UNANNOTATED

CHAPTER 31
Criminal Procedure

ARTICLE 1
Issuance of Process and Warrants

31-1-1. Short title.

Sections 31-1-1 through 31-3-9 NMSA 1978 may be referred to as the "Criminal Procedure Act".

History: 1953 Comp., § 41-1-1, enacted by Laws 1972, ch. 71, § 4; 1973, ch. 73, § 1.

31-1-2. Definitions.

Unless a specific meaning is given, as used in the Criminal Procedure Act:

A. "accused" means any person charged with the violation of any law of this state imposing a criminal penalty;

B. "bail bond" is a contract between surety and the state to the effect that the accused and the surety will appear in court when required and will comply with all conditions of the bond;

C. "defendant" means any person accused of a violation of any law of this state imposing a criminal penalty;

D. "felony" means any crime so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized;

E. "person", unless a contrary intention appears, means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

F. "police officer", "law enforcement officer", "peace officer" or "officer" means any full-time salaried or certified part-time salaried officer who by virtue of office or public employment is vested by law with the duty to maintain the public peace;

G. "recognizance" means any obligation of record entered into before a court requiring the accused to appear at all appropriate times or forfeit any bail and be subject to criminal penalty for failure to appear;

H. "release on personal recognizance" or "release on own recognizance" means the release of a defendant without bail, bail bond or sureties upon the defendant's promise to appear at all appropriate times;

I. "rules of civil procedure" means rules of civil procedure for the district courts of the state of New Mexico, as may be amended from time to time;

J. "rules of criminal procedure" means rules of criminal procedure for the district courts, magistrate courts and municipal courts adopted by the New Mexico supreme court, as may be amended from time to time;

K. "misdemeanor" means any offense for which the authorized penalty upon conviction is imprisonment in excess of six months but less than one year; and

L. "petty misdemeanor" means any offense so designated by law or if upon conviction a sentence of imprisonment for six months or less is authorized.

History: 1953 Comp., § 41-1-2, enacted by Laws 1972, ch. 71, § 5; 1973, ch. 73, § 2; 1979, ch. 123, § 1; 2009, ch. 249, § 1.

31-1-3. Method of prosecution.

A criminal prosecution shall be commenced, conducted and terminated in accordance with Rules of Criminal Procedure. All pleadings, practice and procedure shall be governed by such rules.

History: 1953 Comp., § 41-1-3, enacted by Laws 1972, ch. 71, § 6.

31-1-4. Criminal actions; docketing action; service; return.

A. Upon filing of the complaint of a law enforcement officer, the court shall docket the action. Upon the filing of the complaint of any other person, the court shall collect the docket fee from the person before docketing the action.

B. Upon the docketing of any criminal action, the court may issue a summons directing the defendant to appear before the court at a time stated in the summons.

C. When a warrant is issued in a criminal action, it shall be directed to a law enforcement officer, and the defendant named in the warrant shall, upon arrest, be brought by the officer before the court without unnecessary delay.

D. It shall be the duty of the clerk of the district court to issue process in criminal cases filed in the district court. It shall be the duty of the clerk of the magistrate court or the magistrate, if there is no clerk, to issue process in criminal cases filed in the magistrate court. It shall be the duty of the law enforcement officer to whom process is

directed to execute process and return the same to the clerk of the court from which process is issued or, if there is no clerk of the court, to the judge thereof.

E. Except for criminal actions filed in municipal court, all police officers authorized to serve process issued in any criminal action have jurisdiction to serve such process in any county of this state.

History: 1953 Comp., § 41-1-4, enacted by Laws 1972, ch. 71, § 7; 1975, ch. 242, § 11.

31-1-5. Procedures on arrest; reports.

A. Following arrest, any person accused of a crime is entitled to have reasonable opportunity to make three telephone calls beginning not later than twenty minutes after the time of arrival at a police station, sheriff's office or other place of detention. Nothing in this subsection limits any right to make telephone calls at any time later than twenty minutes after the time of arrival at the police station.

B. Every accused shall be brought before a court having jurisdiction to release the accused without unnecessary delay.

C. Within eighteen hours after the arrest of any person accused with having committed a misdemeanor or a felony, the arresting law enforcement agency shall notify the district attorney of:

(1) the name of the accused; and

(2) the offense charged.

History: 1953 Comp., § 41-1-5, enacted by Laws 1973, ch. 73, § 3.

31-1-6. Citation in lieu of arrest without a warrant.

A. A law enforcement officer who arrests a person without a warrant for a petty misdemeanor or any offense under Chapter 17 NMSA 1978 may offer the person arrested the option of accepting a citation to appear in lieu of taking the person to jail.

B. A citation issued pursuant to this section shall contain the name and address of the cited person, the offense charged and the time and place to appear. The citation may be a paper citation or an electronic version of a paper citation. Unless the person requests an earlier date, the time specified in the citation shall be at least three days after issuance of the citation. The law enforcement officer shall explain the person's rights not to sign a citation, the effect of not signing the citation, the effect of signing the citation and the effect of failing to appear at the time and place stated on the citation.

C. The person's signature on the citation constitutes a promise to appear at the time and place stated in the citation. One copy of the citation to appear shall be delivered to

the person cited, and the law enforcement officer shall keep a duplicate copy for filing with the court as soon as practicable.

D. A law enforcement officer who prepares a citation pursuant to this section may use a paper citation form or an electronic citation form to record the information required by this section. Regardless of the form of citation used, a physical copy of the citation shall be delivered to the person cited as required by this section. An electronic citation may be signed electronically and the law enforcement officer's copy of a citation may be filed with the court electronically.

E. A citation issued pursuant to this section is a valid complaint if the person receives and signs the citation in paper or electronic form.

F. It is a petty misdemeanor for a person signing a citation not to appear at the time and place stated in the citation regardless of the disposition of the offense for which the citation was issued. A written promise to appear may be complied with by appearance of counsel.

History: 1953 Comp., § 41-1-6, enacted by Laws 1973, ch. 73, § 4; 1987, ch. 114, § 1; 2013, ch. 197, § 1.

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.

History: Laws 1979, ch. 178, § 1; 1995, ch. 23, § 2.

31-1-8. Identification of minor or dependent children upon arrest; required inquiry; guidelines.

A. A state or local law enforcement officer who arrests a person shall, at the time of the arrest, inquire whether the person is a parent or guardian of minor or dependent children who may be at risk as a result of the arrest. The officer shall make reasonable efforts to ensure the safety of minor or dependent children at risk as a result of an arrest in accordance with guidelines established by the department of public safety.

B. The department of public safety, in consultation with the children, youth and families department, shall establish guidelines and a training program for law enforcement officers for ensuring child safety upon the arrest of a parent or guardian. The guidelines and training program shall include:

(1) procedures to ensure that law enforcement officers inquire whether arrestees have minor or dependent children who may be present or at another location at the time of the arrest;

(2) procedures for the proper arrangement of temporary care for children to ensure their safety and well-being; and

(3) education on how the effects of witnessing a violent crime or other event causes emotional harm to children and how law enforcement can assist in mitigating the long-term effects of the trauma.

History: Laws 2007, ch. 89, § 2.

ARTICLE 1A
DNA Evidence

31-1A-1. Repealed.

31-1A-2. Procedures for post-conviction consideration of DNA evidence; requirements.

A. A person convicted of a felony, who claims that DNA evidence will establish the person's innocence, may petition the district court of the judicial district in which the person was convicted to order the disclosure, preservation, production and testing of evidence that can be subjected to DNA testing. A copy of the petition shall be served on the district attorney for the judicial district in which the district court is located. A petitioner shall be granted full, fair and prompt proceedings upon filing a petition.

B. As a condition to the district court's acceptance of the person's petition, the petitioner shall:

(1) submit to DNA testing ordered by the district court; and

(2) authorize the district attorney's use of the DNA test results to investigate all aspects of the case that the petitioner is seeking to reopen.

C. DNA samples obtained pursuant to Subsection B of this section shall be submitted for DNA testing according to the procedures in the DNA Identification Act, and the DNA record shall be entered into the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories.

D. The petitioner shall show, by a preponderance of the evidence, that:

(1) the petitioner was convicted of a felony;

(2) evidence exists that can be subjected to DNA testing;

(3) the evidence to be subjected to DNA testing:

(a) has not previously been subjected to DNA testing;

(b) has not previously been subjected to the type of DNA testing that is now being requested; or

(c) was previously subjected to DNA testing, but was tested incorrectly or interpreted incorrectly;

(4) the DNA testing the petitioner is requesting will be likely to produce admissible evidence; and

(5) identity was an issue in the petitioner's case or that if the DNA testing the petitioner is requesting had been performed prior to the petitioner's conviction and the results had been exculpatory, there is a reasonable probability that the petitioner would not have pled guilty or been found guilty.

E. If the petitioner satisfies the requirements set forth in Subsection D of this section, the district court shall appoint counsel for the petitioner, unless the petitioner waives counsel or retains the petitioner's own counsel.

F. After reviewing a petition, the district court may dismiss the petition, order a response by the district attorney or issue an order for DNA testing.

G. The district court shall order all evidence secured that is related to the petitioner's case and that could be subjected to DNA testing. The evidence shall be preserved during the pendency of the proceeding. The district court may impose appropriate sanctions, including dismissal of the petitioner's conviction or criminal contempt, if the court determines that evidence was intentionally destroyed after issuance of the court's order to secure evidence.

H. The district court shall order DNA testing if the petitioner satisfies the requirements set forth in Subsections B and D of this section.

I. If the results of the DNA testing are exculpatory, the district court may set aside the petitioner's judgment and sentence, may dismiss the charges against the petitioner with prejudice, may grant the petitioner a new trial or may order other appropriate relief.

J. The cost of DNA testing ordered pursuant to this section shall be borne by the state or the petitioner, as the district court may order in the interest of justice. Provided, that a petitioner shall not be denied DNA testing because of the petitioner's inability to pay for the cost of DNA testing. Testing under this provision shall only be performed by a laboratory that meets the minimum standards of the national DNA index system.

K. The provisions of this section shall not be interpreted to limit:

(1) other circumstances under which a person may obtain DNA testing; or

(2) post-conviction relief a petitioner may seek pursuant to other provisions of law.

L. The petitioner shall have the right to appeal a district court's denial of the requested DNA testing, a district court's final order on a petition or a district court's decision regarding relief for the petitioner. The state shall have the right to appeal any final order issued by the district court. An appeal shall be filed by a party within thirty days to the court of appeals.

M. The state shall preserve all evidence that is secured in relation to an investigation or prosecution of a crime and that could be subjected to DNA testing, for not less than the period of time that a person remains subject to incarceration or on probation or parole in connection with the investigation or prosecution.

N. The state may dispose of evidence before the expiration of the time period set forth in Subsection M of this section if:

(1) no other law, regulation or court order requires that the evidence be preserved;

(2) the evidence must be returned to its rightful owner;

(3) preservation of the evidence is impractical due to the size, bulk or physical characteristics of the evidence; and

(4) the state takes reasonable measures to remove and preserve portions of the evidence sufficient to permit future DNA testing.

O. In proceedings under this section, the Rules of Evidence and the Rules of Civil Procedure for the District Courts shall apply.

P. As used in this section, "DNA" means deoxyribonucleic acid.

History: Laws 2003, ch. 27, § 1; 2019, ch. 211, § 4.

ARTICLE 2
Fresh Pursuit

31-2-1. [Officer of another state entering this state in fresh pursuit; power to arrest and hold fugitive.]

Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this state, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in this state.

History: Laws 1937, ch. 12, § 1; 1941 Comp., § 42-201; 1953 Comp., § 41-2-1.

31-2-2. [Arrested person taken before magistrate; hearing; commitment or discharge.]

If an arrest is made in this state by an officer of another state in accordance with the provisions of Section 1 [31-2-1 NMSA 1978] of this act he shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

History: Laws 1937, ch. 12, § 2; 1941 Comp., § 42-202; 1953 Comp., § 41-2-2.

31-2-3. [Construction of act; power to arrest not limited.]

Section 1 [31-2-1 NMSA 1978] of this act shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

History: Laws 1937, ch. 12, § 3; 1941 Comp., § 42-203; 1953 Comp., § 41-2-3.

31-2-4. ["State" includes District of Columbia.]

For the purpose of this act [31-2-1 to 31-2-7 NMSA 1978] the word "state" shall include the District of Columbia.

