

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 65

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO CHILD EXPLOITATION; ESTABLISHING INCREASED
PENALTIES FOR POSSESSION, DISTRIBUTION AND MANUFACTURE OF A
DEPICTION OF A CHILD UNDER THE AGE OF THIRTEEN; CREATING A
BASIC SENTENCE OF IMPRISONMENT OF NINE YEARS FOR POSSESSION AND
DISTRIBUTION OF A DEPICTION INVOLVING EXPLOITATION OF A CHILD.

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

SECTION 1. Section 30-6A-3 NMSA 1978 (being Laws 1984,
Chapter 92, Section 3, as amended) is amended to read:

"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

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1 if that person knows or has reason to know that one or more of
2 the participants in that act is a child under eighteen years of
3 age. A person who violates the provisions of this subsection
4 is guilty of a fourth degree felony and, notwithstanding the
5 provisions of Section 31-18-15 NMSA 1978, shall be sentenced to
6 a basic sentence of imprisonment of nine years. When a
7 separate finding of fact made by a court or jury shows beyond a
8 reasonable doubt that a child depicted in the visual or print
9 medium is a child under the age of thirteen, the basic sentence
10 shall be increased by one year, and the sentence imposed by
11 this subsection shall be the first year served and shall not be
12 suspended or deferred; provided that when the offender is a
13 youthful offender, the sentence imposed by this subsection may
14 be increased by one year.

15 B. It is unlawful for a person to intentionally
16 distribute any obscene visual or print medium depicting any
17 prohibited sexual act or simulation of such an act if that
18 person knows or has reason to know that the obscene medium
19 depicts any prohibited sexual act or simulation of such act and
20 if that person knows or has reason to know that one or more of
21 the participants in that act is a child under eighteen years of
22 age. A person who violates the provisions of this subsection
23 is guilty of a third degree felony and, notwithstanding the
24 provisions of Section 31-18-15 NMSA 1978, shall be sentenced to
25 a basic sentence of imprisonment of nine years. When a

1 separate finding of fact made by a court or jury shows beyond a
2 reasonable doubt that a child depicted in the visual or print
3 medium is a child under the age of thirteen, the basic sentence
4 shall be increased by one year, and the sentence imposed by
5 this subsection shall be the first year served and shall not be
6 suspended or deferred; provided that when the offender is a
7 youthful offender, the sentence imposed by this subsection may
8 be increased by one year.

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

18 D. It is unlawful for a person to intentionally
19 manufacture any obscene visual or print medium depicting any
20 prohibited sexual act or simulation of such an act if one or
21 more of the participants in that act is a child under eighteen
22 years of age. A person who violates the provisions of this
23 subsection is guilty of a second degree felony. When a
24 separate finding of fact made by a court or jury shows beyond a
25 reasonable doubt that a child depicted in the visual or print

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1 medium is a child under the age of thirteen, the basic sentence
2 shall be increased by one year, and the sentence imposed by
3 this subsection shall be the first year served and shall not be
4 suspended or deferred; provided that when the offender is a
5 youthful offender, the sentence imposed by this subsection may
6 be increased by one year.

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

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

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1 felony.

2 G. The penalties provided for in this section shall
3 be in addition to those set out in Section 30-9-11 NMSA 1978."

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