

**Presentation to the NM State Legislature's
Criminal Justice Reform Subcommittee**

***Classification of Crimes in
New Mexico Criminal Code***

**Rep. Antonio Maestas, Co-Chair
July 29, 2019**

Chapter 30 - Criminal Offenses - NMSA 1978

"Criminal Code"

ARTICLE 1 General Provisions

ARTICLE 2 Homicide

ARTICLE 3 Assault and Battery

ARTICLE 3A Harassment and Stalking

ARTICLE 4 Kidnapping

ARTICLE 5 Abortion

ARTICLE 5A Partial-Birth Abortion Ban

ARTICLE 6 Crimes Against Children and Dependents

ARTICLE 6A Sexual Exploitation of Children

ARTICLE 7 Weapons and Explosives

ARTICLE 8 Nuisances

ARTICLE 9 Sexual Offenses

ARTICLE 10 Marital and Familial Offenses

ARTICLE 11 Crimes Against Reputation

ARTICLE 12 Abuse of Privacy

ARTICLE 13 Violation of Civil Rights

ARTICLE 14 Trespass

ARTICLE 15 Property Damage

ARTICLE 16 Larceny

ARTICLE 16A Computer Crimes

ARTICLE 16B Unauthorized Recording

ARTICLE 16C Unauthorized Theater

Recording

ARTICLE 16D Unlawful Taking of a Vehicle or Motor Vehicle

ARTICLE 17 Fire

ARTICLE 18 Animals

ARTICLE 19 Gambling

ARTICLE 20 Crimes Against Public Peace

ARTICLE 20A Antiterrorism

ARTICLE 20B Demonstrations at Funerals and Memorial Services

ARTICLE 21 Sabotage and Disloyalty

ARTICLE 22 Interference with Law Enforcement

ARTICLE 23 Misconduct by Officials

ARTICLE 24 Bribery

ARTICLE 25 Perjury and False Affirmations

ARTICLE 26 Interference with Public Records

ARTICLE 27 Malicious Prosecution, etc.

