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

D. The department of public safety shall retain registration information regarding a sex offender convicted for any of the following sex offenses for the entirety of the sex offender's natural life:

(1) criminal sexual penetration in the first, second or third degree, as provided in Section 30-

9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978; (4) kidnapping, as provided in Section 30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim; or

(5) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978; or

(6) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.

E. The department of public safety shall retain registration information regarding a sex offender convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(3) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim; (4) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(5) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(6) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;

(7) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(8) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (6) of this subsection, as provided in Section 30-28-1 NMSA 1978.

F. Notwithstanding the provisions of Subsection E of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in that subsection, the

department of public safety shall retain information regarding the sex offender for the entirety of the sex offender's natural life.

G. The department of public safety shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act. Rules necessary for the collection of DNA samples and the administration and operation of the sex offender DNA identification system shall be adopted by the DNA identification system oversight committee pursuant to the provisions of the DNA Identification Act.

29-11A-5.1. Public access to information regarding certain registered sex offenders; active community notification; internet web site. (2013)

A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

- (1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;
- (2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;
- (3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;
- (4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or
- (5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

B. A person who wants to obtain registration information regarding sex offenders described in Subsection A of this section may request that information from the:

- (1) sheriff for the county in which the sex offenders reside;
- (2) chief law enforcement officer for the municipality in which the sex offenders reside;
- (3) district attorney for the judicial district in which the sex offenders reside; or
- (4) secretary of public safety.

C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number and DNA information, within a reasonable period of time, and no later than seven days after receiving the request.

D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number and DNA information.

E. The department shall establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section, except that the department shall not provide registration information on the internet web site regarding a sex offender who was less than eighteen years of age when the sex offender committed the sex offense for which the sex offender was convicted as a youthful offender, as provided in Section 32A-2-3 NMSA 1978, unless at the time of sentencing, the court made a finding that the sex offender is not amenable to treatment and is a danger to the community. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social security number or DNA information or the identity of a sex offender's place of employment, unless the sex offender's employment requires the sex offender to have direct contact with children. The internet web site shall provide only the following registration information:

- (1) the sex offender's legal name and any other names or aliases that the sex offender is using or has used;
- (2) the sex offender's current address and the address of every place where the sex offender habitually lives;
- (3) if the sex offender's employment involves direct contact with children, the sex offender's place of employment;
- (4) the sex offenses for which the sex offender has been convicted;
- (5) a photograph of the sex offender;
- (6) the sex offender's date of birth;
- (7) a physical description, including a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and
- (8) a link that will pinpoint the location of the sex offender's place of employment if the sex offender has direct contact with children.

29-11A-7. Notice to sex offenders of duty to register.

A. A court shall provide a sex offender convicted in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978]. The written notice shall be included in judgment and sentence forms provided to the sex offender. The written notice shall inform the sex offender that he is required to:

- (1) register with the county sheriff for the county in which the sex offender will reside or if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and

- (9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible court official, designated by the chief judge for that judicial district, has explained the written notice to the sex offender.

B. The corrections department, a municipal or county jail or a detention center at the time of release of a sex offender in its custody, shall provide a written notice to the sex offender of his duty to register, pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall inform the sex offender that he is required to:

- (1) register with the county sheriff for the county in which the sex offender will reside or, if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;
- (8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and
- (9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible corrections department official, designated by the secretary of corrections, or a responsible municipal or county jail official or detention center official has explained the written notice to the sex offender.

C. A court, the corrections department, a municipal or county jail or a detention center shall also provide written notification regarding a sex offender's release to the sheriff of the county in which the sex offender is released and to the department of public safety.

D. The department of public safety, at the time it is notified by officials from another state that a sex offender will be establishing residence in New Mexico, shall provide written notice to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act .

29-11A-8. Immunity.

Nothing in the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] creates a cause of action on behalf of a person against a public employer, public employee or public agency responsible for enforcement of the provisions of that act, so long as the public employer, public employee or public agency complies with the provisions of that act.

29-11A-9. State Preemption; Saving Clause.

A. The state preempts the field of sex offender registration and notification. Cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or continuing in effect any ordinance, rule, regulation, resolution or statute on sex offender registration and notification.

B. After January 18, 2005, cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or amending an ordinance, rule, regulation or resolution on sex offender registration and notification. An ordinance in effect on January 18, 2005 shall continue in force and effect until repealed; provided that the ordinance shall only continue in force and effect with regard to sex offenders who are required to register pursuant to the provisions of the ordinance, but who are not required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978]. All other sex offenders shall register pursuant to the provisions of the Sex Offender Registration and Notification Act.

29-11A-10. Severability.

If any part or application of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] is held invalid, the remainder of that act and its application to other situations or persons shall not be affected.

Section 14. Applicability.

The provisions of this 2005 version of the Sex Offender Registration and Notification Act are applicable to:

- A. A person convicted of a sex offense on or after July 1, 2005; and
- B. A person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

Section 15. Effective Date.

The effective date of the provisions of this act is July 1, 2005.

CHAPTER 29 ARTICLE 16: DNA IDENTIFICATION

29-16-1. Short title.

Chapter 29, Article 16 NMSA 1978 may be cited as the "DNA Identification Act".

29-16-2. Purpose of Act.

The purpose of the DNA Identification Act is to:

- A. establish a DNA Identification system for covered offenders and persons required to provide a DNA sample pursuant to the provisions of Section 1 of this 2006 act [29-3-10 NMSA 1978];
- B. facilitate the use of DNA records by local, state and federal law enforcement agencies in the:
 - (1) identification, detection or exclusion of persons in connection with criminal investigations; and
 - (2) registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978];
- C. establish a missing persons DNA identification system consisting of the following DNA indexes:
 - (1) unidentified persons;
 - (2) unidentified human remains; and
 - (3) relatives of, or known reference samples from, missing persons; and
- D. facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification and location of missing and unidentified persons or human remains.

29-16-3. Definitions.

As used in the DNA Identification Act [29-16-1 NMSA 1978]:

- A. "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system;
- B. "DNA oversight committee" means the DNA identification system oversight committee;
- C. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;
- D. "covered offender" means any person convicted of a felony offense as an adult under the Criminal Code [30-1-1 NMSA 1978], the Motor Vehicle Code [66-1-1 NMSA 1978] or

the constitution of New Mexico or convicted as adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code [32A-1-1 NMSA 1978] or a sex offender required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978];

- E. "department" means the department of public safety;
- F. "DNA" means deoxyribonucleic acid as the basis of human heredity;
- G. "DNA identification system" means the DNA identification system established pursuant to the DNA Identification Act;
- H. "DNA records" means the results of DNA testing and related information;
- I. "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples;
- J. "fund" means the DNA identification system fund;
- K. "missing persons DNA identification system" means the missing persons DNA identification system established by the DNA Identification Act;
- L. "sample" means a sample of biological material sufficient for DNA testing; and
- M. "sex offender DNA identification system" means the sex offender DNA identification system established by the DNA Identification Act.

30-3-10. Short Title.

This act (30-3-10 to 30-3-18 NMSA 1978) may be cited as the “Crimes Against Household Members Act”.

30-3-11. Definitions.

A. As used in the Crimes Against Household Members Act (30-3-10 to 30-3-18 NMSA 1978), “household member” means spouse, former spouse, parent, present or former step-parent, present or former parent in-law, grandparent, grandparent-in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of the Crimes Against Household Members Act;

B. “continuing personal relationship” means a dating or intimate relationship.

30-3-12. Assault against a household member.

- A. Assault against a household member consists of:
- (1) an attempt to commit a battery against a household member; or
 - (2) any unlawful act, threat or menacing conduct that causes a household member to reasonably believe that he is in danger of receiving an immediate battery.
- B. Whoever commits assault against a household member is guilty of a petty misdemeanor.

30-3-13. Aggravated assault against a household member.

- A. Aggravated assault against a household member consists of:
- (1) unlawfully assaulting or striking at a household member with a deadly weapon;
or
 - (2) willfully and intentionally assaulting a household member with intent to commit any felony.
- B. Whoever commits aggravated assault against a household member is guilty of a fourth degree felony.

30-3-14. Assault against a household member with intent to commit a violent felony.

- A. Assault against a household member with intent to commit a violent felony consists of any person assaulting a household member with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery, kidnapping, false imprisonment or burglary.
- B. Whoever commits assault against a household member with intent to commit a violent felony is guilty of a third degree felony.

30-3-15. Battery against a household member.

- A. Battery against a household member consists of the unlawful, intentional touching or application of force to the person of a household member, when done in a rude, insolent or angry manner.
- B. Whoever commits battery against a household member is guilty of a petty misdemeanor.
- C. Upon conviction pursuant to this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- D. Notwithstanding any provision to the contrary, if a sentence imposed pursuant to this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

30-3-16. Aggravated battery against a household member.

- A. Aggravated battery against a household member consists of the unlawful touching or application of force to the person of a household member with intent to injure that person or another.
- B. Whoever commits aggravated battery against a household member by inflicting an injury to that person that is not likely to cause death or great bodily harm, but that does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.
- C. Whoever commits aggravated battery against a household member by inflicting great bodily harm or doing so with a deadly weapon or doing so in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony.
- D. Upon conviction pursuant to Subsection B of this section, an offender shall be required to participate in and complete a domestic violence offender treatment or intervention program approved by the children, youth and families department pursuant to rules promulgated by the department that define the criteria for such programs.
- E. Notwithstanding any provision to the contrary, if a sentence imposed pursuant to the provisions of Subsection B of this section is suspended or deferred in whole or in part, the period of probation may extend beyond three hundred sixty-four days but may not exceed two years. If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed and credit shall not be given for time served by the offender on probation; provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.

30-3-17. Multiple convictions of battery or aggravated battery.