History: Laws 1937, ch. 12, § 4; 1941 Comp., § 42-204; 1953 Comp., § 41-2-4.

31-2-5. ["Fresh pursuit" defined.]

The term "fresh pursuit" as used in this act [31-2-1 to 31-2-7 NMSA 1978] shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

History: Laws 1937, ch. 12, § 5; 1941 Comp., § 42-205; 1953 Comp., § 41-2-5.

31-2-6. [Certified copies of law to be distributed.]

Upon the passage and approval by the governor of this act [31-2-1 to 31-2-7 NMSA 1978] it shall be the duty of the secretary of state (or other officer) to certify a copy of this act to the executive department of each of the states of the United States.

History: Laws 1937, ch. 12, § 6; 1941 Comp., § 42-206; 1953 Comp., § 41-2-6.

31-2-7. [Citation of act.]

This act [31-2-1 to 31-2-7 NMSA 1978] may be cited as the Uniform Act on Fresh Pursuit.

History: Laws 1937, ch. 12, § 8; 1941 Comp., § 42-207; 1953 Comp., § 41-2-7.

31-2-8. Authority to arrest misdemeanant; fresh pursuit.

A. Any county sheriff or municipal police officer who leaves his jurisdictional boundary while in fresh pursuit of a misdemeanant whom he would otherwise have authority to arrest shall have the authority to arrest that misdemeanant anywhere within this state and return him to the jurisdiction in which the fresh pursuit began without further judicial process.

B. For purposes of this section, "fresh pursuit of a misdemeanant" means the pursuit of a person who has committed a misdemeanor in the presence of the pursuing

officer. Fresh pursuit shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

History: Laws 1981, ch. 102, § 1.

ARTICLE 3
Bail

31-3-1. Designee to accept bail.

Any statutory provision or rule of court governing the release of an accused may be carried out by a responsible person designated by the court.

History: 1953 Comp., § 41-3-1, enacted by Laws 1972, ch. 71, § 8.

31-3-1.1. Review of youthful offender records.

Notwithstanding any other provision of law, when considering the setting of bail or other conditions of release of a person charged with a felony, the juvenile disposition of a youthful offender and any evidence given in a hearing in court for a youthful offender may be considered. The juvenile disposition and evidence used pursuant to this section may be considered only if the person is thirty years old or younger. If a judge considers the juvenile disposition of a youthful offender or evidence given in a hearing for the youthful offender pursuant to this section, the disposition and evidence shall be considered confidential and shall be reviewed or discussed in camera. All evidence, motions or other documents or evidence pertaining to the juvenile disposition shall be sealed, unless otherwise considered not to be confidential by law.

History: Laws 2016, ch. 9, § 1.

31-3-2. Failure to appear; forfeiture of bail bonds.

A. Whenever any person fails to appear at the time and place fixed by the terms of recognizance, the court may issue a warrant for his arrest.

B. Whenever a person fails to appear at the time and place fixed by the terms of his bail bond, the court:

(1) may issue a warrant for his arrest; and

(2) may declare a forfeiture of the bail. If the court declares a forfeiture, it shall:

(a) declare such forfeiture at the time of nonappearance;

(b) give written notice thereof to the surety within four working days of declaration; and

(c) issue a bench warrant for the person's arrest.

C. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

D. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default, and execution may issue thereon. By entering into a bail bond, the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom papers affecting their liability may be served. Liability of the surety may be enforced on motion without the necessity of an independent action.

E. Notice of the motion to enter a judgment of default may be served pursuant to the rules of criminal procedure or may be served on the clerk of the court, who shall forthwith mail copies to the obligors at their last known address. The notice shall require the sureties to appear on or before a given date and show cause why judgment shall not be entered against them for the amount of the bail bond or recognizance. If good cause is not shown, the court may then enter judgment against the obligors on the recognizance, for such sum as it sees fit, not exceeding the penalty fixed by the bail bond or recognizance.

F. When a judgment has been rendered against the defendant or surety for the whole or part of the penalty of a forfeited recognizance, the court rendering such judgment shall remit the amount thereof when, after such rendition, the accused has been arrested and surrendered to the proper court to be tried on such charge or to answer the judgment of the court, provided that the apprehension of the accused in some way was aided by the surety's efforts or by information supplied by the surety.

G. If any amount remains unpaid ten days after entry of judgment, the court may issue execution for satisfaction of judgment.

H. In the event that an obligor does not possess property in this state sufficient to satisfy a judgment against it for the whole or part of the penalty of a forfeited recognizance, the court entering judgment against the obligor on the recognizance shall send written notification to the superintendent of insurance. Immediately upon receipt of such written notification and pursuant to Section 46-6-4 NMSA 1978, the superintendent of insurance shall inform the obligor that unless the judgment is paid or an appeal, writ of error or supersedeas is taken within thirty days of the rendition of the judgment or decree, such obligor shall forfeit all right to do business in this state. If timely appeal, writ of error or supersedeas is not taken, the superintendent of insurance shall immediately take whatever steps necessary to revoke the right of the obligor to do business in this state.

History: 1953 Comp., § 41-3-2, enacted by Laws 1972, ch. 71, § 9; 1973, ch. 215, § 1; 1987, ch. 228, § 1; 1993, ch. 159, § 1.

31-3-3. Surrender of principal by surety.

A. When a surety desires to be discharged from the obligation of its bail bond, the surety may arrest the accused and deliver him to the sheriff of the county in which the action against the accused is pending.

B. The surety shall, at the time of surrendering the accused, deliver to the sheriff a certified copy of the order admitting the accused to bail and a certified copy of the bail bond. Delivery of these documents shall be sufficient authority for the sheriff to receive and retain the accused until he is otherwise bailed or discharged.

C. Upon the delivery of the accused as provided in this section, the surety may apply to the court for an order discharging him from liability as surety; and upon satisfactory proof being made that this section has been complied with, the court shall enter an order discharging the surety from liability.

D. This section shall not apply to a paid surety as defined by Section 31-3-4 NMSA 1978.

History: 1953 Comp., § 41-3-3, enacted by Laws 1972, ch. 71, § 10.

31-3-4. Paid sureties.

A. A "paid surety" is a surety that has taken money, property or other consideration to act as a surety for the accused.

B. When a paid surety desires to be discharged from the obligation of its bond, it may arrest the accused and deliver him to the sheriff of the county in which the action against the accused is pending.

C. The paid surety shall, at the time of surrendering the accused, deliver to the sheriff a certified copy of the order admitting the accused to bail and a certified copy of the bail bond. Delivery of these documents shall be sufficient authority for the sheriff to receive and retain the accused until he may be brought before the court.

D. A paid surety may be released from the obligation of its bond only by an order of the court.

E. The court shall order the discharge of a paid surety if:

(1) there has been a final disposition of all charges against the accused;

(2) the accused is dead;

(3) circumstances have arisen which the surety could not have foreseen at the time it became a paid surety for the accused; or

(4) the contractual agreement between the surety, the principal and the state has terminated.

History: 1953 Comp., § 41-3-4, enacted by Laws 1972, ch. 71, § 11.

31-3-5. Approval of bond.

No bond shall be accepted from a paid surety, as defined in Section 31-3-4 NMSA 1978, by a magistrate court or a district court unless executed on a form which has been approved by the supreme court.

History: 1953 Comp., § 41-3-4.1, enacted by Laws 1973, ch. 73, § 5.

31-3-6. Change of venue.

If the defendant is released pending trial and thereafter a change of venue is granted, the defendant shall be bound to appear according to the change of venue and otherwise in accordance with the terms of his recognizance. The sureties on a bail bond shall be bound to deliver the defendant in accordance with the change of venue without the necessity of giving a new bail bond.

History: 1953 Comp., § 41-3-5, enacted by Laws 1972, ch. 71, § 12.

31-3-7. Bail for witness.

If it appears by affidavit that the testimony of a person is material in any felony criminal proceeding and that it may become impracticable to secure his presence by subpoena, the judge may require such person to give bail pursuant to Rules of Criminal Procedure for his appearance as a witness. If the witness fails to give bail pursuant to Rules of Criminal Procedure, the witness may be committed to the custody of the sheriff for a period not to exceed five days within which time his deposition shall be taken as provided by Rules of Criminal Procedure. The court upon good cause shown may extend the time for taking such depositions for a period not exceeding five days. In no case except a first or second degree felony shall any surety be required for the bail of such witness.

History: 1953 Comp., § 41-3-6, enacted by Laws 1972, ch. 71, § 13.

31-3-8. Defects in bail or bail bond; effect.

No recognizance, undertaking or bond taken in any criminal proceeding shall be void, nor shall the principal or surety be discharged, from liability thereon for want of

form or substance or for omission of any recital or condition or because the same was entered into on Sunday.

History: 1953 Comp., § 41-3-7, enacted by Laws 1972, ch. 71, § 14.

31-3-9. Failure to appear; penalty.

A person released pending any proceeding related to the prosecution or appeal of a criminal offense or a probation revocation proceeding who willfully fails to appear before any court or judicial officer as required:

A. is guilty of a fourth degree felony, if he was released in connection with a felony proceeding; or

B. is guilty of a petty misdemeanor, if he was released in connection with a misdemeanor or a petty misdemeanor proceeding.

History: 1953 Comp., § 41-3-8, enacted by Laws 1973, ch. 73, § 6; 1999, ch. 150, § 1.

31-3-10. Termination of liability.

All recognizances secured by the execution of a bail bond shall be null and void upon the finding that the accused person is guilty, and all bond liability shall thereupon terminate.

History: 1978 Comp., § 31-3-10, enacted by Laws 1987, ch. 228, § 2.

31-3-11. Release of individuals who are pregnant or lactating.

A. The court shall consider an individual's pregnancy or lactation status when determining whether the individual is eligible for release or bond and in the computation of good time credit. A presumption shall be made in favor of release for an individual who is pregnant or lactating. An individual released pursuant to this section shall be placed on the least restrictive conditions of release necessary to ensure return to custody.

B. As used in this section, "release" means:

(1) custodial release, which is release under such court-imposed restrictions as to satisfy the court that the person remains in custody while released; and

(2) noncustodial release, which is release under such conditions that are not considered custodial.

History: Laws 2019, ch. 73, § 1.

31-3-12. Availability of global positioning system data on defendants on pretrial release.

Any public entity that possesses or controls global positioning system data with respect to a defendant on pretrial release shall make that data available without a warrant to a law enforcement officer pursuant to an ongoing and pending criminal investigation for which there is reasonable suspicion to believe the data will be probative. Any data provided to the law enforcement officer shall be limited to data that relates to the criminal investigation and is not more than one year old. The data shall not be made a part of any public record unless admitted as evidence during a criminal trial. The law enforcement officer may request immediate access to the data if it involves an investigation of:

A. any of the following serious violent felony offenses:

(1) murder in the first degree;

(2) first or second degree felony human trafficking of a child;

(3) first degree felony abuse of a child;

(4) sexual exploitation of a child constituting at least a second degree felony; or

(5) a serious violent felony offense as provided in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978;

B. a felony offense during which a firearm was brandished pursuant to Section 31-18-16 NMSA 1978 or during which a firearm was discharged; or

C. a felony offense during which great bodily harm was inflicted as defined in Section 30-1-12 NMSA 1978 or that caused the death of a person.

History: Laws 2022, ch. 56, § 28.

31-3-13. Hold for violation of conditions of release.

A. When a court receives notice that a person on pretrial release for a felony is arrested for a subsequent felony, the court shall issue an order for the person to remain in custody.

B. The person shall remain in custody until each judge assigned to any of the person's pending previous felony cases or another judge assigned for that purpose considers modification or revocation of the person's conditions of release.

History: Laws 2024, ch. 53, § 1.

ARTICLE 3A
Witness Immunity (Recompiled.)

31-3A-1. Recompiled.

ARTICLE 4
Extradition

31-4-1. Definitions.

Where appearing in this act [31-4-1 to 31-4-30 NMSA 1978], the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America. The term "prosecuting attorney" includes the various district attorneys of this state and their duly appointed, qualified and acting assistants, the attorney general and his duly appointed, qualified and acting assistants.

History: Laws 1937, ch. 65, § 1; 1941 Comp., § 42-1901; 1953 Comp., § 41-19-1.

31-4-2. Fugitives from justice; duty of governor.