ARTICLE 28 Initiatory Crimes

ARTICLE 29 Glues

ARTICLE 30 Mercury

ARTICLE 31 Controlled Substances

ARTICLE 31A Imitation Controlled Substances

ARTICLE 31B Drug Precursors

ARTICLE 32 Forest Fires

ARTICLE 33 Fraud and False Dealing

ARTICLE 33A Telecommunications Service Theft

ARTICLE 34 Libel and Slander

ARTICLE 35 Public Utilities

ARTICLE 36 Worthless Checks

ARTICLE 37 Sexually Oriented Material Harmful to Minors

ARTICLE 37A Unauthorized Distribution of Sensitive Images

ARTICLE 38 Exhibiting Obscene Films Outdoors

ARTICLE 39 False Reporting

ARTICLE 40 Public Assistance

ARTICLE 41 Kickback, Bribe or Rebate

ARTICLE 42 Racketeering

ARTICLE 43 Loan Sharking

ARTICLE 44 Medicaid Fraud

ARTICLE 45 Computer Crimes

ARTICLE 46 Ticket Scalping

ARTICLE 47 Resident Abuse and Neglect

ARTICLE 48 Smokeless Tobacco Products

ARTICLE 49 Tobacco Products, E-Cigarettes and Nicotine Liquid Containers

ARTICLE 50 Fraudulent Telemarketing

ARTICLE 51 Money Laundering

ARTICLE 52 Human Trafficking

ARTICLE 53 Disruption of Communication and Utility Services

Chapter 31 - Criminal Procedure, NMSA -1978

ARTICLE 1 Issuance of Process and Warrants
ARTICLE 1A DNA Evidence
ARTICLE 2 Fresh Pursuit
ARTICLE 3 Bail
ARTICLE 3A Witness Immunity
ARTICLE 4 Extradition
ARTICLE 5 Interstate Compacts
ARTICLE 6 Grand Jury
ARTICLE 7 Indictments and Proof of Ownership for Offenses Concerning Domestic Animals
ARTICLE 8 Out-of-State Witnesses
ARTICLE 9 Mental Illness and Competency
ARTICLE 10 Commission of Crimes by Indians
ARTICLE 11 Appeals and Post-Conviction Remedies
ARTICLE 12 Fines, Fees and Costs
ARTICLE 13 Civil Rights and Pardons
ARTICLE 14 Execution of Death Sentence
ARTICLE 15 Public Defenders
ARTICLE 16 Defense of Indigents
ARTICLE 16A Pre-prosecution Diversion
ARTICLE 17 Victim Restitution
ARTICLE 18 Criminal Sentencing
ARTICLE 18A Sentencing Guidelines
ARTICLE 18B Hate Crimes
ARTICLE 19 Sentencing Authority for Misdemeanors
ARTICLE 19A Penalty Assessment
ARTICLE 20 Sentencing
ARTICLE 20A Capital Felony Sentencing
ARTICLE 21 Sentence, Pardons and Paroles
ARTICLE 22 Crime Victims Reparations
ARTICLE 23 Crime Victims Immunity
ARTICLE 24 Crime Victims' and Witnesses' Bill of Rights
ARTICLE 25 Victim Counselor Confidentiality
ARTICLE 26 Victims of Crime
ARTICLE 27 Forfeiture
ARTICLE 28 Crime Reduction Grant

Crime defined [30-1-4]

A crime is an act or omission forbidden by law and for which, upon conviction, a sentence of either death, imprisonment or a fine is authorized.

Classified crimes defined [30-1-6]

Felony - one year or more

Misdemeanor – more than six months but less than one year

Petty misdemeanor - six months or less

Traffic Misdemeanors – 90 days or less

Penalty Assessment -

Degrees of felonies [30-1-7]

Capital felonies (30 years to life or life w/out possibilities of parole)

First degree felonies (18 years mandatory)

Second degree felonies (0 – 9 Years)

Third degree felonies (0 – 3 years); and

Fourth degree felonies (0 – 18 months)

Time limitations for commencing prosecution [30-1-8]

Capital felony or a first degree violent felony, no limitation period shall exist

Second degree felony, within six years

Third degree felony, within five years

Fourth degree felony, within five years

Misdemeanor, within two

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

Time starts when the victim turns eighteen or the violation is reported to a law enforcement agency, whichever occurs first.

Alteration of basic sentence; mitigating or aggravating circumstances; procedure [31-18-15.1]

A. The court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision to alter a basic sentence. **The judge may alter the basic sentence** as prescribed in Section 31-18-15 NMSA 1978 upon:

(1) a finding by the judge of any **mitigating circumstances** surrounding the offense or concerning the offender; or

(2) a finding by a jury or by the judge beyond a reasonable doubt of any **aggravating circumstances** surrounding the offense or concerning the offender.

C. For the purpose of this section, the following shall not be considered aggravating circumstances:

- (1) the use of a firearm, as provided in Section 31-18-16 NMSA 1978;
- (2) a prior felony conviction, as provided in Section 31-18-17 NMSA 1978;
- (3) the commission of a crime motivated by hate, as provided in the Hate Crimes Act [31-18B-1 NMSA 1978]; or
- (4) any evidence relating to the proof of an essential element of the offense.

G. The amount of the alteration of the basic sentence for noncapital felonies shall be determined by the judge. However, in no case shall the alteration exceed **one-third of the basic sentence**; provided that when the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence.

Habitual offenders; alteration of basic sentence [31-18-17]

A. A person convicted of one prior felony conviction is a habitual offender and his basic sentence shall be **increased by one year**. The sentence imposed by this subsection shall not be suspended or deferred.

B. A person convicted of two prior felony convictions 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 three or more prior felony convictions 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.