- A. Whoever commits three offenses of battery against a household member as provided in Section 30-3-15 MNSA 1978 or aggravated battery against a household member as provided in Subsection B of Section 30-13-16 NMSA 1978, or any combination thereof, when the household member is a spouse, a former spouse, a co-parent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a fourth degree felony.
- B. Whoever commits four or more offenses of battery against a household member as provided in Section 30-3-15 NMSA 1978 or aggravated battery against a household member as provided in Subsection B of Section 30-3-16 NMSA 1978, or any combination thereof, when the household member is a spouse, a former spouse, a coparent of a child or a person with whom the offender has had a continuing personal relationship is guilty of a third degree felony.
- C. For the purpose of determining the number of offenses committed, each offense must have been committed after conviction for the preceding offense.

30-3-18. Criminal damage to property of household member; deprivation of property of household member.

- A. Criminal damage to the property of a household member consists of intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member.
- B. Whoever commits criminal damage to the property of a household member is guilty of a misdemeanor, except that when the damage to the household member's interest in the property amounts to more than one thousand dollars (\$1,000), the offender is guilty of a fourth degree felony.
- C. Deprivation of the property of a household member consists of intentionally depriving a household member of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member.
- D. Whoever commits deprivation of the property of a household member is guilty of a misdemeanor.

30-3A-2. Harassment; penalties.

- A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.
- B. Whoever commits harassment is guilty of a misdemeanor.

30-3A-3. Stalking; penalties

- A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.
- B. As used in this section:
- (1) “lawful authority” means within the scope of lawful employment or constitutionally protected activity; and
 - (2) “pattern of conduct” means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.
- C. Whoever commits stalking is guilty of a misdemeanor. Upon a second or subsequent conviction, the offender is guilty of a fourth degree felony.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person’s own expense or a domestic violence offender treatment or intervention program.

30-3A-3.1. Aggravated stalking; penalties.

- A. Aggravated stalking consists of stalking perpetrated by a person:
- (1) who knowingly violates a permanent or temporary order of protection issued by a court, except that mutual violations of such orders may constitute a defense to aggravated stalking;
 - (2) in violation of a court order setting conditions of release and bond;
 - (3) when the person is in possession of a deadly weapon; or
 - (4) when the victim is less than sixteen years of age.
- B. Whoever commits aggravated stalking is guilty of a fourth degree felony. Upon a second or subsequent conviction, the offender is guilty of a third degree felony.
- C. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of aggravated stalking to participate in and complete a program of professional counseling at his own expense.

30-3A-4. Exceptions.

The provisions of the [Harassment and] Stalking Act [30-3A-1 NMSA 1978] do not apply to:

- A. picketing or public demonstrations that are lawful or that arise out of a bona fide labor dispute; or
- B. a peace officer in the performance of his duties.

30-12-1. Interference with communications; exception.

Interference with communications consists of knowingly and without lawful authority:

- A. displacing, removing, injuring or destroying any radio station, television tower, antenna or cable, telegraph or telephone line, wire, cable, pole or conduit belonging to another, or the material or property appurtenant thereto;
- B. cutting, breaking, tapping or making any connection with any telegraph or telephone line, wire, cable or instrument belonging to or in the lawful possession or control of another, without the consent of such person owning, possessing or controlling such property;
- C. reading, interrupting, taking or copying any message, communication or report intended for another by telegraph or telephone without the consent of a sender or intended recipient thereof;
- D. preventing, obstructing or delaying the sending, transmitting, conveying or delivering in this state of any message, communication or report by or through telegraph or telephone; or
- E. using any apparatus to do or cause to be done any of the acts hereinbefore mentioned or to aid, agree with, comply or conspire with any person to do or permit or cause to be done any of the acts hereinbefore mentioned.

Whoever commits interference with communications is guilty of a misdemeanor, unless such interference with communications is done:

- (1) under a court order as provided in Sections 30-12-2 through 30-12-11 NMSA 1978; or
- (2) by an operator of a switchboard or an officer, employee or agent of any communication common carrier in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his services or to the protection of rights or property of the carrier of such communication; or
- (3) by a person acting under color of law in the investigation of a crime, where such person is a party to the communication, or one of the parties to the communication has given prior consent to such interception, monitoring or recording of such communication.

30-20-12. Use of telephone to terrify, intimidate, threaten, harass, annoy or offend; penalty.

- A. It shall be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any obscene, lewd or profane language or suggest any lewd, criminal or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person. It shall also be unlawful for any person to attempt by telephone to extort money or other thing of value from any other person, or to otherwise disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any other person at the place where the telephone call or calls were received, or to maliciously make a telephone call, whether or not conversation ensues, with intent to annoy or disturb another, or to disrupt the telecommunications of another.
- B. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in Subsection A shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.
- C. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.

D. Whosoever violates this section is guilty of a misdemeanor, unless such person has previously been convicted of such offense or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, in which case such person is guilty of a fourth degree felony.

31-1-7. Arrest without warrant; liability.

- A. Notwithstanding the provisions of any other law to the contrary, a peace officer may arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member. As used in this section, "household member" means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or co-parent of a child, or a person with whom the victim has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.
- B. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section, provided he acts in good faith and without malice.
- C. Whether or not an arrest is made pursuant to this section, a peace officer may remain with the victim and assist the victim in getting to a shelter or receiving proper medical attention.

CHAPTER 40, ARTICLE 13: FAMILY VIOLENCE PROTECTION ACT

40-13-2. Definitions.

As used in the Family Violence Protection Act:

- A. "continuing personal relationship" means a dating or intimate relationship;

B. "co-parents" means persons who have a child in common, regardless of whether they have been married or have lived together at any time;

C. "court" means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;

D. "domestic abuse":

(1) means an incident of stalking or sexual assault whether committed by a household member or not;

(2) means an incident by a household member against another household member consisting of or resulting in:

(a) physical harm;

(b) severe emotional distress;

(c) bodily injury or assault;

(d) a threat causing imminent fear of bodily injury by any household member;

(e) criminal trespass;

(f) criminal damage to property;

(g) repeatedly driving by a residence or work place;

(h) telephone harassment;

(i) harassment; or

(j) harm or threatened harm to children as set forth in this paragraph; and

(3) does not mean the use of force in self-defense or the defense of another;

E. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section;

F. "mutual order of protection" means an order of protection that includes provisions that protect both parties;

G. "order of protection" means an injunction or a restraining or other court order granted for the protection of a victim of domestic abuse;

H. "protected party" means a person protected by an order of protection; and

I. "restrained party" means a person who is restrained by an order of protection.

40-13-3. Petition for order of protection; contents; standard forms.

A. A victim of domestic abuse may petition the court under the Family Violence Protection Act [40-13-1 NMSA 1978] for an order of protection.

B. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.

C. The petition shall state whether any other domestic action is pending between the petitioner and the respondent.

- D. If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from the Family Violence Protection Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.
- E. Any action brought under the Family Violence Protection Act is independent of any proceeding for annulment, separation or divorce between the petitioner and the parties.
- F. Remedies granted pursuant to the Family Violence Protection Act are in addition to and shall not limit other civil or criminal remedies available to the parties.
- G. Standard simplified petition forms with instructions for completion shall be available to all parties. Law enforcement agencies shall keep such forms and make them available upon request to alleged victims of domestic abuse.

40-13-3.1. Forbearance of costs associated with domestic abuse offenses.

An alleged victim of domestic abuse shall not be required to bear the cost of:

- A. filing a criminal charge against an alleged abusing household member;
 - (1) the prosecution of a misdemeanor or felony offense arising out of an incident of domestic abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;
 - (2) the filing, the issuance or service of a warrant;
 - (3) the filing, issuance or service of a witness subpoena;
 - (4) the filing, issuance or service of a petition for an order of protection;
 - (5) the filing, issuance or service of an order of protection; or
 - (6) obtaining law enforcement reports relating to the alleged abuse or pattern of abuse.
- B. No witness fee shall be charged where prohibited by federal law.

40-13-3.2. Ex parte emergency orders of protection.

- A. The district court may issue an ex parte written emergency order of protection when a law enforcement officer states to the court in person, by telephone or via facsimile and files a sworn written statement, setting forth the need for an emergency order of protection, and the court finds reasonable grounds to believe that the alleged victim or the alleged victim's child is in immediate danger of domestic abuse. The written statement shall include the location and telephone number of the alleged perpetrator, if known.
- B. A law enforcement officer who receives an emergency order of protection, whether in writing, by telephone or by facsimile transmission, from the court shall:

- (1) if necessary, pursuant to the judge's oral approval, write and sign the order on an approved form;
 - (2) if possible, immediately serve a signed copy of the order on the restrained party and complete the appropriate affidavit of service;
 - (3) immediately provide the protected party with a signed copy of the order; and
 - (4) provide the original order to the court by the close of business on the next judicial day.
- C. The court may grant the following relief in an emergency order for protection upon a probable cause finding that domestic abuse has occurred:
- (1) enjoin the restrained party from threatening to commit or committing acts of domestic abuse against the protected party or any designated household members;
 - (2) enjoin the restrained party from any contact with the protected party, including harassing, telephoning, contacting or otherwise communicating with the protected party; and
 - (3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary.
- D. A district judge shall be available as determined by each judicial district to hear petitions for emergency orders of protection.
- E. An emergency order of protection expires seventy-two hours after issuance or at the end of the next judicial day, whichever time is latest. The expiration date shall be clearly stated on the emergency order of protection.
- F. A person may appeal the issuance of an emergency order of protection to the court that issued the order. An appeal may be heard as soon as the judicial day following the issuance of the order.
- G. Upon a proper petition, a district court may issue a temporary order of protection that is based upon the same incident of domestic abuse that was alleged in an emergency order of protection.
- H. Emergency orders of protection are enforceable in the same manner as other orders of protection that are issued pursuant to the provisions of the Family Violence Protection Act [40-13-1 NMSA 1978].