Subject to the provisions of this act [31-4-1 to 31-4-30 NMSA 1978], the provisions of the constitution of the United States controlling and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

History: Laws 1937, ch. 65, § 2; 1941 Comp., § 42-1902; 1953 Comp., § 41-19-2.

31-4-3. Form of demand.

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing, alleging, except in cases arising under Section 6 [31-4-6 NMSA 1978], that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the

demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the cpoy [copy] of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

History: Laws 1937, ch. 65, § 3; 1941 Comp., § 42-1903; 1953 Comp., § 41-19-3.

31-4-4. Governor may investigate case.

When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

History: Laws 1937, ch. 65, § 4; 1941 Comp., § 42-1904; 1953 Comp., § 41-19-4.

31-4-5. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.

When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in Section 23 [31-4-25 NMSA 1978] of this act with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

History: Laws 1937, ch. 65, § 5; 1941 Comp., § 42-1905; 1953 Comp., § 41-19-5.

31-4-6. Extradition of persons not present in demanding state at time of commission of crime.

The governor of this state:

A. may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in Section 31-4-3 NMSA 1978 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of the Uniform Criminal Extradition Act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom; and

B. shall not arrest or deliver a person if the charge is based on engaging in a protected health care activity, pursuant to the provisions of the Reproductive and Gender-Affirming Health Care Protection Act [24-35-1 to 24-35-8 NMSA 1978], including a charge based on vicarious, joint or several liability or conspiracy, unless the executive authority of the demanding state alleges in writing that the accused was physically present in the demanding state at the time of the commission of the alleged offense and that thereafter, the accused fled from the demanding state.

History: Laws 1937, ch. 65, § 6; 1941 Comp., § 42-1906; 1953 Comp., § 41-19-6; 2023, ch. 167, § 9.

31-4-7. Issue of governor's warrant of arrest; its recitals.

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: Laws 1937, ch. 65, § 7; 1941 Comp., § 42-1907; 1953 Comp., § 41-19-7.

31-4-8. Manner and place of execution.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act [31-4-1 to 31-4-30 NMSA 1978], to the duly authorized agent of the demanding state.

History: Laws 1937, ch. 65, § 8; 1941 Comp., § 42-1908; 1953 Comp., § 41-19-8.

31-4-9. Authority of arresting officer.

Every such peace officer or other person empowered to make the arrest shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: Laws 1937, ch. 65, § 9; 1941 Comp., § 42-1909; 1953 Comp., § 41-19-9.

31-4-10. Rights of accused person; application for writ of habeas corpus.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

History: Laws 1937, ch. 65, § 10; 1941 Comp., § 42-1910; 1953 Comp., § 41-19-10.

31-4-11. Penalty for noncompliance with preceding section.

Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience to the last section [31-4-10 NMSA 1978], shall be guilty of a misdemeanor and, on conviction, shall be fined (not more than $1,000.00 or be imprisoned not more than six months, or both).

History: Laws 1937, ch. 65, § 11; 1941 Comp., § 42-1911; 1953 Comp., § 41-19-11.

31-4-12. Confinement in jail when necessary.

The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the

expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: Laws 1937, ch. 65, § 12; 1941 Comp., § 42-1912; 1953 Comp., § 41-19-12.

31-4-13. Arrest prior to requisition.

Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under Section 6 [31-4-6 NMSA 1978] with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under Section 6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: Laws 1937, ch. 65, § 13; 1941 Comp., § 42-1913; 1953 Comp., § 41-19-13.

31-4-14. Arrest without a warrant.

The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding section [31-4-13 NMSA 1978]; and thereafter his answer shall be heard as if he had been arrested on a warrant.

History: Laws 1937, ch. 65, § 14; 1941 Comp., § 42-1914; 1953 Comp., § 41-19-14.

31-4-15. Commitment to await requisition; bail.

If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under Section 6 [31-4-6 NMSA 1978], that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section [31-4-16 NMSA 1978], or until he shall be legally discharged.

History: Laws 1937, ch. 65, § 15; 1941 Comp., § 42-1915; 1953 Comp., § 41-19-15.

31-4-16. Bail; in what cases; conditions of bond.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state.

History: Laws 1937, ch. 65, § 16; 1941 Comp., § 42-1916; 1953 Comp., § 41-19-16.

31-4-17. Extension of time of commitment, adjournment.

If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or may recommit him for a further period not to exceed sixty days, or a judge or magistrate judge may again take bail for his appearance and surrender, as provided in Section 16 [31-4-16 NMSA 1978], but within a period not to exceed sixty days after the date of such new bond.

History: Laws 1937, ch. 65, § 17; 1941 Comp., § 42-1917; 1953 Comp., § 41-19-17.

31-4-18. Forfeiture of bail.

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

History: Laws 1937, ch. 65, § 18; 1941 Comp., § 42-1918; 1953 Comp., § 41-19-18.

31-4-19. Persons under criminal prosecution in this state at time of requisition.

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: Laws 1937, ch. 65, § 19; 1941 Comp., § 42-1919; 1953 Comp., § 41-19-19.

31-4-20. Guilt or innocence of accused, when inquired into.

The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

History: Laws 1937, ch. 65, § 20; 1941 Comp., § 42-1920; 1953 Comp., § 41-19-20.

31-4-21. Governor may recall warrant or issue alias.

The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: Laws 1937, ch. 65, § 21; 1941 Comp., § 42-1921; 1953 Comp., § 41-19-21.

31-4-22. Written waiver of extradition proceedings.

Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in Sections 31-4-7 and 31-4-8 NMSA 1978 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a magistrate or a judge of a magistrate court or of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 31-4-10 NMSA 1978.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to

such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.

History: Laws 1937, ch. 65, § 25a; 1941 Comp., § 42-1922; 1953 Comp., § 41-19-22; 1981, ch. 258, § 1.

31-4-23. Nonwaiver by this state.

Nothing in this act [31-4-1 to 31-4-30 NMSA 1978] contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

History: Laws 1937, ch. 65, § 25b; 1941 Comp., § 42-1923; 1953 Comp., § 41-19-23.

31-4-24. Fugitives from this state; duty of governors.

Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state, from the executive authority of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: Laws 1937, ch. 65, § 22; 1941 Comp., § 42-1924; 1953 Comp., § 41-19-24.

31-4-25. Application for issuance of requisition; by whom made; contents.

A. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting attorney, the ends of justice require

the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

B. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

C. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: Laws 1937, ch. 65, § 23; 1941 Comp., § 42-1925; 1953 Comp., § 41-19-25.

31-4-26. Costs and expenses.

When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed.

History: Laws 1937, ch. 65, § 24; 1941 Comp., § 42-1926; 1953 Comp., § 41-19-26.

31-4-27. Immunity from service of process in certain civil actions.

A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he is being or has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: Laws 1937, ch. 65, § 25; 1941 Comp., § 42-1927; 1953 Comp., § 41-19-27; Laws 1975, ch. 69, § 1.

31-4-28. No right of asylum; no immunity from other criminal prosecutions while in this state.

After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: Laws 1937, ch. 65, § 26; 1941 Comp., § 42-1928; 1953 Comp., § 41-19-28.

31-4-29. Interpretation.

The provisions of this act [31-4-1 to 31-4-30 NMSA 1978] shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History: Laws 1937, ch. 65, § 27; 1941 Comp., § 42-1929; 1953 Comp., § 41-19-29.

31-4-30. Short title.

This act [31-4-1 to 31-4-30 NMSA 1978] may be cited as the Uniform Criminal Extradition Act.

History: Laws 1937, ch. 65, § 30; 1941 Comp., § 42-1930; 1953 Comp., § 41-19-30.

31-4-31. Transfer under treaty; governor.

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted criminal offenders who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals, the governor is authorized, subject to the terms of such treaty, to act on behalf of the state of New Mexico and to consent to the transfer of the convicted criminal offender.

History: 1978 Comp., § 31-4-31, enacted by Laws 1978, ch. 156, § 1.

ARTICLE 5
Interstate Compacts

31-5-1 to 31-5-3. Repealed.

31-5-4. [Western Interstate Corrections Compact; form.]

The Western Interstate Corrections Compact is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I - Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Article II - Definitions

As used in this compact, unless the context clearly requires otherwise:

A. "state" means a state of the United States, the territory of Hawaii, or, subject to the limitation contained in Article VII, Guam.

B. "sending state" means a state party to this compact in which conviction was had.

C. "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

D. "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

E. "institution" means any prison, reformatory or other correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article III - Contracts

A. Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) its duration.

(2) payments to be made to the receiving state by the sending state for inmate maintenance; extraordinary medical and dental expenses, and any participation

in or receipts by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(3) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(4) delivery and retaking of inmates.

(5) such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

B. Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

C. The terms and provisions of this compact shall be a part of any contract entered into by the authority of [this compact] or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV - Procedures and Rights

A. Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

B. The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

C. Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state,

for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

D. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

E. All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

F. Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearings [hearing] or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

G. Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

H. Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

I. The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V - Acts Not Reviewable in Receiving State; Extradition

A. Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

B. An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI - Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Article VII - Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon

similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Article VIII - Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX - Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X - Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1953 Comp., § 41-20-11, enacted by Laws 1959, ch. 112, § 1.

31-5-5. Inmate commitment or transfer.

The secretary of corrections may commit or transfer an inmate to any institution in or outside New Mexico if New Mexico has entered into a contract or contracts for the confinement of inmates in the institution pursuant to Article III of the Western Interstate Corrections Compact [31-5-4 NMSA 1978].

History: 1953 Comp., § 41-20-12, enacted by Laws 1959, ch. 112, § 2; 1985, ch. 119, § 1.

31-5-6. [Enforcement of compact; submission of reports.]

The courts, departments, agencies and officers of New Mexico and its subdivisions shall enforce this compact [31-5-4 NMSA 1978] and do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of reports required by the compact.

History: 1953 Comp., § 41-20-13, enacted by Laws 1959, ch. 112, § 3.

31-5-7. [Board of parole; hearings within and outside state.]

The New Mexico board of parole is authorized to hold hearings within and outside New Mexico pursuant to Article IV (F) of the Western Interstate Corrections Compact [31-5-4 NMSA 1978].

History: 1953 Comp., § 41-20-14, enacted by Laws 1959, ch. 112, § 4.

31-5-8. [Contracts of governor; approval by board of finance.]

The governor may enter into contracts on behalf of New Mexico to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III of the compact [31-5-4 NMSA 1978], provided that any contract entered into by the governor must be approved by the state board of finance before the same shall be binding.

History: 1953 Comp., § 41-20-15, enacted by Laws 1959, ch. 112, § 5.

31-5-9. [Release of inmate from institution outside state; transportation to home or place of employment.]

If an inmate is released from an institution outside of New Mexico, pursuant to Article IV (G) of the compact [31-5-4 NMSA 1978], the superintendent of the penitentiary shall provide him with transportation to either his home or place of employment if in New Mexico, or if neither of these is applicable to any point in New Mexico selected by the inmate.

History: 1953 Comp., § 41-20-16, enacted by Laws 1959, ch. 112, § 6.

31-5-10. Interstate Compact on Mentally Disordered Offenders.

The Interstate Compact on Mentally Disordered Offenders is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

INTERSTATE COMPACT ON MENTALLY DISORDERED OFFENDERS

Article 1 - Purpose and Policy

A. The party states, desiring by common action to improve their programs for the care and treatment of mentally disordered offenders, declare that it is the policy of each of the party states to:

(1) strengthen their own programs and laws for the care and treatment of the mentally disordered offender;

(2) encourage and provide for such care and treatment in the most appropriate locations, giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, aftercare and auxiliary services and facilities and, to every extent practicable, to do so in geographic locations convenient for providing a therapeutic environment;

(3) authorize cooperation among the party states in providing services and facilities, when it is found that cooperative programs can be more effective and efficient than programs separately pursued;

(4) place such mentally disordered offender in a legal status which will facilitate his care, treatment and rehabilitation;

(5) authorize research and training of personnel on a cooperative basis in order to improve the quality or quantity of personnel available for the proper staffing of programs, services and facilities for mentally disordered offenders; and

(6) care for and treat mentally disordered offenders under conditions which will improve the public safety.

B. Within the policies set forth in this article, it is the purpose of this compact to:

(1) authorize negotiation, entry into and operations under contractual arrangements among any two or more of the party states for the establishment and maintenance of cooperative programs in any one or more of the fields for which specific provision is made in the several articles of this compact;

(2) set the limits within which such contracts may operate, so as to assure protection of the civil rights of mentally disordered offenders and protection of the rights and obligations of the public and of the party states; and

(3) facilitate the proper disposition of criminal charges pending against mentally disordered offenders, so that programs for their care, treatment and rehabilitation may be carried on efficiently.

