

HOUSE BILL 246

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Matthew McQueen

AN ACT

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

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

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

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

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

B. "deadly weapon" means any firearm, whether  
loaded or unloaded; or any weapon which is capable of producing

.205211.4

underscored material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

.205211.4

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

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

25           "30-14-1. CRIMINAL TRESPASS.--

underscored material = new  
[bracketed material] = delete

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

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

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

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

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

.205211.4

underscored material = new  
[bracketed material] = delete

1       custodian [~~thereof~~] of the lands.

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

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

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

19                       (2) any person who commits criminal trespass  
20 in an evacuation zone is guilty of a fourth degree felony.

21              F. [~~Whoever~~] Any person who knowingly removes,  
22 tampers with or destroys any "no trespass" sign is guilty of a  
23 petty misdemeanor, except that, when the damage to the sign  
24 amounts to more than one thousand dollars (\$1,000), [~~he or she~~]  
25 the person is guilty of a misdemeanor and shall be subject to

.205211.4

underscored material = new  
[bracketed material] = delete

1 imprisonment in the county jail for a definite term less than  
2 one year or a fine not more than one thousand dollars (\$1,000)  
3 or to both such imprisonment and fine in the discretion of the  
4 judge.

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

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

10 "30-14-8. BREAKING AND ENTERING.--

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

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

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

25 "30-15-1. CRIMINAL DAMAGE TO PROPERTY.--

.205211.4

underscored material = new  
[bracketed material] = delete

1           A. Criminal damage to property consists of  
2 intentionally damaging any real or personal property of another  
3 without the consent of the owner of the property.

4           ~~[Whoever]~~ B. Any person who commits criminal damage  
5 to property is guilty of a petty misdemeanor, except that:

6                   (1) when the damage to the property amounts to  
7 more than one thousand dollars (\$1,000), ~~[he]~~ the person is  
8 guilty of a fourth degree felony; and

9                   (2) any person who commits criminal damage to  
10 property in an evacuation zone is guilty of a third degree  
11 felony."

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

14           "30-16-1. LARCENY.--

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

17                   B. ~~[Whoever]~~ Any person who commits larceny when  
18 the value of the property stolen is two hundred fifty dollars  
19 (\$250) or less is guilty of a petty misdemeanor, except that,  
20 if the larceny was committed in an evacuation zone, the person  
21 is guilty of a misdemeanor.

22                   C. ~~[Whoever]~~ Any person who commits larceny when  
23 the value of the property stolen is over two hundred fifty  
24 dollars (\$250) but not more than five hundred dollars (\$500) is  
25 guilty of a misdemeanor, except that, if the larceny was

underscored material = new  
[bracketed material] = delete

1 committed in an evacuation zone, the person is guilty of a  
2 fourth degree felony.

3 D. ~~[Whoever]~~ Any person who commits larceny when  
4 the value of the property stolen is over five hundred dollars  
5 (\$500) but not more than two thousand five hundred dollars  
6 (\$2,500) is guilty of a fourth degree felony, except that, if  
7 the larceny was committed in an evacuation zone, the person is  
8 guilty of a third degree felony.

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

13 F. Any person who commits larceny in an evacuation  
14 zone when the value of the property stolen is over two thousand  
15 five hundred dollars (\$2,500) is guilty of a second degree  
16 felony.

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

20 [~~G. — Whoever~~] H. Any person who commits larceny  
21 when the property of value stolen is livestock is guilty of a  
22 third degree felony regardless of its value.

23 [~~H. — Whoever~~] I. Any person who commits larceny  
24 when the property of value stolen is a firearm is guilty of a  
25 fourth degree felony when its value is less than two thousand

.205211.4

underscored material = new  
[bracketed material] = delete

1 five hundred dollars (\$2,500)."

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

4 "30-16-3. BURGLARY.--Burglary consists of the  
5 unauthorized entry of any vehicle, watercraft, aircraft,  
6 dwelling or other structure, movable or immovable, with the  
7 intent to commit any felony or theft therein.

8 A. Any person who, without authorization, enters a  
9 dwelling house with intent to commit any felony or theft  
10 therein is guilty of a third degree felony, except that, if the  
11 dwelling house is located in an evacuation zone, the person is  
12 guilty of a second degree felony.

13 B. Any person who, without authorization, enters  
14 any vehicle, watercraft, aircraft or other structure, movable  
15 or immovable, with intent to commit any felony or theft therein  
16 is guilty of a fourth degree felony, except that, if the  
17 vehicle, watercraft, aircraft or other structure, movable or  
18 immovable, is located in an evacuation zone, the person is  
19 guilty of a third degree felony."

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

22 "30-16-4. AGGRAVATED BURGLARY.--

23 A. Aggravated burglary consists of the unauthorized  
24 entry of [~~any~~] a vehicle, watercraft, aircraft, dwelling or  
25 other structure, movable or immovable, with intent to commit

.205211.4

underscored material = new  
[bracketed material] = delete

1 [any] a felony or theft [~~therein~~] in it and the person  
2 [~~either~~]:

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

4 [B-] (2) after entering, arms himself or  
5 herself with a deadly weapon; or

6 [C-] (3) commits a battery upon [any] a person  
7 while in [~~such~~] the place or in entering or leaving [~~such~~] the  
8 place.

9 [~~Whoever~~] B. Any person who commits aggravated  
10 burglary is guilty of a second degree felony, except that, if  
11 the aggravated burglary is in an evacuation zone, the person is  
12 guilty of a first degree felony."

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

17 "30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR  
18 VEHICLE.--

19 A. Unlawful taking of a vehicle or motor vehicle  
20 consists of a person taking any vehicle or motor vehicle as  
21 defined by the Motor Vehicle Code intentionally and without  
22 consent of the owner. [~~Whoever~~]

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

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

underscoring material = new  
[bracketed material] = delete

1                    (2) third degree felony for a first offense  
2 committed in an evacuation zone;

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

5                    (4) second degree felony for a second or  
6 subsequent offense committed in an evacuation zone; and

7                    [~~3~~] (5) second degree felony for a third or  
8 subsequent offense.

9                    [~~B-~~] C. The consent of the owner of the vehicle or  
10 motor vehicle to its taking shall not in any case be presumed  
11 or implied because of the owner's consent on a previous  
12 occasion to the taking of the vehicle or motor vehicle by the  
13 same or a different person.

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

24                    **SECTION 9. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2017.

.205211.4