40-13-4. Temporary order of protection; hearing; dismissal.

- A. Upon the filing of a petition for order of protection, the court shall:
1. immediately grant an ex parte temporary order of protection without bond, if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that an act of domestic abuse has occurred;
 2. cause the temporary order of protection together with notice of hearing to be served immediately on the alleged perpetrator of the domestic abuse; and

3. within ten days after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or
 4. if an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; provided if notice of hearing cannot be served within seventy-two hours, the temporary order of protection shall be automatically extended for ten days.
- B. If the court grants a temporary order of protection, it may award temporary custody and visitation of any children involved when appropriate.
- C. Except for petitions alleging stalking or sexual assault, if the court finds that the alleged perpetrator is not a household member, the court shall dismiss the petition.

40-13-5. Order of protection; contents; remedies; title to property not affected; mutual order of protection.

A. Upon finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection ordering the restrained party to refrain from abusing the protected party or any other household member. The court shall specifically describe the acts the court has ordered the restrained party to do or refrain from doing. As a part of any order of protection, the court may:

- (1) grant sole possession of the residence or household to the protected party during the period the order of protection is effective or order the restrained party to provide temporary suitable alternative housing for the protected party and any children to whom the restrained party owes a legal obligation of support;
- (2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected party and the children;
- (3) order that the restrained party shall not initiate contact with the protected party;
- (4) restrain a party from transferring, concealing, encumbering or otherwise disposing of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the restrained party;
- (5) order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;
- (6) order the restrained party to participate in, at the restrained party's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and
- (7) order other injunctive relief as the court deems necessary for the protection of a party, including orders to law enforcement agencies as provided by this section.

B. The order of protection shall contain a notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both.

C. If the order of protection supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition

for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

D. A mutual order of protection shall be issued only in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

E. No order issued under the Family Violence Protection Act shall affect title to any property or allow a party to transfer, conceal, encumber or otherwise dispose of another party's property or the joint or community property of the parties.

F. Either party may request a review hearing to amend an order of protection. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances.

G. An order of protection shall not be issued unless a petition or a counter petition has been filed.

40-13-6. Service of order; duration; penalty; remedies not exclusive. (2013)

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court, and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued. The order shall be filed and served without cost to the protected party.

B. A local law enforcement agency receiving an order of protection from the clerk of the court that was issued under the Family Violence Protection Act shall have the order entered in the national crime information center's order of protection file within seventy-two hours of receipt. This does not include temporary orders of protection entered pursuant to the provisions of Section 40-13-4 NMSA 1978.

C. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the protected party for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party or until the court approves a subsequent consent agreement entered into by the parties.

D. A peace officer may arrest without a warrant and take into custody a restrained party whom the peace officer has probable cause to believe has violated an order of protection that is issued pursuant to the Family Violence Protection Act or entitled to full faith and credit.

E. A restrained party convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and shall order the person convicted to participate in and complete a program of professional counseling, at the person's own expense, if possible.

G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic abuse when probable cause exists.

H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the protected party or the state.

40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an alleged perpetrator is released from detention; statement in judgment and sentence document.

A. A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

B. A local law enforcement officer responding to the request for assistance shall be required to take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

(1) advising the victim of the remedies available under the Family Violence Protection Act; the right to file a written statement, a criminal complaint and a request for an arrest warrant; and the availability of domestic violence shelters, medical care, counseling and other services;

(2) upon the request of the victim, providing or arranging for transportation of the victim to a medical facility or place of shelter;

(3) upon the request of the victim, accompanying the victim to the victim's residence to obtain the victim's clothing and personal effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;

(4) upon the request of the victim, assist in placing the victim in possession of the dwelling or premises or otherwise assist in execution, enforcement or service of an order of protection;

(5) arresting the alleged perpetrator when appropriate and including a written statement in the attendant police report to indicate that the arrest of the alleged perpetrator was, in whole or in part, premised upon probable cause to believe that the alleged perpetrator committed domestic abuse against the victim and, when appropriate, indicate that the party arrested was the predominant aggressor; and

(6) advising the victim when appropriate of the procedure for initiating proceedings under the Family Violence Protection Act or criminal proceedings and of the importance of preserving evidence.

C. The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the alleged perpetrator is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the alleged perpetrator is released from custody.

D. Any law enforcement officer responding to a request for assistance under the Family Violence Protection Act is immune from civil liability to the extent allowed by law. Any jail, detention center or law enforcement agency that makes a reasonable attempt to provide notification that an alleged perpetrator is released from custody is immune from civil liability to the extent allowed by law.

E. A statement shall be included in a judgment and sentence document to indicate when a conviction results from the commission of domestic abuse.

27-2B-5. Work requirements; work participation rates. (victim of domestic abuse exceptions E-(4).)

E. The following qualify as temporary alternative **work** activities that the department may establish for no longer than twelve weeks except as otherwise provided:

- 1) participating in parenting classes, money management classes or life skills training;
- 2) participating in a certified alcohol or drug addiction program;
- 3) in the case of a homeless benefit group, finding a home;
- 4) in the case of a participant who is a victim of domestic violence residing in a domestic violence shelter or receiving counseling or treatment or participating in criminal justice activities directed at prosecuting the domestic violence perpetrator, for no longer than twenty-four weeks; and

27-2B-6. Durational Limits

A. Pursuant to the federal act, on or after July 1, 1997 a participant may receive federally funded cash assistance and services for up to sixty months.

B. During a participant's fourth, sixth and eighth semi-annual reviews, the department shall examine the participant's progress to determine if the participant has successfully completed an educational or training program or increased the number of hours he is working as required by the federal act. The department may refer the participant to alternative work activities or provide additional services to address possible barriers to employment facing the participant.

C. Up to twenty percent of the population of participants may be exempted from the sixty-month durational limit set out in Subsection A of this section because of hardship or because those participants are battered or subject to extreme cruelty.

D. For the purposes of this section, a participant has been battered or subjected to extreme cruelty if he can demonstrate by reliable medical, psychological or mental reports, court orders or police reports that he has been subjected to and currently is affected by:

- (1) physical acts that result in physical injury;
- (2) sexual abuse;
- (3) being forced to engage in nonconsensual sexual acts or activities;
- (4) threats or attempts at physical or sexual abuse;
- (5) mental abuse; or
- (6) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

E. For the purposes of this section, a hardship exception applies to a person who demonstrates through reliable medical, psychological or mental reports, social security administration records, court orders, police reports or department records that he is a person:

- (1) who is barred from engaging in a work activity because he is temporarily or completely disabled;
- (2) who is the sole provider of home care to an ill or disabled family member;
- (3) whose ability to be gainfully employed is affected by domestic violence;
- (4) whose application for supplemental security income is pending in the application or appeals process and who:
 - (a) meets the criteria of Paragraph (1) of this subsection; or
 - (b) was granted a waiver from the work requirement pursuant to Paragraph (1) of Subsection I of Section 27-2B-5 NMSA 1978 in the last twenty-four months; or
- (5) who otherwise qualifies for a hardship exception as defined by the department.

F. Pursuant to the federal act, the department shall not count a month of receipt of cash assistance or services toward the sixty-month durational limit if during the time of receipt the participant:

- (1) was a minor and was not the head of a household or married to the head of a household; or
- (2) lived in Indian country, as defined in the federal act, if the most reliable data available with respect to the month indicate that at least fifty percent of the adults living in Indian country or in the village were not employed.

GENERAL VIOLENT & PROPERTY CRIMES STATUTES RELATED TO DOMESTIC VIOLENCE CASES: MURDER, ASSAULT, BATTERY, AGGRAVATED ASSAULT, AGGRAVATED BATTERY, INJURY TO PREGNANT WOMAN, ARSON, ROBBERY, BURGLARY, CRIMINAL TRESPASS, CRIMINAL DAMAGE TO PROPERTY, CRUELTY TO ANIMALS, MISCELLANEOUS

30-2-1. Murder.

A. Murder in the first degree is the killing of one human being by another without lawful justification or excuse, by any of the means with which death may be caused:

- (1) by any kind of willful, deliberate and premeditated killing;
- (2) in the commission of or attempt to commit any felony; or

(3) by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.

Whoever commits murder in the first degree is guilty of a capital felony.

B. Unless he is acting upon sufficient provocation, upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.

Murder in the second degree is a lesser included offense of the crime of murder in the first degree.

Whoever commits murder in the second degree is guilty of a second degree felony resulting in the death of a human being.

30-2-3. Manslaughter.

Manslaughter is the unlawful killing of a human being without malice.

A. Voluntary manslaughter consists of manslaughter committed upon a sudden quarrel or in the heat of passion.

Whoever commits voluntary manslaughter is guilty of a third degree felony resulting in the death of a human being.

B. Involuntary manslaughter consists of manslaughter committed in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection.

Whoever commits involuntary manslaughter is guilty of a fourth degree felony.

30-2-5. Excusable homicide.

Homicide is excusable in the following cases:

A. when committed by accident or misfortune in doing any lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent; or

B. when committed by accident or misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, if no undue advantage is taken, nor any dangerous weapon used and the killing is not done in a cruel or unusual manner.

30-2-7. Justifiable homicide by citizen.

Homicide is justifiable when committed by any person in any of the following cases:

A. when committed in the necessary defense of his life, his family or his property, or in necessarily defending against any unlawful action directed against himself, his wife or family;

B. when committed in the lawful defense of himself or of another and when there is a reasonable ground to believe a design exists to commit a felony or to do some great personal injury against such person or another, and there is imminent danger that the design will be accomplished;
or

C. when necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed in his presence, or in lawfully suppressing any riot, or in necessarily and lawfully keeping and preserving the peace.

30-3-1. Assault.