Article 2 - Definitions

As used in this compact:

A. "mentally disordered offender" means a person who has been determined, by adjudication or other method legally sufficient for the purpose in the party state where the determination is made, to be mentally ill and:

(1) is under sentence for the commission of crime; or

(2) who is confined or committed on account of the commission of an offense for which, in the absence of mental illness, the person would be subject to incarceration in a penal or correctional facility;

B. "patient" means a mentally disordered offender who is cared for, treated or transferred pursuant to this compact;

C. "sending state" means a state party to this compact in which the mentally disordered offender was convicted; or the state in which he would be subject to trial on or conviction of an offense except for his mental condition; or, within the meaning of Article 5 of this compact, the state whose authorities have filed a petition in connection with an untried indictment, information or complaint; and

D. "receiving state" means a state party to this compact to which a mentally disordered offender is sent for care, aftercare, treatment or rehabilitation, or within the meaning of Article 5 of this compact, the state in which a petition in connection with an untried indictment, information or complaint has been filed.

Article 3 - Contracts

A. Each party state may make one or more contracts with any one or more of the other party states for the care and treatment of mentally disordered offenders on behalf of a sending state in facilities situated in receiving states, or for the participation of mentally disordered offenders in programs of aftercare on conditional release administered by the receiving state. Any such contract shall provide for:

(1) its duration;

(2) payments to be made to the receiving state by the sending state for patient care, treatment and extraordinary services, if any;

(3) determination of responsibility for ordering or permitting the furnishing of extraordinary services, if any;

(4) participation in compensated activities, if any, available to patients, the disposition or crediting of any payment received by patients on account thereof and the crediting of proceeds from or disposal of any products resulting therefrom;

(5) delivery and retaking of mentally disordered offenders; and

(6) other matters as necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

B. Prior to the construction or completion of construction of any facility for mentally disordered offenders or addition to such facility by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the facility or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentage of the capacity of the facility to be kept available for use by patients of the sending state or states so contracting. Any sending state so contracting may, to the extent that money is legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. The payment may be in a lump sum or in installments as provided in the contract.

C. A party state may contract with any one or more other party states for the training of professional or other personnel whose services, by reason of such training, would become available for or be improved in respect of ability to participate in the care and treatment of mentally disordered offenders. Such contracts may provide for such training to take place at any facility being operated or to be operated for the care and treatment of mentally disordered offenders, at any institution or facility having resources suitable for the offering of such training or may provide for the separate establishment of training facilities, provided that no separate establishment shall be undertaken unless it is determined that an appropriate existing facility or institution cannot be found at which to conduct the contemplated program. Any contract entered into pursuant to this subarticle shall provide for:

(1) the administration, financing and precise nature of the program;

(2) the status and employment or other rights of the trainees; and

(3) all other necessary matters.

D. No contract entered into pursuant to this compact shall be inconsistent with any provision thereof.

Article 4 - Procedures and Rights

A. Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article 3, decide that custody, care and treatment in, or transfer of a patient to, a facility within the territory of another party state, or conditional release for aftercare in another party state is necessary in order to provide adequate care and treatment or is desirable in order to provide an appropriate program of therapy or other treatment, or is desirable for clinical reasons, said officials may direct that the custody, care and treatment be within a facility or in a program of aftercare within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

B. The appropriate officials of any state party to this compact shall have access at all reasonable times to any facility in which it has a contractual right to secure care or treatment of patients for the purpose of inspection and visiting such of its patients as may be in the facility or served by it.

C. Except as otherwise provided in Article 6, patients in a facility pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed for transfer to a facility within the sending state, for transfer to another facility in which the sending state may have a contractual or other right to secure care and treatment of patients, for release on aftercare or other conditional status, for discharge or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article 3.

D. Each receiving state shall provide regular reports to each sending state on the patients of that sending state in facilities pursuant to this compact, including a psychiatric and behavioral record of each patient, and certify the record to the official designated by the sending state in order that each patient may have the benefit of his or her record in determining and altering the disposition of the patient in accordance with the law which may obtain in the sending state and in order that the record may be a source of information for the sending state.

E. All patients who may be in a facility or receiving aftercare from a facility pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for, treated and supervised in accordance with the standards pertaining to the program administered at the facility. The fact of presence in a receiving state shall not deprive any patient of any legal rights which the patient would have had if in custody or receiving care, treatment or supervision as appropriate in the sending state.

F. Any hearing or hearings to which a patient present in a receiving state pursuant to this compact may be entitled by the laws of the sending state shall be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such

hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. The record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In all proceedings pursuant to the provisions of this subarticle, the officials of the receiving state shall act solely as agents of the sending state, and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subarticle shall be borne by the sending state.

G. Any patient confined pursuant to this compact shall be released within the territory of the sending state unless the patient and the sending and receiving states agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

H. Any patient pursuant to the terms of this compact shall be subject to civil process and shall have all rights to sue, be sued and participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if in any appropriate facility of the sending state or being supervised therefrom, as the case may be, located within such state.

I. The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any patient shall not be deprived of, or restricted in his exercise of, any power in respect of any patient pursuant to the terms of this compact.

Article 5 - Disposition of Charges

A. Whenever the authorities responsible for the care and treatment of a mentally disordered offender, whether convicted or adjudicated in the state or subject to care, aftercare, treatment or rehabilitation pursuant to a contract, are of the opinion that charges based on untried indictments, informations or complaints in another party state present obstacles to the proper care and treatment of a mentally disordered offender or to the planning or execution of a suitable program for him, such authorities may petition the appropriate court in the state where the untried indictment, information or complaint is pending for prompt disposition thereof. If the mentally disordered offender is a patient in a receiving state, the appropriate authorities of the sending state, upon recommendation of the appropriate authorities in the receiving state, shall, if they concur in the recommendation, file the petition contemplated by this subarticle.

B. The court shall hold a hearing on the petition within thirty days of the filing thereof. The hearing shall be only to determine whether the proper safeguarding and advancement of the public interest, the condition of the mentally disordered offender and the prospects for more satisfactory care, treatment and rehabilitation of him warrant disposition of the untried indictment, information or complaint prior to termination of the

defendant's status as a mentally disordered offender in the sending state. The prosecuting officer of the jurisdiction from which the untried indictment, information or complaint is pending, the petitioning authorities and such other persons as the court may determine shall be entitled to be heard.

C. Upon any hearing pursuant to this article, the court may order such adjournments or continuances as may be necessary for the examination or observation of the mentally disordered offender or for the securing of necessary evidence. In granting or denying any such adjournment or continuance, the court shall give primary consideration to the purposes of this compact, and more particularly to the need for expeditious determination of the legal and mental status of a mentally disordered offender so that his care, treatment and discharge to the community only under conditions which will be consonant with the public safety may be implemented.

D. The presence of a mentally disordered offender within a state wherein a petition is pending or being heard pursuant to this article, or his presence within any other state through which he is being transported in connection with such petition or hearing, shall be only for the purposes of this compact, and no court, agency or person shall have or obtain jurisdiction over the mentally disordered offender for any other purpose by reason of his presence pursuant to this article. The mentally disordered offender shall, at all times, remain in the custody of the sending state. Any acts of officers, employees or agencies of the receiving state in providing or facilitating detention, housing or transportation for the mentally disordered offender shall be only as agents for the sending state.

E. Promptly upon conclusion of the hearing, the court shall dismiss the untried indictment, information or complaint, if it finds that the purposes enumerated in Subarticle B of this article would be served thereby. Otherwise, the court shall make such order with respect to the petition and the untried indictment, information or complaint as may be appropriate in the circumstances and consistent with the status of the defendant as a mentally disordered offender in the custody of, and subject to the jurisdiction of, the sending state.

F. No fact or other matter established or adjudicated at any hearing pursuant to this article or in connection therewith shall be deemed established or adjudicated, nor shall the same be admitted in evidence, in any subsequent prosecution of the untried indictment, information or complaint concerned in a petition filed pursuant to this article unless:

(1) the defendant or his duly empowered legal representative requested or expressly acquiesced in the making of the petition, and was afforded an opportunity to participate in person in the hearing; or

(2) the defendant himself offers or consents to the introduction of the determination or adjudication at such subsequent proceedings.

Article 6 - Acts Not Reviewable in Receiving State; Return

A. Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon, and not reviewable within, the receiving state, but, if at the time the sending state seeks to remove a patient from the receiving state, there is pending against the patient within such state any criminal charge, or if the patient is suspected of having committed within such state a criminal offense, the patient shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport patients pursuant to this compact through all states party to this compact without interference.

B. A patient who escapes while receiving care and treatment, or who violates provisions of aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this compact, shall be deemed an escapee from the sending state and from the state in which the facility is situated or the aftercare was being provided. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for return shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article 7 - Federal Aid

Any state party to this compact may accept federal aid for use in connection with any facility or program, the use of which is or may be affected by this compact or any contract pursuant thereto, and any patient in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary regimen of the facility or program, the express consent of the appropriate official of the sending state shall be required therefor.

Article 8 - Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state, upon similar action by such state.

Article 9 - Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other

party states. An actual withdrawal shall not take effect until two years after the notices provided in the statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such patients as it may have in other party states pursuant to the provisions of this compact.

Article 10 - Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the custody, care, treatment, rehabilitation or aftercare of patients, nor to repeal any other laws of a party state authorizing the making of cooperative arrangements.

Article 11 - Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, or sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any state participating therein, the compact shall remain in effect as to the remaining states and in effect as to the state affected as to all severable matters.

History: 1953 Comp., § 41-20-17, enacted by Laws 1967, ch. 201, § 1.

31-5-11. Compact authority.

The governor may negotiate and enter into contracts on behalf of this state pursuant to Article 3 of the Interstate Compact on Mentally Disordered Offenders [31-5-10 NMSA 1978] and may perform the contracts. No funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract unless legally available therefor.

History: 1953 Comp., § 41-20-18, enacted by Laws 1967, ch. 201, § 2.

31-5-12. Agreement on Detainers.

The Agreement on Detainers is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

AGREEMENT ON DETAINERS

Article 1 - Findings

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article 2 - Definitions

As used in this agreement:

A. "state" means a state of the United States, the United States, a territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico;

B. "sending state" means a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article 3 of this agreement or at the time that a request for custody or availability is initiated pursuant to Article 4 of this agreement; and

C. "receiving state" means the state in which trial is to be had on an indictment, information or complaint pursuant to Article 3 or Article 4 of this agreement.

Article 3 - Prisoner's Request for Final Disposition

A. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he has caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

B. The written notice and request for final disposition referred to in Subarticle A shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

C. The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

D. Any request for final disposition made by a prisoner pursuant to Subarticle A shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subarticle shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

E. Any request for final disposition made by a prisoner pursuant to Subarticle A shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of Subarticle D, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this subarticle shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

F. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in Subarticle A shall void the request.

Article 4 - Prosecutor's Request for Final Disposition

A. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending is entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article 5 A of this agreement upon presentation of a written

request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated, but the court having jurisdiction of the indictment, information or complaint shall have duly approved, recorded and transmitted the request, and there shall be a period of thirty days after receipt by the appropriate authorities before the request is honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

B. Upon receipt of the officer's written request as provided in Subarticle A, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

C. In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

D. Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in Subarticle A, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

E. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article 5 E of this agreement, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article 5 - Transfer of Custody

A. In response to a request made under Article 3 or Article 4 of this agreement, the appropriate authority in a sending state shall offer to deliver temporary custody of the prisoner to the appropriate authority in the state where the indictment, information or complaint is pending against the person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article 3 of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the

prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

B. The officer or other representative of a state accepting an offer of temporary custody shall present upon demand:

(1) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given; and

(2) a certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

C. If the appropriate authority refuses or fails to accept temporary custody of the person, or if an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article 3 or Article 4 of this agreement, the appropriate court of the jurisdiction where the indictment, information or complaint had been pending shall enter an order dismissing it with prejudice, and any detainer based thereon shall cease to be of any force or effect.

D. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

E. At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

F. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

G. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

H. From the time that a party state receives custody of a prisoner pursuant to this agreement until the prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are

pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this subarticle govern unless the states concerned have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of an [and] in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article 6 - Application

A. In determining the duration and expiration dates of the time periods provided in Articles 3 and 4 of this agreement, the running of the time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

B. No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article 7 - Compact Administrator

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article 8 - Party States

This agreement shall enter into full force and effect as to a party state when such state has enacted the agreement into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing this agreement. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time the withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article 9 - Construction

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the

remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1953 Comp., § 41-20-19, enacted by Laws 1971, ch. 270, § 1.

31-5-13. Definition.

As used in the Agreement on Detainers [31-5-12 NMSA 1978] with reference to the courts of this state, the phrase "appropriate court" means the district court.

History: 1953 Comp., § 41-20-20, enacted by Laws 1971, ch. 270, § 2.

31-5-14. Cooperation.

All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the Agreement on Detainers [31-5-12 NMSA 1978] and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: 1953 Comp., § 41-20-21, enacted by Laws 1971, ch. 270, § 3.

31-5-15. Habitual offenders.

Nothing in this act [31-5-12 to 31-5-16 NMSA 1978] or in the Agreement on Detainers [31-5-12 NMSA 1978] shall be construed to require the application of the habitual offenders laws to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of that agreement.

History: 1953 Comp., § 41-20-22, enacted by Laws 1971, ch. 270, § 4.

31-5-16. Transfers.

The corrections department shall give over the person of any inmate whenever required by the operation of the Agreement on Detainers [31-5-12 NMSA 1978].

History: 1953 Comp., § 41-20-23, enacted by Laws 1971, ch. 270, § 5.

31-5-17. Interstate Corrections Compact.

The Interstate Corrections Compact is enacted into law and entered into by New Mexico with any other states legally joining therein in the form substantially as follows:

Article 1. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article 2. Definitions

As used in this compact, unless the context clearly requires otherwise:

A. "state" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico;

B. "sending state" means a state party to this compact in which conviction or court commitment was had;

C. "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had;

D. "inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution; and

E. "institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article 3. Contracts

A. Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(1) its duration;

(2) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(3) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(4) delivery and retaking of inmates; and

(5) such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

B. The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article 4. Procedures and Rights

A. Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article 3, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

B. The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

C. Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article 3.

D. Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

E. All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

F. Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

G. Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

H. Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

I. The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article 5. Acts Not Reviewable in Receiving State: Extradition

A. Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding,

imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

B. An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article 6. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article 7. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article 8. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article 9. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for

the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article 10. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: Laws 1982, ch. 56, § 1.

31-5-18. Secretary of corrections; powers.

The secretary of corrections is authorized and directed to do all things necessary or incidental to the carrying out of the compact [31-5-17 NMSA 1978] in every particular, and he may in his discretion delegate this authority to another appropriate official.

History: Laws 1982, ch. 56, § 2.

31-5-19. Convicted offenders; contracts with United States attorney general.

The secretary of corrections is authorized to contract with the United States attorney general for the custody, care, housing, subsistence, education, treatment and training either of persons convicted of criminal offenses in the courts of New Mexico in order that they may be housed in United States prisons or correctional facilities for these purposes or of persons convicted of criminal offenses in the courts of the United States in order that they may be housed in New Mexico correctional facilities for such purposes.

History: Laws 1982, ch. 54, § 1.

31-5-20. [Interstate Compact for Adult Offender Supervision.]

The Interstate Compact for Adult Offender Supervision is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

ARTICLE I - Purpose

A. The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community and is authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. Section 112, 1965, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

B. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) to provide the framework for the promotion of public safety and protection of the rights of victims in the community through the control and regulation of the interstate movement of offenders;

(2) to provide for the effective tracking, supervision and rehabilitation of these offenders by the sending and receiving states; and

(3) to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

C. In addition, this compact will:

(1) create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies and that will promulgate rules to achieve the purpose of this compact;

(2) ensure an opportunity for input and timely notice to victims and to jurisdictions as to where defined offenders are authorized to travel or to relocate across state lines;

(3) establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials and regular reporting of compact activities to heads of state councils, state executive, judicial and legislative branches and criminal justice administrators;

(4) monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

D. The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder.

E. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II - Definitions

As used in this compact, unless the context clearly requires a different construction:

A. "adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute or operation of law;

B. "bylaws" mean those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct;

C. "compact" means the Interstate Compact for Adult Offender Supervision;

D. "compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

E. "compacting state" means any state that has enacted the enabling legislation for this compact;

F. "commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;

G. "interstate commission" means the interstate commission for adult offender supervision established by this compact;

H. "member" means the commissioner of a compacting state or his designee, who shall be a person officially connected with the commissioner;

I. "non-compacting state" means any state that has not enacted the enabling legislation for this compact;

J. "offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies;

K. "person" means any individual, corporation, business enterprise or other legal entity, either public or private;

L. "rules" means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states;

M. "state" means a state of the United States, the District of Columbia and any other territorial possessions of the United States; and

N. "state council" means the resident members of the state council for interstate adult offender supervision created by each compacting state under Article IV of this compact.

ARTICLE III - The Compact Commission

A. The compacting states hereby create the "interstate commission for adult offender supervision". The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the interstate commission shall be ex-officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex-officio, nonvoting members as it deems necessary.

B. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

C. The interstate commission shall establish an executive committee that shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and amendment to the compact. The executive committee shall oversee the day-to-day activities managed by the executive director and interstate commission staff, administer enforcement and compliance with the provisions of the compact and its bylaws as directed by the interstate commission and perform other duties as directed by the interstate commission or set forth in the bylaws.

ARTICLE IV - The State Council

Each compacting state shall create a "state council for interstate adult offender supervision" that shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the compacting state. While each compacting state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial and executive branches of government and victims groups and its compact administrator. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each compacting state, including development of policy concerning operations and procedures of the compact within that state.

ARTICLE V - Powers and Duties of the Interstate Commission

The interstate commission shall have the following powers:

A. to adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

B. to promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

C. to oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

D. to enforce compliance with compact provisions and interstate commission rules and bylaws, using all necessary and proper means, including the use of judicial process;

E. to establish and maintain offices;

F. to purchase and maintain insurance and bonds;

G. to borrow, accept or contract for services of personnel, including members and their staffs;

H. to establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions, including an executive committee as required by Article III that shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

I. to elect or appoint such officers, attorneys, employees, agents or consultants and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

J. to accept any and all donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of same;

K. to lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed;

L. to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

M. to establish a budget and make expenditures and levy dues as provided in Article X of this compact;

N. to sue and be sued;

O. to provide for dispute resolution among compacting states;

P. to perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

Q. to report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the interstate commission;

R. to coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

S. to establish uniform standards for the reporting, collecting and exchanging of data.

ARTICLE VI - Organization and Operation of the Interstate Commission

A. The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) establishing the fiscal year of the interstate commission;

(2) establishing an executive committee and such other committees as may be necessary;

(3) providing reasonable standards and procedures:

(a) for the establishment of committees; and

(b) for any general or specific delegation of any authority or function of the interstate commission;

(4) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;

(5) establishing the titles and responsibilities of the officers of the interstate commission;

(6) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(7) providing a mechanism for winding-up the operations of the interstate commission and for the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;

(8) providing transition rules for "start-up" administration of the compact; and

(9) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

C. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

D. The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person. The interstate commission shall defend the commissioner of a compacting state, or his representatives or employees or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII - Activities of the Interstate Commission

A. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

B. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

C. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the compacting state and shall not delegate a vote to another compacting state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

D. The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

E. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to non-disclosure and confidentiality provisions.

F. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the federal Government in the Sunshine Act, 5 U.S.C. Section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by a two-thirds' vote that a meeting would be likely to:

(1) relate solely to the interstate commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by statute;

(3) disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) involve accusing any person of a crime, or formally censuring any person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigatory records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or

(9) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

G. For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes.

H. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII - Rulemaking Functions of the Interstate Commission

A. The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. Section 551 et seq., and the federal Advisory Committee Act, 5 U.S.C. Section 1

et seq., as may be amended. All rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

C. When promulgating a rule, the interstate commission shall:

(1) publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) provide an opportunity for an informal hearing; and

(4) promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

D. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the Administrative Procedure Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) notice to victims and opportunity to be heard;

(2) offender registration and compliance;

(3) violations or returns;

(4) transfer procedures and forms;

(5) eligibility for transfer;

(6) collection of restitution and fees from offenders;

(7) data collection and reporting;

(8) the level of supervision to be provided by the receiving state;

(9) transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(10) mediation, arbitration and dispute resolution.

E. The existing rules governing the operation of the previous compact superseded by this compact shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

F. Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX - Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

A. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in non-compacting states that may significantly affect compacting states. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

B. The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities. The interstate commission shall attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and non-compacting states. The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

C. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Section B of Article XII of this compact.

ARTICLE X - Finance

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff that must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the compacting state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states that governs said assessment.

C. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI - Compacting States, Effective Date and Amendment

A. Any state is eligible to become a compacting state. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth state. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of non-compacting states or their designees will be invited to participate in interstate commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

B. Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII - Withdrawal, Default, Termination and Judicial Enforcement

A. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of

the withdrawing state's intent to withdraw within sixty days of its receipt thereof. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(2) remedial training and technical assistance as directed by the interstate commission; and

(3) suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the state council.

The grounds for default include failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a re-

enactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

C. The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact and its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

D. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound-up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII - Severability and Construction

A. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV - Binding Effect of Compact and Other Laws

A. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

B. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states. All agreements between the interstate commission and the compacting states are binding in accordance with their terms. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

History: Laws 2001, ch. 322, § 1.

ARTICLE 6
Grand Jury

31-6-1. Grand jury panels; calling; qualifying.

The district judge may convene one or more grand juries at any time, without regard to court terms. A grand jury shall serve for a period of no longer than three months. The district judge shall summon and qualify as a panel for grand jury service such number of jurors as he deems necessary. Each grand jury shall be composed of twelve regular jurors and a sufficient number of alternates to insure the continuity of the inquiry and the taking of testimony. All deliberations shall be conducted by any twelve jurors, comprised of regular jurors or substituted alternates. No more than twelve jurors may deliberate. No juror may vote on an indictment unless the juror has heard all evidence presented on the charge. The district judge may discharge or excuse members of a grand jury and substitute alternate grand jurors as necessary. The names of jurors summoned for grand jury service shall be drawn from the master jury wheel of the district court for the county.

History: 1953 Comp., § 41-5-1, enacted by Laws 1969, ch. 276, § 1; 1981, ch. 262, § 1; 1983, ch. 62, § 1.

31-6-2. Foreman of grand jury.

The jurors shall select one of their number as foreman of the grand jury. The foreman shall preside over the sessions of the grand jury. The foreman shall administer oaths to witnesses. The foreman will sign all reports, indictments or other undertakings of the grand jury. The foreman may appoint one member of the grand jury as a clerk to aid in the keeping of notes or minutes and the tallying of votes during secret sessions when no persons other than grand jury members may be present. The foreman may recess the sessions of the grand jury and reconvene them. The foreman, for good cause, may request the court to excuse or discharge individual grand jurors and to replace them with alternate grand jurors as necessary to continue the work of the grand jury.

History: 1953 Comp., § 41-5-2, enacted by Laws 1969, ch. 276, § 2; 1979, ch. 337, § 1.

31-6-3. Challenge to grand jury.

Any person held to answer for an offense by grand jury indictment, upon arraignment to the charge therein, by motion to quash the indictment stating with particularity the ground therefor, may challenge the validity of the grand jury. A failure to file such motion is a waiver of the challenge. Grounds that may be presented by such motion are limited to the following:

A. the grand jury was not selected in accordance with law;

B. a member of the grand jury returning the indictment was ineligible to serve as a juror;

C. a member of the grand jury returning the indictment was a witness or is likely to become a witness; or

D. a member of the grand jury returning the indictment was not qualified to serve due to a conflict of interest, bias, partiality or inability to follow the law.

History: 1953 Comp., § 41-5-3, enacted by Laws 1969, ch. 276, § 3; 2003, ch. 363, § 1.

31-6-4. Time and place for hearing; privacy of hearings; witnesses permitted to have attorney present.

A. A grand jury shall conduct its hearing during the usual business hours of the court which convened it. Hearings and deliberations may be conducted at any place ordered by the convening judge and provided by the court. Inspections or grand jury views of places under inquiry may be made when directed by the foreman wherever deemed necessary within the county, but no oral testimony or other evidence may be received except during formal private sessions.

