



## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

#### Synopsis:

Section 1 is new material to be included in the Criminal Code entitled “Misappropriation of a Petroleum Product or Oil and Gas Equipment.”

Subsection A provides that this crime can be committed in one of four ways: (1) “taking, acquiring or exercising control” over such products or equipment without the owner’s consent and with the intent to deprive the owner of such products or equipment by either disposing of the product or drilling a hole in the product; (2) transporting the product to a waste facility for which the person cannot identify the product’s owner; (3) purchasing the product from someone not authorized to sell it; and (4) storing, delivering, purchasing, or trading the product for financial benefit by a method not approved by the oil conservation division.

Subsection B provides graduated penalties for the crime, depending on the value of the product or equipment that is misappropriated ranging from a fourth degree felony for \$500 or less; a third degree felony for \$500-\$2500; and a second degree felony for any amount over \$2500.

Subsection C provides that when a person has misappropriated such a product more than once within a six-month period, even if in different counties, the prosecution may charge the person either (1) in separate counts based on the value of the products “in each occurrence from a single property” or (2) in a single count based on the aggregated value of all the products misappropriated during the six-month period. If the misappropriations occurred in different counties, venue is proper in any county from which a product was misappropriated.

Subsection D provides that the penalties pursuant to this section are separate and distinct from those authorized in Section 70-2-31 (providing for criminal penalties up to three years incarceration and a \$5000 for any knowing and willful violation of the Oil and Gas Act).

Subsection E contains the definitions for “oil and gas equipment” and “petroleum product.”

Section 2 amends Section 30-42-3 of the Racketeering Act of the Criminal Code entitled “Definitions” to include the crime of misappropriation of a petroleum product of oil and gas equipment as a crime that can be included in a racketeering charge.

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None for this agency.

### **SIGNIFICANT ISSUES**

#### Section 1, Subsection A

The crime can be committed in one of four ways, but only the first way seems to contain a mens rea. The crimes are designated as felonies but only the first way contains the mens rea of committing the misappropriation without the owner’s consent and “with the intent to deprive the

owner” of the product. The following three contain no such similar language. As such, those subsections appears to be a strict liability crimes. Strict liability crimes are crimes “for which liability is imposed irrespective of the defendant’s knowledge or intentions, that is, crimes without a mens rea requirement.” Laurie L. Levenson, *Good Faith Defenses: Reshaping Strict Liability Crimes*, 78 Cornell L. Rev. 401, 417 (1993); see also *State v. Harrison*, 1992-NMCA-139, ¶ 18 (“A strict liability crime is one which imposes a criminal sanction for an unlawful act without requiring a showing of criminal intent.”). “Strict liability crimes generally arise from the legislative exercise of police powers to achieve some societal good, with relatively slight penalties.” *State v. Rael*, 2024-NMSC-010, ¶ 43, 548 P.3d 66. In *Rael*, the Supreme Court presumed a mens rea for the manufacturing portion of the sexual exploitation of children statute and construed the statute to supply the mens rea. *Id.* ¶¶ 44-45.

These crimes do not carry “slight penalties.” Rather, they range from a fourth degree felony which carries a potential prison sentence of 18 months to a second degree felony which carries a potential sentence of nine years. See Section 31-18-15. Moreover, the severity of the crime is not tied to the culpability of the person’s actions, but rather to the value of the property misappropriated. It is possible that the courts will similarly decline to read the statute as one of strict liability, and construe the crime to require an intent element. See e.g. *State v. Ramos*, 2013-NMSC-031, ¶ 21 (holding that although not expressly stated in the statute, the crime of violating a protection order requires proof that the defendant knew of the order and of the protected person’s presence within the protected zone); *State v. Nozie*, 2009-NMSC-018, ¶ 30 (knowledge that the victim is a police officer is an essential element of aggravated battery on an officer, although not expressly stated in the statute). *State v. Valino*, 2012-NMCA-105, ¶¶ 15, 17 (same for battery on a health care worker). The drafters may wish to consider inclusion of a mens rea in the language of the bill to avoid possible litigation of imposing felony liability for an act without criminal intent.

### Subsection C

Specifying the unit of prosecution for a crime can avoid double jeopardy litigation because “the polestar guiding courts is the legislature’s intent to authorize multiple punishments for the same offense.” *Swafford v. State*, 1991-NMSC-043, ¶ 9, 112 N.M. 3. Here, the prosecutor is given the choice of charging singly or in the aggregate for multiple occurrences within six months. However, charging in the aggregate, if the misappropriations happened in separate counties, could be challenging in terms of making sure witnesses from different counties are available in the venue that is chosen. There may also be difficulty in knowing if there have been similar misappropriations in different counties.

### **PERFORMANCE IMPLICATIONS**

Possible venue issues, as noted above.

### **ADMINISTRATIVE IMPLICATIONS**

None noted.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

### **TECHNICAL ISSUES**

n/a

### **OTHER SUBSTANTIVE ISSUES**

None noted.

**ALTERNATIVES**

n/a

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

n/a