Assault consists of either:

- A. an attempt to commit a battery upon the person of another;
- B. any unlawful act, threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery; or
- C. The use of insulting language toward another impugning his honor, delicacy or reputation.

Whoever commits assault is guilty of a petty misdemeanor.

30-3-2. Aggravated assault.

Aggravated assault consists of either:

- A. unlawfully assaulting or striking at another with a deadly weapon;
- B. committing assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face, head or body, or while disguised in any manner, so as to conceal identity; or
- C. willfully and intentionally assaulting another with intent to commit any felony.

Whoever commits aggravated assault is guilty of a fourth degree felony.

30-3-3. Assault with intent to commit a violent felony.

Assault with intent to commit a violent felony consists of any person assaulting another with intent to kill or commit any murder, mayhem, criminal sexual penetration in the first, second or third degree, robbery or burglary.

Whoever commits assault with intent to commit a violent felony is guilty of a third degree felony.

30-3-4. Battery.

Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

Whoever commits battery is guilty of a petty misdemeanor.

30-3-5. Aggravated battery.

- A. Aggravated battery consists of the unlawful touching or application of force to the person of another with intent to injure that person or another.
- B. Whoever commits aggravated battery, inflicting an injury to the person which is not likely to cause death or great bodily harm, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, is guilty of a misdemeanor.
- C. Whoever commits aggravated battery inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted is guilty of a third degree felony.

30-3-6. Reasonable detention; assault, battery, public affray or criminal damage to property.

- A. As used in this section:
 - (1) "licensed premises" means all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of establishments licensed to sell or serve alcoholic liquors;
 - (2) "proprietor" means the owner of the licensed premises or his manager or his designated representative; and
 - (3) "operator" means the owner or the manager of any establishment or premises open to the public.
- B. Any law enforcement officer may arrest without warrant any persons he has probable cause for believing have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 NMSA 1978 or public affray or criminal damage to property. Any proprietor or operator who causes such an arrest shall not be criminally or civilly liable if he has actual knowledge, communicated truthfully and in good faith to the law enforcement officer, that the persons so arrested have committed the crime of assault or battery as defined in Sections 30-3-1 through 30-3-5 NMSA 1978 or public affray or criminal damage to property.

30-3-7. Injury to pregnant woman.

- A. Injury to [a] pregnant woman consists of a person other than the woman injuring a pregnant woman in the commission of a felony causing her to suffer a miscarriage or stillbirth as a result of that injury.
- B. As used in this section:
 - (1) "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth and which is not an induced abortion, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception; and
 - (2) "stillbirth" means the death of a fetus prior to the complete expulsion or extraction from its mother, irrespective of the duration of pregnancy and which is not an induced abortion; and death is manifested by the fact that after the expulsion or extraction the fetus does not breathe spontaneously or show any other evidence of life such as heart beat, pulsation of the umbilical cord or definite movement of voluntary muscles.
- C. Whoever commits injury to [a] pregnant woman is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

30-3-8. Shooting at dwelling or occupied building; shooting at or from motor vehicle.

A. Shooting at a dwelling or occupied building consists of willfully discharging a firearm at a dwelling or occupied building. Whoever commits shooting at a dwelling or occupied building that does not result in great bodily harm to another person is guilty of a fourth degree felony. Whoever commits shooting at a dwelling or occupied building that results in injury to another person is guilty of a third degree felony. Whoever commits shooting at a dwelling or occupied building that results in great bodily harm to another person is guilty of a second degree felony.

B. Shooting at or from a motor vehicle consists of willfully discharging a firearm at or from a motor vehicle with reckless disregard for the person of another. Whoever commits shooting at or from a motor vehicle that does not result in great bodily harm to another person is guilty of a fourth degree felony. Whoever commits shooting at or from a motor vehicle that results in injury to another person is guilty of a third degree felony. Whoever commits shooting at or from a motor vehicle that results in great bodily harm to another person is guilty of a second degree felony.

C. This section shall not apply to a law enforcement officer discharging a firearm in the lawful performance of his duties.

30-14-1. Criminal trespass.

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

- (1) the owner or person in control of the land has entered into an agreement with the department of game and fish granting access to the land to the general public for the purpose of taking any game animals, birds or fish by hunting or fishing; or
- (2) a person is in possession of a landowner license given to him by the owner or person in control of the land that grants access to that particular private land for the purpose of taking any game animals, birds or fish by hunting or fishing.

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

C. Criminal trespass also consists of knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

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

E. Whoever commits criminal trespass is guilty of a misdemeanor. Additionally, any person who violates the provisions of Subsection A, B or C of this section, when in connection with hunting, fishing or trapping activity, shall have his hunting or fishing license revoked by the state game commission for a period of not less than three years, pursuant to the provisions of Section 17-3-34 NMSA 1978.

F. Whoever knowingly removes, tampers with or destroys any "no trespass" sign is guilty of a petty misdemeanor; except when the damage to the sign amounts to more than one thousand dollars (\$1,000), he or she is guilty of a misdemeanor and shall be subject to imprisonment in the county jail for a definite term less than one year or a fine not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

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

30-15-1. Criminal damage to property.

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

30-16-1. Larceny.

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

B. Whoever commits larceny when the value of the property stolen is two hundred fifty dollars (\$250) or less is guilty of a petty misdemeanor.

C. Whoever commits larceny when the value of the property stolen is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a misdemeanor.

D. Whoever commits larceny when the value of the property stolen is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony.

E. Whoever commits larceny when the value of the property stolen is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.

F. Whoever commits larceny when the value of the property stolen is over twenty thousand dollars (\$20,000) is guilty of a second degree felony.

G. Whoever commits larceny when the property of value stolen is livestock is guilty of a third degree felony regardless of its value.

H. Whoever commits larceny when the property of value stolen is a firearm is guilty of a fourth degree felony when its value is less than two thousand five hundred dollars (\$2,500).

30-16-2. Robbery.

Robbery consists of the theft of anything of value from the person of another or from the immediate control of another, by use or threatened use of force or violence.

Whoever commits robbery is guilty of a third degree felony.

Whoever commits robbery while armed with a deadly weapon is, for the first offense, guilty of a second degree felony and, for second and subsequent offenses, is guilty of a first degree felony.

30-16-3. Burglary.

Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.

A. Any person who, without authorization, enters a dwelling house with intent to commit any felony or theft therein is guilty of a third degree felony.

B. Any person who, without authorization, enters any vehicle, watercraft, aircraft or other structure, movable or immovable, with intent to commit any felony or theft therein is guilty of a fourth degree felony.

30-16-4. Aggravated burglary.

Aggravated burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with intent to commit any felony or theft therein and the person either:

A. is armed with a deadly weapon;

B. after entering, arms himself with a deadly weapon;

C. commits a battery upon any person while in such place, or in entering or leaving such place.

Whoever commits aggravated burglary is guilty of a second degree felony.

30-17-5. Arson and negligent arson.

A. Arson consists of a person maliciously or willfully starting a fire or causing an explosion with the purpose of destroying or damaging:

(1) a building, occupied structure or property of another person;

(2) a bridge, utility line, fence or sign; or

(3) any property, whether the person's own property or the property of another person, to collect insurance for the loss.

B. Whoever commits arson when the damage is two hundred fifty dollars (\$250) or less is guilty of a petty misdemeanor.

C. Whoever commits arson when the damage is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a misdemeanor.

- D. Whoever commits arson when the damage is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony.
- E. Whoever commits arson when the damage is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony.
- F. Whoever commits arson when the damage is over twenty thousand dollars (\$20,000) is guilty of a second degree felony.
- G. Negligent arson consists of a person recklessly starting a fire or causing an explosion, whether on the person's property or the property of another person, and thereby directly:
- (1) causing the death or bodily injury of another person; or
 - (2) damaging or destroying a building or occupied structure of another person.
- H. Whoever commits negligent arson is guilty of a fourth degree felony.
- I. As used in this section, "occupied structure" includes a boat, trailer, car, airplane, structure or place adapted for the transportation or storage of property, for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

30-16D-5. Injuring or tampering with a motor vehicle.

- A. Injuring or tampering with a motor vehicle consists of a person, individually or in association with another person:
- (1) purposely and without authority from the owner starting or causing to be started the engine of any motor vehicle;
 - (2) purposely and maliciously shifting or changing the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of the motor vehicle;
 - (3) purposely scratching or damaging the chassis, running gear, body, sides, top covering or upholstery of a motor vehicle that is the property of another;
 - (4) purposely destroying any part of a motor vehicle or purposely cutting, mashing or marking or in any other way destroying or damaging any part, attachment, fastening or appurtenance of a motor vehicle without the permission of the owner;
 - (5) purposely draining or starting the drainage of any radiator, oil tank or gas tank upon a motor vehicle without the permission of the owner;
 - (6) purposely putting any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage or impede the working of the machinery of the motor vehicle;
 - (7) maliciously tightening or loosening any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or
 - (8) purposely releasing the brake upon a standing motor vehicle with the intent to injure the motor vehicle.
- B. Whoever commits injuring or tampering with a motor vehicle is guilty of a misdemeanor.
- C. As used in this section, "motor vehicle" means a motor vehicle as defined by the Motor Vehicle Code [66-1-1 NMSA 1978].

30-17-6. Aggravated arson.

Aggravated arson consists of the willful or malicious damaging by any explosive substance or the willful or malicious setting fire to any bridge, aircraft, watercraft, vehicle, pipeline, utility line, communication line or structure, railway structure, private or public building, dwelling or other structure, causing a person great bodily harm.

Whoever commits aggravated arson is guilty of a second degree felony.

30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions.