B. All deliberations shall be conducted in a private room outside the hearing or presence of any person other than the grand jury members. All taking of testimony shall be in private with no persons present other than the grand jury, the persons required or entitled to assist the grand jury and the attorney, if any, of the target.

C. Persons required or entitled to be present at the taking of testimony before the grand jury include the district attorney and the attorney general and their staffs, interpreters, court reporters, security officers, the witness and an attorney for the target. Security personnel may be present only with special leave of the district court and are neither potential witnesses nor otherwise interested parties in the matter being presented to the grand jury.

D. If a target has his attorney present, the attorney may be present only while the target witness is testifying and may advise the witness but may not speak so that he can be heard by the grand jurors or otherwise participate in the proceedings. At least twenty-four hours before grand jury proceedings begin, the target's attorney may submit proposed questions and exhibits to the district attorney or the attorney general.

History: 1953 Comp., § 41-5-4, enacted by Laws 1969, ch. 276, § 4; 1979, ch. 337, § 2; 1981, ch. 262, § 2; 2003, ch. 363, § 2.

31-6-5. Return of indictments.

Indictments shall be returned by the grand jury within twenty-four hours following the day when the indictment is voted. Indictments shall not name persons as unindicted coconspirators. Indictments may be filed and prosecution and trial had thereon without regard to court terms. No-bills shall be sealed and filed with the district court clerk. Upon application to the court by the state for good cause shown, or upon request by the target, the court may release a sealed no-bill.

History: 1953 Comp., § 41-5-5, enacted by Laws 1969, ch. 276, § 5; 1979, ch. 337, § 3; 2003, ch. 363, § 3.

31-6-6. Oaths; grand jurors; witnesses; officers; penalty.

A. The following oaths shall be administered by the district judge to jurors, officers of the court or others assigned to assist the grand jury, and by the foreman to witnesses:

(1) JUROR OATH: "You, as members of this grand jury, do swear (or affirm) that you will diligently inquire and true indictment make, of all public offenses against the people of this state, committed or triable within this county, of which you shall receive legal evidence; that you shall indict no person through malice, hatred or ill will; nor have any not indicted through fear, favor or affection, or for any reward or the hope or promise thereof; but in all your indictments, reports or undertakings, you shall present the truth, according to the best of your skill and understanding, and further that you will forever keep secret whatever you or any other juror may have said or in what manner you or any other juror may have voted on any matter before you; and that you will keep secret the testimony of any witness heard by you unless ordered by the court to disclose the same in the trial or prosecution of the witness for perjury before the grand jury, so help you God.";

(2) OATH FOR OFFICER OR OTHER PERSON: "You do swear (or affirm) that you will keep secret all proceedings occurring in your presence or of which you may learn as a result of your service in aid of the grand jury, so help you God."; and

(3) OATH FOR WITNESS: "You do swear (or affirm) that the testimony which you are about to give will be the truth, so help you God."

B. Any person found to have violated the oath under Paragraph (1) or (2) of Subsection A of this section shall be guilty of a misdemeanor. This subsection shall not apply to communications by the prosecuting attorney to his staff or grand jury aides and in obtaining and presenting evidence, preparing indictments, reports and other undertakings of the grand jury and in preparation for trial.

History: 1953 Comp., § 41-5-6, enacted by Laws 1969, ch. 276, § 6; 1979, ch. 337, § 4.

31-6-7. Assistance for grand jury; report.

A. The district court shall assign necessary personnel to aid the grand jury in carrying out its duties. The district attorney or his assistants shall attend the grand jury, examine witnesses and prepare indictments, reports and other undertakings of the grand jury.

B. When engaged in the investigation of an offense over which he has jurisdiction, the attorney general or his assistants may attend a grand jury, examine witnesses and prepare indictments, reports and other undertakings of the grand jury.

C. When a grand jury is convened in response to a citizens' grand jury petition pursuant to Article 2, Section 14 of the constitution of New Mexico, the district attorney or his assistants, unless otherwise disqualified, shall attend and conduct the grand jury.

D. A prosecuting attorney attending a grand jury and all grand jurors shall conduct themselves in a fair and impartial manner at all times during grand jury proceedings.

E. A grand jury, in its discretion, may make a formal, written report as to the condition and operation of any public office or institution it has investigated. The report shall not charge any public officer or other person with willful misconduct, corruption or malfeasance unless an indictment or accusation for removal from public office is also returned by the grand jury. The right of every person to be properly charged, face his accusers and be heard in his defense in open court shall not be circumvented by the report.

History: 1953 Comp., § 41-5-7, enacted by Laws 1969, ch. 276, § 7; 1979, ch. 337, § 5; 2001, ch. 98, § 1; 2003, ch. 363, § 4.

31-6-8. Record of testimony.

All proceedings in the grand jury room, with the exception of the deliberations of the grand jury, shall be reported verbatim and the notes or transcriptions thereof certified by the court reporter or stenographer making them, with the notes or transcriptions then deposited with the clerk or other officer of the district court as directed by the district judge. Upon order of the district court in cases where an indictment is returned, the notes may be caused to be transcribed and certified by the stenographer or court reporter who made them, if available, or by another person qualified and competent to transcribe them accurately. Copies of documentary evidence or a summary thereof if directed by the district court exhibited to the grand jury shall be made a part of the record. In cases where an indictment is not returned, the notes or transcriptions shall be destroyed unless ordered by the district judge to be preserved for good cause shown, including but not limited to the prosecution of a witness for perjury.

History: 1953 Comp., § 41-5-8, enacted by Laws 1969, ch. 276, § 8; 1979, ch. 337, § 6; 1983, ch. 62, § 2.

31-6-9. Charge to grand jury.

The district judge convening a grand jury shall charge it with its duties and direct it as to any special inquiry into violations of law that he wishes it to make.

History: 1953 Comp., § 41-5-9, enacted by Laws 1969, ch. 276, § 9; 1993, ch. 71, § 1.

31-6-9.1. Abuse of grand jury procedures.

The prosecuting attorney shall not use the grand jury solely for the purpose of obtaining additional evidence against an already indicted person on the charge or accusation for which the person was indicted.

History: Laws 1979, ch. 337, § 12.

31-6-10. Requirement for indictment; number of jurors concurring.

Before the grand jury may vote an indictment charging an offense against the laws of the state, it must be satisfied from the lawful evidence before it that an offense against the laws has been committed and that there is probable cause to accuse by indictment the person named, of the commission of the offense so that he may be brought to trial therefor. In the absence of an indictment against a person holding public office or a presentment for the removal of a local elected officer, the grand jury shall not denigrate that person's moral fitness to hold public office. Eight jurors must concur to return an indictment.

History: 1953 Comp., § 41-5-10, enacted by Laws 1969, ch. 276, § 10; 1979, ch. 337, § 7.

31-6-11. Evidence before grand jury.

A. Evidence before the grand jury upon which it may find an indictment is that which is lawful, competent and relevant, including the oral testimony of witnesses under oath and any documentary or other physical evidence exhibited to the jurors. The Rules of Evidence shall not apply to a grand jury proceeding. The sufficiency of the evidence upon which an indictment is returned shall not be subject to review absent a showing of bad faith on the part of the prosecuting attorney assisting the grand jury.

B. It is the duty of the grand jury to weigh all the evidence submitted to it, and when it has reason to believe that other lawful, competent and relevant evidence is available that would disprove or reduce a charge or accusation or that would make an indictment unjustified, then it shall order the evidence produced. At least twenty-four hours before grand jury proceedings begin, the target or his counsel may alert the grand jury to the existence of evidence that would disprove or reduce an accusation or that would make an indictment unjustified, by notifying the prosecuting attorney who is assisting the grand jury in writing regarding the existence of that evidence.

C. A district attorney shall use reasonable diligence to notify a person in writing that the person is the target of a grand jury investigation. Unless the district judge presiding over the grand jury determines by clear and convincing evidence that providing notification may result in flight by the target, result in obstruction of justice or pose a danger to another person, the target of a grand jury investigation shall be notified in writing of the following information:

(1) that he is the target of an investigation;

(2) the nature of the alleged crime being investigated and the date of the alleged crime and any applicable statutory citations;

(3) the target's right to testify no earlier than four days after receiving the target notice if he is in custody, unless for good cause the presiding judge orders a different time period or the target agrees to testify sooner;

(4) the target's right to testify no earlier than ten days after receiving the target notice if he is not in custody, unless for good cause the presiding judge orders a different time period or the target agrees to testify sooner;

(5) the target's right to choose to remain silent; and

(6) the target's right to assistance of counsel during the grand jury investigation.

History: 1953 Comp., § 41-5-11, enacted by Laws 1969, ch. 276, § 11; 1979, ch. 337, § 8; 1981, ch. 238, § 1; 2003, ch. 363, § 5.

31-6-11.1. Renewed presentation of evidence forbidden.

After a grand jury acts on the merits of evidence presented to it and returns a no-bill, the same matter shall not be presented again to that jury or another grand jury on the same evidence.

History: Laws 1979, ch. 337, § 11.

31-6-12. Subpoena powers; notice to witnesses.

A. The grand jury has power to order the attendance of witnesses before it, to cause the production of all public and private records or other evidence relevant to its inquiry and to enforce such power by subpoena issued on its own authority through the district court convening the grand jury and executed by any public officer charged with the execution of legal process of the district court; provided that all subpoenaed witnesses shall be given a minimum of thirty-six hours' notice unless a shorter period is specifically approved for each witness by a judge of the district court.

B. The target of the investigation shall not be subpoenaed except where it is found by the prosecuting attorney to be essential to the investigation. If the target and his attorney, if he has one, sign a document stating that the target will assert the fifth amendment, he shall be excused from testifying on those matters as to which the district judge determines he has a valid fifth-amendment privilege.

C. Subpoenas directed to witnesses shall be returnable only when the grand jury is sitting.

History: 1953 Comp., § 41-5-12, enacted by Laws 1969, ch. 276, § 12; 1975, ch. 15, § 1; 1979, ch. 337, § 9.

31-6-13. Compensation of jurors and witnesses.

Grand jurors shall be paid by the district court a per diem allowance and mileage for their necessary travel for their attendance and service in the amounts provided by law for trial or petit jurors. Witnesses attending the grand jury under subpoena shall be paid by the district court a per diem allowance and mileage for their necessary travel in the amounts provided by law for witnesses attending trials.

History: 1953 Comp., § 41-5-13, enacted by Laws 1969, ch. 276, § 13.

31-6-14. Multiple representation.

A lawyer or lawyers who are associated in practice shall not continue multiple representation of clients in a grand jury proceeding if the exercise of the lawyer's independent professional judgment on behalf of one of the clients will be or is likely to be adversely affected by his representation of another client. If the court determines that this principle is violated, it may order separate representation of witnesses, giving appropriate weight to an individual's right to counsel of his own choosing.

History: Laws 1979, ch. 337, § 13.

31-6-15. Witness immunity; protection from harrassment [harassment] and unreasonable inconvenience.

A. If a witness is granted immunity in return for evidence, none of his testimony or any evidence obtained as a fruit of his testimony shall be used against him in any criminal prosecution except that such person may be prosecuted for any perjury committed in such testimony or in producing such evidence, or for contempt for failing to give an answer or produce evidence.

B. Witnesses shall not be harrassed [harassed] nor subjected to unreasonable repeated appearances by the grand jury or the prosecuting attorney assisting the grand jury.

History: Laws 1979, ch. 337, § 10; 1978 Comp., § 31-3A-1, recompiled as 1978 Comp., § 31-6-15.

ARTICLE 7
Indictments and Proof of Ownership for Offenses Concerning Domestic Animals

31-7-1. [Description of bovine animals; proof of brand; prima facie evidence of ownership.]

In the prosecution of any offense arising under the laws of this state in regard to the unlawful taking, handling, killing, driving or other unlawful disposition of animals of the bovine kind, the description "neat cattle" in any indictment shall be deemed sufficient, and the proof of the brand by a certified copy of the registration thereof in the brand book, under the seal of the cattle sanitary board [livestock board], certified to by the secretary of said board, shall be sufficient to identify all horses, mules, asses or neat cattle, and shall be prima facie proof that the person owning the recorded brand is the owner of the animal branded with such brand.

History: Laws 1895, ch. 6, § 6; C.L. 1897, § 67; Code 1915, § 122; C.S. 1929, § 4-1408; 1941 Comp., § 42-704; 1953 Comp., § 41-7-4.