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

- (1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or
- (2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

- (1) humanely destroying a sick or injured animal; or
- (2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

- (1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or
- (2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;

- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978; (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;
- (5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;
- (6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or
- (7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

GENERAL CRIMINAL STATUTES: OBSTRUCTING A REPORT, FALSE REPORTS, EVIDENCE TAMPERING, INTIMIDATION OF WITNESS, ATTEMPT, CONSPIRACY, CRIMINAL SOLICITATION, SENTENCING, TIME LIMITATIONS FOR PROSECUTION, LAW ENFORCEMENT REQUIREMENTS, MISCELLANEOUS

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 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, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime.

30-1-9. Tolling of time limitation for prosecution for crimes.

- A. If after any crime has been committed the defendant shall conceal himself, or shall flee from or go out of the state, the prosecution for such crime may be commenced within the time prescribed in Section 1-8 [30-1-8 NMSA 1978], after the defendant ceases to conceal himself or returns to the state. No period shall be included in the time of limitation when the party charged with any crime is not usually and publicly a resident within the state.
- B. When

- (1) an indictment, information or complaint is lost, mislaid or destroyed;
- (2) the judgment is arrested;
- (3) the indictment, information or complaint is quashed, for any defect or reason; or
- (4) the prosecution is dismissed because of variance between the allegations of the indictment, information or complaint and the evidence; and a new indictment, information or complaint is thereafter presented, the time elapsing between the preferring of the first indictment, information or complaint and the subsequent indictment, information or complaint shall not be included in computing the period limited for the prosecution of the crime last charged; provided that the crime last charged is based upon and grows out of the same transaction upon which the original indictment, information or complaint was founded, and the subsequent indictment, information or complaint is brought within five years from the date of the alleged commission of the original crime.

30-1-9.1. Offenses against children; tolling of statute of limitations.

The applicable time period for commencing prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-6-1, 30-9-11 or 30-9-13 NMSA 1978 until the victim attains the age of eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

30-1-9.2. Criminal sexual penetration; tolling of statute of limitations

- A. When DNA evidence is available and a suspect has not been identified, the applicable time period for commencing a prosecution pursuant to Section 30-1-8 NMSA 1978 shall not commence to run for an alleged violation of Section 30-9-11 NMSA 1978 until a DNA profile is matched with a suspect.
- B. As used in this section, "DNA" means deoxyribonucleic acid."

30-6-4. Obstruction of reporting or investigation of child abuse or neglect.

Obstruction of reporting or investigation of child abuse or neglect consists of:

- A. knowingly inhibiting, preventing, obstructing or intimidating another from reporting, pursuant to Section 32-1-15 NMSA 1978 [repealed], child abuse or neglect, including child sexual abuse; or
- B. knowingly obstructing, delaying, interfering with or denying access to a law enforcement officer or child protective services social worker in the investigation of a report of child abuse or sexual abuse.

Whoever commits obstruction of reporting or investigation of child abuse or neglect is guilty of a misdemeanor.

30-22-5. Tampering with evidence.

- A. Tampering with evidence consists of destroying, changing, hiding, placing or fabricating any physical evidence with intent to prevent the apprehension, prosecution or conviction of any person or to throw suspicion of the commission of a crime upon another.
- B. Whoever commits tampering with evidence shall be punished as follows:
- (1) if the highest crime for which tampering with evidence is committed is a capital or first degree felony or a second degree felony, the person committing tampering with evidence is guilty of a third degree felony;
 - (2) if the highest crime for which tampering with evidence is committed is a third degree felony or a fourth degree felony, the person committing tampering with evidence is guilty of a fourth degree felony;
 - (3) if the highest crime for which tampering with evidence is committed is a misdemeanor or a petty misdemeanor, the person committing tampering with evidence is guilty of a petty misdemeanor; and
 - (4) if the highest crime for which tampering with evidence is committed is indeterminate, the person committing tampering with evidence is guilty of a fourth degree felony.

30-22-6. Compounding a crime.

Compounding a crime consists of knowingly agreeing to take anything of value upon the agreement or understanding, express or implied, to compound or conceal a crime or to abstain from a prosecution therefor, or to withhold any evidence thereof.

For purposes of this section, a person may be prosecuted and convicted of compounding a crime though the person guilty of the original crime has not been charged, indicted or tried.

Whoever commits compounding a crime is guilty of a misdemeanor.

30-24-3. Bribery or intimidation of a witness; retaliation against a witness.

- A. Bribery or intimidation of a witness consists of any person knowingly:
- (1) giving or offering to give anything of value to any witness or to any person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding to testify falsely or to abstain from testifying to any fact in such cause or proceeding;
 - (2) intimidating or threatening any witness or person likely to become a witness in any judicial, administrative, legislative or other official cause or proceeding for the purpose of preventing such individual from testifying to any fact, to abstain from testifying or to testify falsely; or
 - (3) intimidating or threatening any person or giving or offering to give anything of value to any person with the intent to keep the person from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.
- B. Retaliation against a witness consists of any person knowingly engaging in conduct that causes bodily injury to another person or damage to the tangible property of another person, or threatening to do so, with the intent to retaliate against any person for any information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer.

- C. Whoever commits bribery or intimidation of a witness is guilty of a third degree felony.
- D. Whoever commits retaliation against a witness is guilty of a second degree felony.

30-24-3.1. Acceptance of a bribe by a witness.

- A. No person who is a witness or is likely to become a witness shall receive, agree to receive or solicit any bribe or anything of value to:
 - (1) testify falsely or to abstain from testifying to any fact in any cause in any judicial, administrative, legislative or other proceeding; or
 - (2) abstain from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.
- B. Whoever receives, agrees to receive or solicits a bribe is guilty of a fourth degree felony.

30-27-1. Malicious criminal prosecution.

Malicious criminal prosecution consists of maliciously procuring or attempting to procure an indictment or otherwise causing or attempting to cause a criminal charge to be preferred or prosecuted against an innocent person, knowing him to be innocent.
Whoever commits malicious criminal prosecution is guilty of a misdemeanor.

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 a third degree felony, the person committing such attempt is guilty of a fourth degree felony; and
 - D. 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.

30-28-2. Conspiracy.

- A. Conspiracy consists of knowingly combining with another for the purpose of committing a felony within or without this state.

B. Whoever commits conspiracy shall be punished as follows:

- (1) if the highest crime conspired to be committed is a capital or first degree felony, the person committing such conspiracy is guilty of a second degree felony;
- (2) if the highest crime conspired to be committed is a second degree felony, the person committing such conspiracy is guilty of a third degree felony; and
- (3) if the highest crime conspired to be committed is a third degree felony or a fourth degree felony, the person committing such conspiracy is guilty of a fourth degree felony.

30-28-3. Criminal solicitation; penalty.

A. Except as to bona fide acts of persons authorized by law to investigate and detect the commission of offenses by others, a person is guilty of criminal solicitation if, with the intent that another person engage in conduct constituting a felony, he solicits, commands, requests, induces, employs or otherwise attempts to promote or facilitate another person to engage in conduct constituting a felony within or without the state.

B. In any prosecution for criminal solicitation, it is an affirmative defense that under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant:

- (1) notified the person solicited; and
- (2) gave timely and adequate warning to law enforcement authorities or otherwise made a substantial effort to prevent the criminal conduct solicited.

The burden of raising this issue is on the defendant, but does not shift the burden of proof of the state to prove all of the elements of the crime of solicitation beyond a reasonable doubt.

C. It is not a defense that the person solicited could not be guilty of the offense solicited due to insanity, minority or other lack of criminal responsibility or incapacity. It is not a defense that the person solicited is unable to commit the crime solicited because of lack of capacity, status or other characteristic needed to commit the crime solicited, so long as the person soliciting or the person solicited believes that he or they have such capacity, status or characteristics.

D. A person is not liable for criminal solicitation when his solicitation constitutes conduct of a kind that is necessarily incidental to the commission of the offense solicited. When the solicitation constitutes a felony offense other than criminal solicitation, which is related to but separate from the offense solicited, the defendant is guilty of such related felony offense and not of criminal solicitation. Provided, a defendant may be prosecuted for and convicted of both the criminal solicitation as well as any other crime or crimes committed by the defendant or his accomplices or coconspirators, or the crime or crimes committed by the person solicited.

E. Any person convicted of criminal solicitation shall be punished as follows:

- (1) if the highest crime solicited is a capital or first degree felony, the person soliciting such felony is guilty of a second degree felony;
- (2) if the highest crime solicited is a second degree felony, the person soliciting such a felony is guilty of a third degree felony; and
- (3) if the highest crime solicited is a third degree felony or a fourth degree felony, the person soliciting such felony is guilty of a fourth degree felony.

30-39-1. False report; penalty.

It is unlawful for any person to intentionally make a report to a law enforcement agency or official, which report he knows to be false at the time of making it, alleging a violation by another person of the provisions of the Criminal Code. Any person violating the provisions of this section is guilty of a misdemeanor.

29-1-16. Electronic recordings of custodial interrogations

A. A state or local law enforcement officer shall comply when reasonably able to do so with the following procedures when conducting a custodial interrogation:

- (1) the custodial interrogation shall be electronically recorded in its entirety;
- (2) if conducted in a police station, the custodial interrogation shall be electronically recorded by a method that includes audio or visual or both, if available; and
- (3) the electronic recording shall include the advice of constitutional rights required by law.

B. A law enforcement officer shall comply with the provisions of this section unless the law enforcement officer has good cause not to electronically record the entire custodial interrogation and makes a contemporaneous written or electronic record of the reasons for not doing so. Good cause includes:

- (1) the electronic recording equipment was not reasonably available;
- (2) the electronic recording equipment failed and obtaining replacement equipment was not feasible;
- (3) the individual refused to be recorded; or
- (4) the statement was made in a court proceeding or a grand jury proceeding.

C. Statements that are spontaneously volunteered and not the result of custodial interrogation are not subject to the provisions of this section.

D. The provisions of this section shall apply only to custodial interrogations when, at the time of the interrogation, the person is suspected of committing a felony offense.

E. The provisions of this section do not apply to custodial interrogations conducted outside the state of New Mexico.

F. The provisions of this section do not apply to statements used for impeachment purposes.

G. The provisions of this section do not apply within a correctional facility.

H. As used in this section:

- (1) "custodial interrogation" means questioning by law enforcement officers that requires the advice of constitutional rights; and
- (2) "electronic recording" means a complete and authentic electronic recording created by visual or audio media, including by motion picture, videotape, audio tape or digital media.

I. This section shall not be construed to exclude otherwise admissible evidence in any judicial proceeding.

31-1-7. Arrest without warrant; liability.

- D. Notwithstanding the provisions of any other law to the contrary, a peace officer may arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that the person has committed an assault or a battery upon a household member. As used in this section, "household member" means a spouse, former spouse, family member, including a relative, parent, present or former step-parent, present or former in-law, child or co-parent of a child, or a person with whom the victim has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.
- E. No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section, provided he acts in good faith and without malice.
- F. Whether or not an arrest is made pursuant to this section, a peace officer may remain with the victim and assist the victim in getting to a shelter or receiving proper medical attention.

FEDERAL CODES

CHAPTER 109A-SEXUAL ABUSE

FEDERAL CODE, CHAPTER 109A-SEXUAL ABUSE

18 U.S.C. § 2241. Aggravated sexual abuse

(a) By force or threat. -- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act –

- (1) by using force against that other person; or
- (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By other means. -- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly –

- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby -
 - (A) substantially impairs the ability of that other person to appraise or control conduct; and
 - (B) engages in a sexual act with that other person; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With children. -- Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement. -- In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

18 U.S.C. § 2242. Sexual abuse

Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly --

- (1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or

- (2) engages in a sexual act with another person if that other person is --
 (A) incapable of appraising the nature of the conduct; or
 (B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; or attempts to do so, shall be fined under this title and imprisoned for any terms of years or for life.

18 U.S.C. § 2243. Sexual abuse of a minor or ward

(a) **Of a minor.** -- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who --

- (1) has attained the age of 12 years but has not attained the age of 16 years; and
(2) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) **Of a ward.** -- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is

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- (1) in official detention; and
(2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(c) **Defenses.**

- (1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence that the defendant reasonably believed that the other person had attained the age of 16 years.
(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) **State of Mind Proof Requirement.** - In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew --

- (1) the age of the other person engaging in the sexual act; or
(2) that the requisite age difference existed between the persons so engaging.

18 U.S.C. § 2244. Abusive sexual contact

(a) **Sexual conduct in circumstances where sexual acts are punished by this chapter.** -- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate -

- (1) subsection (a) or (b) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;
(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;
(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both;

- (4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than six months, or both; or
- (5) subsection (c) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title and imprisoned for any term of years or for life.
- (b) In other circumstances.** -- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in sexual contact with another person without that other person's permission shall be fined under this title, imprisoned not more than two years, or both.
- (c) Offenses involving young children.** -- If the sexual contact that violates this section (other than subsection (a) (5) is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.

18 U.S.C. § 2245. Offenses resulting in death

(a) [FN1] In general.--A person who, in the course of an offense under this chapter, or section 1591, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, murders an individual, shall be punished by death or imprisoned for any term of years or for life.

18 U.S.C. § 2246. Definitions for chapter

As used in this chapter --

- (1) the term "prison" means a correctional, detention, or penal facility;
- (2) the term "sexual act" means --
- (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- (D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- (3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; (4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;
- (5) the term "official detention" means -
- (A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or (B) custody by a Federal officer or employee, or under the direction of a Federal officer or

employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency, and

- (6) the term “State” means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

18 U.S.C. § 2247. Repeat offenders

(a) **Maximum Term of Imprisonment** --The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter, unless section 3559(e) applies.

(b) **Prior Sex Offense Conviction Defined** --In this section, the term “prior sex offense conviction” has the meaning given that term in section 2426(b).

18 U.S.C. § 2248. Mandatory restitution

(a) **In general.** -- Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and nature of order --

(1) **Directions.** -- The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).

(2) **Enforcement.** -- An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) **Definition.**—For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for--

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorney’s fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) **Order mandatory.** --

(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) **Definition.**--For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

CHAPTER 213 – LIMITATIONS

18 U.S.C. § 3283. Offenses against children

No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child.

CHAPTER 73 – OBSTRUCTION OF JUSTICE

18 U.S.C. § 1510. Obstruction of criminal investigations

(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both.

18 U.S.C. § 3581. Sentence of imprisonment

(a) In general – A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) Authorized terms – The authorized terms of imprisonment are –

- (1) for a Class A felony, the duration of the defendant’s life or any period of time;
- (2) for a Class B felony, not more than twenty-five years;
- (3) for a Class C felony, not more than twelve years;
- (4) for a Class D felony, not more than three years;
- (5) for a Class E felony, not more than three years;
- (6) for a Class A misdemeanor, not more than one year;
- (7) for a Class B misdemeanor, not more than six months; (8) for a Class C misdemeanor, not more than thirty days; and
- (9) for an infraction, not more than five days.

CHAPTER 110A SEXUAL EXPLOITATION & OTHER ABUSE OF CHILDREN

18 U.S.C. § 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted

using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that –

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct:

shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that --

(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or **(B)** such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice) or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

18 U.S.C. § 2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either --

- (1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
- (2) with intent to promote either --
 - (A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - (B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either --

- (1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
- (2) with intent to promote either --
 - (A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - (B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that --

- (1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in or affecting interstate or foreign commerce;
- (2) any offer described in such subsections was communicated or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mail; or
- (3) the conduct described in such subsections took place in any territory or possession of the United States.

18 U.S.C. § 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who --

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if --

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if --

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either --

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if --

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either --

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was

produced using materials which have been mailed or so shipped or transported, by any means including by computer, if --

- (i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
- (ii) such visual depiction is of such conduct; shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of Title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) Affirmative defense. -- It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant -

- (1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and
- (2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof -- **(A)** took reasonable steps to destroy each such visual depiction; or **(B)** reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

18 U.S.C. § 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who --

- (1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;
- (2) knowingly receives or distributes --
 - (A)** any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or
 - (B)** any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;
- (3) knowingly --
 - (A)** reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains --

- (i) an obscene visual depiction of a minor engaging in sexually explicit conduct;
- or
- (ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

(4) either --

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(5) either -

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or **(B)** knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct --

(A) that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce, for purposes of inducing or persuading a minor to participate in any activity that is illegal; or **(7)** knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor. shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title or imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the

Uniform Code of Military Justice), the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that --

(1A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct;

(B) each such person was an adult at the time the material was produced; and

(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that involves child pornography as described in section 2256 (8) (C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) Affirmative Defense. -- It shall be an affirmative defense to a charge of violating subsection (a) (5) that the defendant --

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof -- (A) took reasonable steps to destroy each such image; or (B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) **Admissibility of evidence.** -- On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) **Civil remedies.** --

- (1) **In general.** -- Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).
- (2) **Relief.**-- In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including –
- (A) temporary, preliminary, or permanent injunctive relief;
 - (B) compensatory and punitive damages; and
 - (C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) Child exploitation enterprises.--

- (1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.
- (2) A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim and commits those offenses in concert with three or more other persons.

18 U.S.C. § 2252B. Misleading domain names on the Internet

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 10 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.

(d) For the purposes of this section, the term “material that is harmful to minors” means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context --

- (1) predominantly appeals to a prurient interest of minors;
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term “sex” means acts of masturbation, sexual intercourse, or physical [physical] contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

18 USC § 2252C. Misleading words or digital images on the Internet

(a) In general. Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title and imprisoned for not more than 10 years.

(b) Minors. Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be fined under this title and imprisoned for not more than 20 years.

(c) Construction. For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as "sex" or "porn", is not misleading.

(d) Definitions. As used in this section--

(1) the terms "material that is harmful to minors" and "sex" have the meaning given such terms in section 2252B; and

(2) the term "source code" means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

18 U.S.C. § 2256. Definitions for chapter

For the purposes of this chapter, the term -

(1) "minor" means any person under the age of eighteen years;

(2) "sexually explicit conduct" means actual or simulated -

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) sadistic or masochistic abuse; or

(E) lascivious exhibition of the genitals or pubic area of any person;

(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) "organization" means a person other than an individual;

(5) "visual depiction" includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;

(6) "computer" has the meaning given that term in section 1030 of this title;

(7) "custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(8) "child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

(D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and

(9) "identifiable minor" - (A) means a person -

(i) (I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

18 U.S.C. § 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be fined under this title or imprisoned not more than 1 year or both.

18 U.S.C. § 2258A, Reporting requirements of electronic communication service providers and remote computing service providers

(a) Duty to report.--

(1) In general. --Whoever, while engaged in providing an electronic communication service or a remote computing service to the public through a facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible--

(A) provide to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center, the mailing address, telephone number, facsimile number, electronic mail address of, and individual point of contact for, such electronic communication service provider or remote computing service provider; and

(B) make a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by such center.

(2) Facts or circumstances.--The facts or circumstances described in this paragraph are any facts or circumstances from which there is an apparent violation of--

(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography; or

(B) section 1466A.

(b) Contents of report.--To the extent the information is within the custody or control of an electronic communication service provider or a remote computing service provider, the facts and circumstances included in each report under subsection (a)(1) may include the following information:

(1) Information about the involved individual.--Information relating to the identity of any individual who appears to have violated a Federal law described in subsection (a)(2), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, or any other identifying information, including self-reported identifying information.

(2) Historical reference.--Information relating to when and how a customer or subscriber of an electronic communication service or a remote computing service uploaded, transmitted, or received apparent child pornography or when and how apparent child pornography was reported to, or discovered by the electronic communication service

provider or remote computing service provider, including a date and time stamp and time zone.