ARTICLE 8
Out-of-State Witnesses

31-8-1. [Attendance of witnesses from without a state; definitions.]

"Witness," as used in this act [31-8-1 to 31-8-6 NMSA 1978], shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and District of Columbia.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

History: Laws 1937, ch. 66, § 1; 1941 Comp., § 42-1213; 1953 Comp., § 41-12-13.

31-8-2. Summoning witness in this state to testify in another state.

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under

the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process in connection with any matters which arose before his entrance into this state under the summons, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of six cents [($.06)] a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and three dollars [($3.00)] for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: Laws 1937, ch. 66, § 2; 1941 Comp., § 42-1214; 1953 Comp., § 41-12-14.

31-8-3. Witness from another state summoned to testify in this state.

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in

a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of five cents [($.05)] a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and two dollars [($2.00)] for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. Expenses as herein provided shall be paid from the fund from which all other witnesses are usually paid.

History: Laws 1937, ch. 66, § 3; 1941 Comp., § 42-1215; 1953 Comp., § 41-12-15.

31-8-4. Exemption from arrest and service of process.

If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

History: Laws 1937, ch. 66, § 4; 1941 Comp., § 42-1216; 1953 Comp., § 41-12-16.

31-8-5. Uniformity of interpretation.

This act [31-8-1 to 31-8-6 NMSA 1978] shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

History: Laws 1937, ch. 66, § 5; 1941 Comp., § 42-1217; 1953 Comp., § 41-12-17.

31-8-6. Short title.

This act [31-8-1 to 31-8-6 NMSA 1978] may be cited as "Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings".

History: Laws 1937, ch. 66, § 6; 1941 Comp., § 42-1218; 1953 Comp., § 41-12-18.

ARTICLE 9
Mental Illness and Competency

31-9-1. Determination of competency; raising the issue.

Whenever it appears that there is a question as to the defendant's competency to proceed in a criminal case, any further proceeding in the cause shall be suspended until the issue is determined. Unless the case is dismissed upon motion of a party, when the question is raised in a court other than the district court or a metropolitan court, the proceeding shall be suspended and the cause transferred to the district court. If the question of a defendant's competency is raised in the metropolitan court and the court determines that the defendant is incompetent to proceed in a criminal case, the cause, if not dismissed upon motion of a party, shall be transferred to the district court.

History: 1978 Comp., § 31-9-1, enacted by Laws 1988, ch. 107, § 1 and by 1988, ch. 108, § 1; 1989, ch. 94, § 1; 1993, ch. 240, § 1; 1993, ch. 249, § 1.

31-9-1.1. Determination of competency; evaluation and determination.

The defendant's competency shall be professionally evaluated by a psychologist or psychiatrist or other qualified professional recognized by the district court as an expert and a report shall be submitted as ordered by the court. A hearing on the issue of the competency of an incarcerated defendant charged with a felony shall be held by the district court within a reasonable time, but in no event later than thirty days after notification to the court of completion of the diagnostic evaluation. In the case of an incarcerated defendant not charged with a felony, the court shall hold a hearing and determine his competency within ten days of notification to the court of completion of the diagnostic evaluation.

History: 1978 Comp., § 31-9-1.1, enacted by Laws 1988, ch. 107, § 2 and by Laws 1988, ch. 108, § 2; 1993, ch. 240, § 2; 1993, ch. 249, § 2.

31-9-1.2. Determination of competency; commitment; report.

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of

proceedings under the Mental Health and Developmental Disabilities Code [43-1-1 NMSA 1978] and order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

B. When a district court determines that a defendant charged with a felony is incompetent to proceed in the criminal case, but does not dismiss the criminal case, and the district court at that time makes a specific finding that the defendant is dangerous, the district court may commit the defendant as provided in this section for treatment to attain competency to proceed in a criminal case. The court shall enter an appropriate transport order that also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed shall be provided with treatment available to involuntarily committed persons, and:

(1) the defendant shall be detained by the department of health in a secure, locked facility; and

(2) the defendant, during the period of commitment, shall not be released from that secure facility except pursuant to an order of the district court that committed him.

C. Within thirty days of receipt of the court's order of commitment of an incompetent defendant and of the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or his designee, the defendant shall be admitted to a facility designated for the treatment of defendants who are incompetent to stand trial and dangerous. If, after conducting an investigation, the secretary determines that the department of health does not have the ability to meet the medical needs of a defendant ordered committed to a facility, the secretary or his designee may refuse admission to the defendant upon written certification to the committing court and the parties of the lack of ability to meet the medical needs of the defendant. The certification must be made within fourteen days of the receipt of the court's order of commitment and necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary or his designee. Within ten days of filing of the certification the court shall conduct a hearing for further disposition of the criminal case.

D. As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.

E. Within thirty days of an incompetent defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment shall file with the district court, the state and the defense an initial assessment and treatment plan and a report on the defendant's amenability to treatment to render him competent to proceed in a criminal case, an assessment of the facility's or program's capacity to provide appropriate treatment for the defendant and an opinion as to the probability of the defendant's attaining

competency within a period of nine months from the date of the original finding of incompetency to proceed in a criminal case.

History: 1978 Comp., § 31-9-1.2, enacted by Laws 1988, ch. 107, § 3 and by Laws 1988, ch. 108, § 3; 1993, ch. 240, § 3; 1993, ch. 249, § 3; 1999, ch. 149, § 1.

31-9-1.3. Determination of competency; ninety-day review; reports; continuing treatment.

A. Within ninety days of the entry of the order committing an incompetent defendant to undergo treatment, the district court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) whether the defendant is competent to proceed in the criminal case; and, if not,

(2) whether the defendant is making progress under treatment toward attainment of competency within nine months from the date of the original finding of incompetency; and

(3) whether the defendant remains dangerous as that term is defined in Section 31-9-1.2 NMSA 1978.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written progress report to the court, the state and the defense indicating:

(1) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

(2) the opinion of the treatment supervisor as to whether the defendant has attained competency or as to whether the defendant is making progress under treatment toward attaining competency within nine months from the date of the original finding of incompetency and whether there is a substantial probability that the defendant will attain competency within nine months from the date of the original finding of incompetency;

(3) whether the defendant is dangerous as that term is defined in Section 31-9-1.2 NMSA 1978 or whether the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978]; and

(4) if the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor.

C. If the district court finds the defendant to be competent, the district court shall set the matter for trial, provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

D. If the district court finds that the defendant is still not competent to proceed in a criminal case but that he is making progress toward attaining competency, the district court may continue or modify its original treatment order entered pursuant to Section 31-9-1.2 NMSA 1978, provided that:

(1) the question of the defendant's competency shall be reviewed again not later than nine months from the original determination of incompetency to proceed in a criminal case; and

(2) the treatment supervisor shall submit a written progress report as specified in Subsection B of this section at least seven days prior to such hearing.

E. If the district court finds that the defendant is still not competent, that he is not making progress toward attaining competency and that there is not a substantial probability that he will attain competency within nine months from the date of the original finding of incompetency, the district court shall proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the proceedings.

History: 1978 Comp., § 31-9-1.3, enacted by Laws 1988, ch. 107, § 4 and by Laws 1988, ch. 108, § 4; 1993, ch. 240, § 4; 1993, ch. 249, § 4; 1999, ch. 149, § 2.

31-9-1.4. Determination of competency; incompetent defendants.

If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, the district court may:

A. hear the matter pursuant to Section 31-9-1.5 NMSA 1978 within three months if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

B. release the defendant from custody and dismiss with prejudice the charges against him; or

C. dismiss the criminal case without prejudice in the interest of justice. If the treatment supervisor has issued a report finding that the defendant satisfies the criteria for involuntary commitment contained in the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978], the department of health shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978, and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to the Mental Health and Developmental Disabilities Code. The district court may refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code.

History: 1978 Comp., § 31-9-1.4, enacted by Laws 1988, ch. 107, § 5 and by Laws 1988, ch. 108, § 5; 1993, ch. 240, § 5; 1993, ch. 249, § 5; 1999, ch. 149, § 3.

31-9-1.5. Determination of competency; evidentiary hearing.

A. As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of the evidence shall be held if the case is not dismissed and if the defendant is charged with a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978. Such hearing shall be conducted by the district court without a jury. The state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978, the district court shall dismiss the criminal case with prejudice; however, nothing in this section shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code [43-1-2 NMSA 1978], and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

C. If the district court finds by clear and convincing evidence that the defendant committed a crime and has not made a finding of dangerousness, pursuant to Section 31-9-1.2 NMSA 1978, the district court shall dismiss the charges without prejudice. The

state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code and the court may order the defendant confined for a maximum of seven days to facilitate preparation and initiation of a petition pursuant to that code.

D. If the district court finds by clear and convincing evidence that the defendant committed a felony that involves the infliction of great bodily harm on another person; a felony that involves the use of a firearm; aggravated arson, as provided in Section 30-17-6 NMSA 1978; criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978 and enters a finding that the defendant remains incompetent to proceed and remains dangerous pursuant to Section 31-9-1.2 NMSA 1978:

(1) the defendant shall be detained by the department of health in a secure, locked facility;

(2) the defendant shall not be released from that secure facility except pursuant to an order of the district court which committed him or upon expiration of the period of time equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding;

(3) significant changes in the defendant's condition, including but not limited to trial competency and dangerousness, shall be reported in writing to the district court, state and defense; and

(4) at least every two years, the district court shall conduct a hearing upon notice to the parties and the department of health charged with detaining the defendant. At the hearing, the court shall enter findings on the issues of trial competency and dangerousness:

(a) upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding;

(b) if the defendant continues to be incompetent to proceed in a criminal case and dangerous pursuant to Section 31-9-1.2 NMSA 1978, the court shall review the defendant's competency and dangerousness every two years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding; provided, that if the treatment supervisor recommends that the defendant be committed pursuant to the Mental Health and Developmental Disabilities Code, the court may at any time proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978; and

(c) if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or if the court finds upon its two-year review hearing that the defendant is no longer dangerous, as defined in Section 31-9-1.2 NMSA 1978, the defendant shall be released.

History: 1978 Comp., § 31-9-1.5, enacted by Laws 1988, ch. 107, § 6 and by 1988, ch. 108, § 6; 1993, ch. 240, § 6; 1993, ch. 249, § 6; 1999, ch. 149, § 4.

31-9-1.6. Hearing to determine developmental or intellectual disability.

A. Upon motion of the defense requesting a ruling, the court shall hold a hearing to determine whether the defendant has a developmental or intellectual disability as defined in Subsection E of this section.

B. If the court finds by a preponderance of the evidence that the defendant has a developmental or intellectual disability and that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed nine months from the date of the original finding of incompetency, then, no later than sixty days from notification to the secretary of health or the secretary's designee of the court's findings, the department of health shall perform an evaluation to determine whether the defendant presents a likelihood of serious harm to self or others.

C. If the department of health evaluation results in a finding that the defendant presents a likelihood of serious harm to self or others, within sixty days of the department's evaluation, the department shall commence proceedings pursuant to Chapter 43, Article 1 NMSA 1978 if the defendant was charged with murder in the first degree, first degree criminal sexual penetration, criminal sexual contact of a minor or arson in the initial proceedings, and the court presiding over the initial proceedings shall enter a finding that the respondent presents a likelihood of harm to others.

D. The criminal charges shall be dismissed without prejudice after the hearing pursuant to Chapter 43, Article 1 NMSA 1978 or upon expiration of fourteen months from the court's initial determination that the defendant is incompetent to proceed in a criminal case.

E. As used in this section, "developmental or intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of developmental or intellectual disability.

History: 1978 Comp., § 31-9-1.6, enacted by Laws 1997, ch. 153, § 1; 1999, ch. 149, § 5; 2023, ch. 113, § 10.

31-9-2. Mental examination.

Upon motion of any defendant, the court shall order a mental examination of the defendant before making any determination of competency under Sections 41-13-3

[NMSA 1953] or 31-9-1 NMSA 1978. Where the defendant is determined to be indigent, the court shall pay for the costs of the examination from funds available to the court.

History: 1953 Comp., § 41-13-3.2, enacted by Laws 1967, ch. 231, § 3.

31-9-3. Repealed.

History: Laws 1982, ch. 55, § 1; repealed by Laws 2010, ch. 97, § 1.

31-9-4. Repealed.