(3) Geographic location information.--

(A) In general.--Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified billing address, or, if not reasonably available, at least 1 form of geographic identifying information, including area code or zip code.

(B) Inclusion.--The information described in subparagraph (A) may also include any geographic information provided to the electronic communication service or remote computing service by the customer or subscriber.

(4) Images of apparent child pornography.--Any image of apparent child pornography relating to the incident such report is regarding.

(5) Complete communication.--The complete communication containing any image of apparent child pornography, including--

(A) any data or information regarding the transmission of the communication; and

(B) any images, data, or other digital files contained in, or attached to, the communication.

(c) Forwarding of report to law enforcement.--

(1) In general.—The National Center for Missing and Exploited Children shall forward each report made under subsection (a)(1) to any appropriate law enforcement agency designated by the Attorney General under subsection (d)(2).

(2) State and local law enforcement.--The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to an appropriate law enforcement official or a State or political subdivision of a State for the purpose of enforcing State criminal law.

(3) Foreign law enforcement.--

(A) In general.--The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to any appropriate foreign law enforcement agency designated by the Attorney General under subsection (d)(3), subject to the conditions established by the Attorney General under subsection (d)(3).

(B) Transmittal to designated Federal agencies.--If the National Center for Missing and Exploited Children forwards a report to a foreign law enforcement agency under subparagraph (A), the National Center for Missing and Exploited Children shall concurrently provide a copy of the report and the identity of the foreign law enforcement agency to--

(i) the Attorney General; or

(ii) the Federal law enforcement agency or agencies designated by the Attorney General under subsection (d)(2).

(d) Attorney general responsibilities.--

(1) In general.--The Attorney General shall enforce this section.

(2) Designation of Federal agencies.--The Attorney General shall designate promptly the Federal law enforcement agency or agencies to which a report shall be forwarded under subsection (c)(1).

(3) Designation of foreign agencies.--The Attorney General shall promptly--

(A) in consultation with the Secretary of State, designate the foreign law enforcement agencies to which a report may be forwarded under subsection (c)(3);

(B) establish the conditions under which such a report may be forwarded to such agencies; and

(C) develop a process for foreign law enforcement agencies to request assistance from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (c) (3).

(4) Reporting designated foreign agencies.—The Attorney General shall maintain and make available to the Department of State, the National Center for Missing and

Exploited Children, electronic communication service providers, remote computing service providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

- (5) Sense of Congress regarding designation of foreign agencies.--**It is the sense of Congress that--
- (A)** combating the international manufacturing, possession, and trade in online child pornography requires cooperation with competent, qualified, and appropriately trained foreign law enforcement agencies; and
- (B)** the Attorney General, in cooperation with the Secretary of State, should make a substantial effort to expand the list of foreign agencies designated under paragraph (3).
- (6) Notification to providers.--**If an electronic communication service provider or remote computing service provider notifies the National Center for Missing and Exploited Children that the electronic communication service provider or remote computing service provider is making a report under this section as the result of a request by a foreign law enforcement agency, the National Center for Missing and Exploited Children shall--
- (A)** If the Center forwards the report to the requesting foreign law enforcement agency or another agency in the same country designated by the Attorney General under paragraph (3), notify the electronic communication service provider or remote computing service provider of—
- (i)** the identity of the foreign law enforcement agency to which the report was forwarded; and
- (ii)** the date on which the report was forwarded; or
- (B)** notify the electronic communication service provider or remote computing service provider if the Center declines to forward the report because the Center, in consultation with the Attorney General, determines that no law enforcement agency in the foreign country has been designated by the Attorney General under paragraph (3).
- (e) Failure to report.--**An electronic communication service provider or remote computing service provider that knowingly and willfully fails to make a report required under subsection (a)(1) shall be fined--
- (1)** in the case of an initial knowing and willful failure to make a report, not more than \$150,000; and
- (2)** in the case of any second or subsequent knowing and willful failure to make a report, not more than \$300,000.
- (f) Protection of privacy.--**Nothing in this section shall be construed to require an electronic communication service provider or a remote computing service provider to--
- (1)** monitor any user, subscriber, or customer of that provider;
- (2)** monitor the content of any communication of any person described in paragraph (1); or
- (3)** affirmatively seek facts or circumstances described in sections (a) and (b).
- (g) Conditions of disclosure information contained within report.--**
- (1) In general.--**Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (c) shall not disclose any information contained in that report.
- (2) Permitted disclosures by law enforcement.--**
- (A) In general.--**A law enforcement agency may disclose information in a report received under subsection (c)--

- (i) to an attorney for the government for use in the performance of the official duties of that attorney;
- (ii) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions; (iii) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;
 - (iv) If the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law;
 - (v) to a defendant in a criminal case or the attorney for that defendant, subject to the terms and limitations under section 3509(m) or a similar State law, to the extent the information relates to a criminal charge pending against that defendant;
 - (vi) subject to subparagraph (B), to an electronic communication service provider or remote computing provider if necessary to facilitate response to legal process issued in connection to a criminal investigation, prosecution, or post-conviction remedy relating to that report; and
 - (vii) as ordered by a court upon a showing of good cause and pursuant to any protective orders or other conditions that the court may impose.

(B) Limitations.--

- (i) **Limitations on further disclosure.--**The electronic communication service provider or remote computing service provider shall be prohibited from disclosing the contents of a report provided under subparagraph (A) (vi) to any person, except as necessary to respond to the legal process.
- (ii) **Effect.--**Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide child pornography images to an electronic communications service provider or a remote computing service.
- (3) **Permitted disclosures by the National Center for Missing and Exploited Children.--**The National Center for Missing and Exploited Children may disclose information received in a report under subsection (a) only--
 - (A) to any Federal law enforcement agency designated by the Attorney General under subsection (d)(2);
 - (B) to any State, local, or tribal law enforcement agency involved in the investigation of child pornography, child exploitation, kidnapping, or enticement crimes;
 - (C) to any foreign law enforcement agency designated by the Attorney General under subsection (d)(3); and
 - (D) to an electronic communication service provider or remote computing service provider as described in section 2258C.

(h) Preservation.--

- (1) **In general.--**For the purposes of this section, the notification to an electronic communication service provider or a remote computing service provider by the CyberTipline of receipt of a report under subsection (a)(1) shall be treated as a request to preserve, as if such request was made pursuant to section 2703(f).
- (2) **Preservation of report.--**Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve the contents of the report provided pursuant to subsection (b) for 90 days after such notification by the CyberTipline. (3) **Preservation of commingled images.--**Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve any images, data, or other digital files that are commingled or interspersed

among the images of apparent child pornography within a particular communication or user-created folder or directory.

(4) Protection of preserved materials.--An electronic communications service or remote computing service preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access by agents or employees of the service to the materials to that access necessary to comply with the requirements of this subsection.

(5) Authorities and duties not affected.--Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703.

18 U.S.C. § 2260. Production of sexually explicit depictions of a minor for importation into the United States

(a) Use of minor. A person who, outside the United States, employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor with the intent that the minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, intending that the visual depiction will be imported into the United States or into waters within 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(b) Use of visual depiction. A person who, outside the United States, knowingly receives, transports, ships, distributes, sells, or possesses with intent to transport, ship, sell, or distribute any visual depiction of a minor engaging in sexually explicit conduct (if the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct), intending that the visual depiction will be imported into the United States or into waters within a distance of 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(c) Penalties.

(1) A person who violates subsection (a), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (e) of section 2251 for a violation of that section, including the penalties provided for such a violation by a person with a prior conviction or convictions as described in that subsection.

(2) A person who violates subsection (b), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (b) (1) of section 2252 for a violation of paragraph (1), (2), or (3) of subsection (a) of that section, including penalties provided for such a violation by a person with a prior conviction or convictions as described in subsection (b)(1) of section 2252.

18 U.S.C. § 2260A. Penalties for registered sex offenders

Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under that provision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

18 U.S.C. § 2421. Transportation generally

Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

18 U.S.C. § 1466. Engaging in the business of selling or transferring obscene matter

(a) Whoever is engaged in the business of selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term "engaged in the business" means that the person who sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection.

18 U.S.C. § 1466A. Obscene visual representations of the sexual abuse of children

(a) In general – Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that – (1) (A) depicts a minor engaging in sexually explicit conduct; and (B) is obscene; or (2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital or oral-anal, whether between persons of the same or opposite sex; and (B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A (b)(1), including the penalties provided for cases involving a prior conviction.

(b) Additional offenses – Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting that – (1) (A) depicts a minor engaging in sexually explicit conduct; and (B) is obscene; or (2) (A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital or oral-anal, whether between persons of the same or opposite sex; and (B) lacks serious literary, artistic, political, or scientific value; or attempts or conspires to do so shall be subject to the penalties provided in section 2252A (b) (2), including the penalties provided for cases involving a prior conviction.

(c) Nonrequired element of offense – It is not a required element of any offense under this section that the minor depicted actually exist.

- (d) Circumstances – The circumstance referred to in subsections (a) and (b) is that –
- (1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;
 - (2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;
 - (3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;
 - (4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or
 - (5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.
- (e) Affirmative defense – It shall be an affirmative defense to a charge of violating subsection (b) that the defendant –
- (1) possessed less than 3 such visual depictions; and
 - (2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction – (A) took reasonable steps to destroy each such visual depiction; or
 - (B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.
- (f) Definitions – For purposes of this section –
- (1) the term “visual depiction” includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture whether made or produced by electronic, mechanical, or other means;
 - (2) the term “sexually explicit conduct” has the meaning given the term in section 2256(2) (A) or 2256(2) (B); and
 - (3) the term “graphic” when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

18 U.S.C. § 1470. Transfer of obscene material to minors

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 1591. Sex trafficking of children or by force, fraud, or coercion

- (a) Whoever knowingly--
- (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

- (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).
- (b) The punishment for an offense under subsection (a) is--
- (1) if the offense was effected by force, fraud, or coercion or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or
- (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.
- (c) In this section:
- (1) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.
- (2) The term "coercion" means--
- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C) the abuse or threatened abuse of law or the legal process.
- (3) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

18 U.S.C. § 1801. Video voyeurism

- (a) Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.
- (b) In this section--
- (1) the term "capture", with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;
- (2) the term "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons;
- (3) the term "a private area of the individual" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;
- (4) the term "female breast" means any portion of the female breast below the top of the areola; and
- (5) the term "under circumstances in which that individual has a reasonable expectation of privacy" means--
- (A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or
- (B) circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

(c) This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

18 U.S.C. § 2422. Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

(b) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

18 U.S.C. § 2423. Transportation of minors

(a) Transportation with intent to engage in criminal sexual activity. A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(b) Travel with intent to engage in illicit sexual conduct. A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) Engaging in illicit sexual conduct in foreign places. Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) Ancillary offenses. Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

(e) Attempt and conspiracy. Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

(f) Definition. As used in this section, the term "illicit sexual conduct" means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

(g) Defense. In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

18 U.S.C. § 2424. Filing factual statement about alien individual

(a) Whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral purpose, any individual, knowing or in reckless disregard of the fact that the individual is an alien, shall file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such individual, the place at which that individual is kept, and all facts as to the date of that individual's entry into the United States, the port through which that individual entered, that individual's age, nationality, and parentage, and concerning that individual's procurement to come to this country within the knowledge of such person; and

Whoever fails within five business days after commencing to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien individual, to file such statement concerning such alien individual with the Commissioner of Immigration and Naturalization; or

Whoever knowingly and willfully states falsely or fails to disclose in such statement any fact within that person's knowledge or belief with reference to the age, nationality, or parentage of any such alien individual, or concerning that individual's procurement to come to this country--

Shall be fined under this title or imprisoned not more than 10 years, or both.

(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by that person, or the information therein contained, might tend to criminate that person or subject that person to a penalty or forfeiture, but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section.

18 U.S.C. § 2425. Use of interstate facilities to transmit information about a minor

Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 5 years, or both.

CHAPTER 53 INDIANS

18 U.S.C. § 1169. Reporting of child abuse

- (a) Any person who -
- (1) is a -
 - (A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider,
 - (B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, Federal, public or private school,
 - (C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school,
 - (D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,
 - (E) psychiatrist, psychologist, or psychological assistant,
 - (F) licensed or unlicensed marriage, family, or child counselor,
 - (G) person employed in the mental health profession, or
 - (H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;
 - (2) knows, or has reasonable suspicion, that - (A) a child was abused in Indian country, or
(B) actions are being taken, or are going to be taken, that would reasonably be expected to result in abuse of a child in Indian country; and
 - (3) fails to immediately report such abuse or actions described in paragraph (2) to the local child protective services agency or local law enforcement agency, shall be fined under this title or imprisoned for not more than 6 months or both.
- (b) Any person who -
- (1) supervises, or has authority over, a person described in subsection (a) (1), and
 - (2) inhibits or prevents that person from making the report described in subsection (a), shall be fined under this title or imprisoned for not more than 6 months or both.
- (c) For purposes of this section, the term -
- (1) "abuse" includes -
 - (A) any case in which -
 - (i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, and
 - (ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; and
 - (B) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

- (2) "child" means an individual who - (A) is not married, and
(B) has not attained 18 years of age;
 - (3) "local child protective services agency" means that agency of the Federal Government, of a State, or of an Indian tribe that has the primary responsibility for child protection on any Indian reservation or within any community in Indian country; and
 - (4) "local law enforcement agency" means that Federal, tribal, or State law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse within the portion of Indian country involved.
- (d) Any person making a report described in subsection (a) which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report.

CHAPTER 110A DOMESTIC VIOLENCE AND STALKING

18 U.S.C. § 2261. Interstate domestic violence

(a) Offenses. --

- (1) **Travel or conduct of offender.** --A person who travels in interstate or foreign commerce or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).
- (2) **Causing travel of victim.**--A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties. -- A person who violates this section or section 2261A shall be fined under this title, imprisoned --

- (1) for life or any term of years, if death of the victim results;
- (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
- (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
- (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than 5 years, in any other case,
- (6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

or both fined and imprisoned.

18 U.S.C. § 2261A. Stalking [FN1]

Whoever –

- (1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or
- (2) with the intent --

(A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or (B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to --

(i) that person;

(ii) a member of the immediate family (as defined in section 115 [FN2] of that person; or

(iii) a spouse or intimate partner of that person, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii), of subparagraph (B) [FN2]; shall be punished as provided in section 2261(b) of this title.

18 U.S.C. § 2262. Interstate violation of protection order

(a) Offenses. --

(1) **Travel or conduct of offender. --**A person who travels in interstate or foreign commerce, or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) **Causing travel of victim. --** A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties. -- A person who violates this section shall be fined under this title, imprisoned--

- (1) for life or any term of years, if death of the victim results;
- (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
- (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
- (4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than 5 years, in any other case, or both fined and imprisoned.

18 U.S.C. § 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

18 U.S.C. § 2264. Restitution

- (a) **In General.** - Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.
- (b) **Scope and Nature of Order.** -
- (1) **Directions.** - The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).
- (2) **Enforcement.** - An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.
- (3) **Definition.** - For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for –
- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
- (F) any other losses suffered by the victim as a proximate result of the offense.
- (4) **Order mandatory.** –
- (A) The issuance of a restitution order under this section is mandatory.
- (B) A court may not decline to issue an order under this section because of - (i) the economic circumstances of the defendant; or (ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.
- (c) **Victim Defined.** - For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

18 U.S.C. § 2250 Failure to Register

(a) In general--Whoever --

- (1) is required to register under the Sex Offender Registration and Notification Act;
- (2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or
- (B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and
- (3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act; shall be fined under this title or imprisoned not more than 10 years, or both.

- (b) **Affirmative defense.**--In a prosecution for a violation under subsection (a), it is an affirmative defense that--

- (1) uncontrollable circumstances prevented the individual from complying;
- (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and
- (3) the individual complied as soon as such circumstances ceased to exist.

(c) Crime of violence.--

- (1) **In general.--**An individual described in subsection (a) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years. (2) **Additional punishment.--**The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a).

8 U.S.C. 12 II I § 1154

8 U.S.C. § 1154. – Self-petitioning for battered immigrant women and their children

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute allows victims to remain in the United States independent of their abusive husbands/parents.

FEDERAL STATUES ON FULL FAITH AND CREDIT

18 U.S.C. § 2265. Full faith and credit given to protection orders

- (a) **Full Faith and Credit.** -- Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory [FN1] as if it were the order of the enforcing State or tribe.
- (b) **Protection Order.** -- A protection order issued by a State, tribal, or territorial court is consistent with this subsection if -
 - (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
 - (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (c) **Cross or Counter Petition.** -- A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if --

- (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and Registration. --

- (1) **Notification.** -- A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal or territorial jurisdiction unless requested to do so by the party protected under such order.
- (2) **No prior registration or filing as prerequisite for enforcement.** -- Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
- (3) **Limits on Internet publication of registration information.** -- A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction [FN2] in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share

court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

- (e) **Tribal Court Jurisdiction.** -- For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 U.S.C. § 2265A. Repeat Offenders [FN1]

- (a) **Maximum term of imprisonment.** -- The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

- (b) **Definition** -- For purposes of this section –

- (1) the term “prior domestic violence or stalking offense” means a conviction for an offense--
 - (A) under section 2261, 2261A, or 2262 of this chapter; or
 - (B) under State law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and
- (2) the term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

18 U.S.C. § 2266. Definitions

In this chapter:

- (1) **Bodily injury.** -- The term "bodily injury" means any act, except one done in selfdefense that results in physical injury or sexual abuse.
- (2) **Course of conduct.** -- The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.
- (3) Enter or leave Indian country. - The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.
- (4) **Indian country.** -- The term "Indian country" has the meaning stated in section 1151 of this title.
- (5) **Protection order.** -- The term "protection order" includes--
 - (A) any injunction or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and
 - (B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence or stalking.
- (6) **Serious bodily injury.** -- The term "serious bodily injury" has the meaning stated in section 2119(2).
- (7) **Spouse or intimate partner.** -- The term "spouse or intimate partner" includes --
 - (A) **for purposes of --**
 - (i) sections other than 2261A --
 - (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
 - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship; and
 - (ii) section 2261A --
 - (I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or
 - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship
 - (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.
- (8) **State.** -- The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.
- (9) **Travel in interstate or foreign commerce.** -- The term "travel in interstate or foreign commerce" does not include travel from one State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

- (10) **Dating partner.** -- The term “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of -- (A) the length of the relationship; and
- (B) the type of relationship; and
 - (C) the frequency of interaction between the persons involved in the relationship.

FEDERAL FIREARM OFFENSES

Federal law 18 U.S.C. 922 (d) 8 and 9, (g) 1, 8-9 Firearm Offenses

18 U.S.C. § 922 (d)

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

18 U.S.C. § 922 (d) (8) Transfer of a firearm to a person subject to a protection order

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that -

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

18 U.S.C. § 922 (d) (9) Transfer of a firearm to a person convicted of a misdemeanor crime of domestic violence

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person -

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

18 U.S.C. § 922 (g) (1) Felon in possession of a firearm (g)

It shall be unlawful for any person -

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

18 U.S.C. § 922 (g) (8) Possession of a firearm while subject to a protection order (g)

It shall be unlawful for any person -

- (8) who is subject to a court order that -

- (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (C)
 - (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

18 U.S.C. § 922 (g) (9) Possession of a firearm after conviction of a misdemeanor crime of domestic violence

(g) It shall be unlawful for any person -

- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.