History: Laws 1982, ch. 55, § 2; repealed by Laws 2010, ch. 97, § 1.

ARTICLE 10
Commission of Crimes by Indians (Repealed.)

31-10-1 to 31-10-3. Repealed.

ARTICLE 11
Appeals and Post-Conviction Remedies

31-11-1. Stay of execution; release.

A. All appeals and writs of error in criminal cases have the effect of a stay of execution of the sentence of the district court until the decision of the supreme court or court of appeals.

B. If a defendant is convicted of a capital or violent offense and is sentenced to death or a term of imprisonment not suspended in whole, he shall not be entitled to release pending appeal.

C. If a defendant is convicted of a noncapital offense other than a violent offense and is sentenced to a term of imprisonment not suspended in whole, he shall not be entitled to release pending appeal unless the court finds:

(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and

(2) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

D. As used in Subsections B and C of this section, "violent offense" means:

(1) kidnaping;

(2) criminal sexual penetration in the first or second degree;

(3) armed robbery;

(4) murder in the second degree;

(5) aggravated burglary;

(6) aggravated arson; or

(7) assault with intent to commit violent felony upon peace officer.

E. In all parole and probation revocation proceedings, where the alleged violation by the parolee or probationer of the conditions of release poses a threat to himself or others, the defendant shall not be entitled to be released on bail pending the decision on revocation. In those instances where the state has failed to conduct a preliminary parole revocation hearing on a parolee held for parole violations within sixty days of arrest, the parolee shall be eligible for bail. In all cases, the final parole revocation hearing shall be scheduled for hearing within sixty days of the parolee's return to the penitentiary. In the case of probation violation, if the final probation revocation hearing is not brought before the court within sixty days, then the probationer shall be eligible for bail.

History: Laws 1917, ch. 43, § 58; 1927, ch. 93, § 10; C.S. 1929, § 105-2532; 1941 Comp., § 42-1502; 1953 Comp., § 41-15-2; Laws 1966, ch. 28, § 59; 1981, ch. 232, § 1; 1988, ch. 3, § 1.

31-11-2. [Appeal granted; defendant to be committed or recognized.]

If an appeal be granted, the district court shall order the defendant to be committed or recognized and the commitment or recognizance shall be to the same effect as when the defendant himself is appellant.

History: Laws 1917, ch. 43, § 51; C.S. 1929, § 105-2528; 1941 Comp., § 42-1504; 1953 Comp., § 41-15-4.

31-11-3. Directions following review brought by defendant.

In any criminal case, if the supreme court or court of appeals affirms the judgment of the district court upon review brought by the defendant, it shall direct that the sentence pronounced be executed; and if the judgment is reversed, it shall direct a new trial or that the defendant be absolutely discharged according to the circumstances of the case.

History: Laws 1917, ch. 43, § 55; 1927, ch. 93, § 8; C.S. 1929, § 105-2529; 1941 Comp., § 42-1505; 1953 Comp., § 41-15-5; Laws 1966, ch. 28, § 60.

31-11-4. Directions following review brought by state.

In any criminal case, if the supreme court or court of appeals affirms the judgment of the district court upon review brought by the state, it shall direct that the defendant be discharged; and if the judgment is reversed, it shall direct the district court to enter judgment on the verdict rendered, or, when no judgment has been rendered, to proceed to trial on the indictment or information.

History: Laws 1917, ch. 43, § 56; 1927, ch. 93, § 9; C.S. 1929, § 105-2530; 1941 Comp., § 42-1506; 1953 Comp., § 41-15-6; Laws 1966, ch. 28, § 61.

31-11-5. [New trial granted; procedure in district court.]

The district court to which any criminal cause shall be remanded for new trial shall proceed thereon in same manner as if said cause had not been theretofore tried.

History: Laws 1917, ch. 43, § 57; C.S. 1929, § 105-2531; 1941 Comp., § 42-1507; 1953 Comp., § 41-15-7.

31-11-6. Post-conviction remedy.

A prisoner in custody under sentence of a court established by the laws of New Mexico claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution of the United States, or of the constitution or laws of New Mexico, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A. A motion for such relief may be made at any time.

B. Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the district attorney of the judicial district in which such motion is pending, appoint local counsel if the prisoner is indigent, grant a prompt hearing therein, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law, or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him, or grant a new trial, or correct the sentence, as may appear appropriate.

C. A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

D. The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

E. An appeal may be taken from the order entered on the motion as from a final judgment in the manner and within the time provided in Section 21-2-1(5) New Mexico Statutes Annotated, 1953 Compilation.

F. An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief by motion to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention, or that a habeas corpus proceeding is pending at the effective date of this section.

G. This section shall not apply to municipal or justice of the peace courts [magistrate courts].

History: 1953 Comp., § 41-15-8, enacted by Laws 1966, ch. 29, § 1.

ARTICLE 12
Fines, Fees and Costs

31-12-1, 31-12-2. Repealed.

31-12-3. Paying fines, fees or costs in installments; community service option.

A. Any person sentenced to pay a fine or to pay fees and costs in any criminal proceeding against the person, either in addition to or without a term of imprisonment, shall be allowed to pay such fine, fees or costs in installments of such amounts, at such times and upon such conditions as the court may fix.

B. The defendant may also be required to serve a period of time in labor to be known as "community service" in lieu of all or part of the fine, fees or costs. The labor shall be meaningful, shall not be suspended or deferred and shall be of a type that benefits the public at large or any public, charitable or educational entity or institution, including enrollment in job training or an academic or vocational program or participation in social service or rehabilitation programs, and is consistent with Article 9, Section 14 of the constitution of New Mexico. Any person performing community service pursuant to court order shall be immune from civil liability arising out of the community service other than for gross negligence, shall not be entitled to wages or considered an employee for any purpose and shall not be entitled to workers'

compensation, unemployment or any other benefits otherwise provided by law. Instead, a person who performs community service shall receive credit toward the fine, fees or costs at twice the rate of the prevailing state hourly minimum wage. Unless otherwise provided, however, the total fine, fees and costs shall be payable forthwith.

C. The court may at any time revise, modify, reduce or enlarge the amount of the installment or the time and conditions fixed for payment of it.

D. When a defendant sentenced to pay a fine in installments or ordered to pay fees or costs defaults in payment, the court, upon motion of the prosecutor or upon its own motion, may require the defendant to show cause why the defendant's default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant's appearance. It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that the defendant made a good faith effort to obtain the funds required for the payment. If the defendant's default was contumacious, the court may order the defendant committed until the fine or a specified part of it or the fees or costs are paid. A defendant who is ordered to a period of confinement under this subsection shall receive credit toward the fine, fees or costs at twenty-four times the rate of the state minimum wage for each day or portion of a day of incarceration. A defendant shall receive credit at the same rate for all pre-sentence confinement served. The maximum term of imprisonment for such contumacious nonpayment shall be specified in the order of commitment.

E. If it appears that a defendant's default in the payment of a fine, fees or costs is not contumacious, the court may allow the defendant additional time for payment, reduce the amount of the fine or of each installment, revoke the fine or the unpaid portion in whole or in part or require the defendant to perform community service in lieu of the fine, fees or costs.

History: 1953 Comp., § 41-21-8, enacted by Laws 1971, ch. 236, § 1; 1991, ch. 54, § 1; 1993, ch. 155, § 1; 2023, ch. 184, § 1.

31-12-4, 31-12-5. Repealed.

31-12-6. Repealed.

History: Laws 1858-1859, p. 30; C.L. 1865, ch. 46, § 14; C.L. 1884, § 2506; C.L. 1897, § 3445; Code 1915, § 4450; C.S. 1929, § 105-2229; 1941 Comp., § 42-1304; 1953 Comp., § 41-13-4; 1972, ch. 71, § 16; 1978 Comp., § 31-12-6 repealed by Laws 2023, ch. 184, § 19.

31-12-7. Repealed.

History: Laws 1981, ch. 367, § 1; 1988, ch. 56, § 5; 1991, ch. 245, § 1; 1997, ch. 203, § 1; 2010, ch. 5, § 1; repealed by Laws 2023, ch. 184, § 19.

31-12-8. Repealed.

History: Laws 1981, ch. 367, § 2; 1984, ch. 82, § 1; 1988, ch. 14, § 5; repealed by Laws 2023, ch. 184, § 19.

31-12-9. Crime laboratory fund created; appropriation.

There is created in the state treasury the "crime laboratory fund". The fund consists of gifts, grants, donations, appropriations and distributions to the fund made pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978]. All balances in the crime laboratory fund are appropriated to the traffic safety bureau of the department of transportation to provide funds to approved comprehensive community programs for the prevention of driving while under the influence of alcohol or drugs and for other traffic safety purposes. Payment out of the crime laboratory fund shall be made on vouchers issued and signed by the chief of the traffic safety bureau upon warrants drawn by the department of finance and administration.

History: Laws 1981, ch. 367, § 3; 1989, ch. 324, § 22; 1991, ch. 245, § 2; 2023, ch. 184, § 2.

31-12-10. Repealed.

31-12-11. Repealed.

History: Laws 2003, ch. 387, § 1; 2008, ch. 7, § 1; repealed by Laws 2023, ch. 184, § 19.

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. The fund consists of gifts, grants, donations, appropriations and distributions to the fund made pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

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 to 30-3-18 NMSA 1978];

(2) convicted for violating an order of protection granted by a court pursuant to the provisions of the Family Violence Protection Act [Chapter 40, Article 13 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.

History: Laws 2003, ch. 387, § 2; 2008, ch. 7, § 2; 2023, ch. 184, § 3.

31-12-13. Repealed.

History: Laws 2015, ch. 10, § 3; repealed by Laws 2023, ch. 184, § 19.

31-12-14. Relief of court debt for fees or costs.

The court, by its own motion or by defendant petition, may waive fees or costs assessed prior to July 1, 2024.

History: Laws 2023, ch. 184, § 4.

ARTICLE 13
Civil Rights and Pardons

31-13-1. Felony conviction; restoration of right to hold office of public trust.

A person who has been convicted of a felony shall not be permitted to hold an office of public trust for the state, a county, a municipality or a district, unless the person has presented the governor with a certificate verifying the completion of the sentence and was granted a pardon or a certificate by the governor restoring the person's full rights of citizenship.

History: 1953 Comp., § 40A-29-14, enacted by Laws 1963, ch. 303, § 29-14; and recompiled as 1953 Comp., § 40A-29-38, by Laws 1977, ch. 216, § 16; 2001, ch. 46, § 2; 2005, ch. 116, § 2; 2023, ch. 84, § 23.

ARTICLE 14
Execution of Death Sentence (Repealed.)

31-14-1. Repealed.

History: 1978 Comp., § 31-14-12, enacted by Laws 1979, ch. 150, § 9; 1978 Comp., § 31-14-12, repealed by Laws 2009, ch. 11, § 5.

31-14-2. Repealed.

History: Laws 1929, ch. 69, § 2; C.S. 1929, § 35-322; 1941 Comp., § 42-1402; 1953 Comp., § 41-14-2; 1978 Comp., § 31-14-2, repealed by Laws 2009, ch. 11, § 5.

31-14-3. Repealed.

History: Laws 1929, ch. 69, § 3; C.S. 1929, § 35-323; 1941 Comp., § 42-1403; 1953 Comp., § 41-14-3; 1978 Comp., § 31-14-3, repealed by Laws 2009, ch. 11, § 5.

31-14-4. Repealed.

History: Laws 1929, ch. 69, § 4; C.S. 1929, § 35-324; 1941 Comp., § 42-1404; 1953 Comp., § 41-14-4; 1978 Comp., § 31-14-4, repealed by Laws 2009, ch. 11, § 5.

31-14-5. Repealed.

History: Laws 1929, ch. 69, § 5; C.S. 1929, § 35-325; 1941 Comp., § 42-1405; 1953 Comp., § 41-14-5; 1978 Comp., § 31-14-5, repealed by Laws 2009, ch. 11, § 5.

31-14-6. Repealed.

History: Laws 1929, ch. 69, § 6; C.S. 1929, § 35-326; 1941 Comp., § 42-1406; 1953 Comp., § 41-14-6; 2005, ch. 313, § 8; 1978 Comp., § 31-14-6, repealed by Laws 2009, ch. 11, § 5.

31-14-7. Repealed.

History: Laws 1929, ch. 69, § 7; C.S. 1929, § 35-327; 1941 Comp., § 42-1407; 1953 Comp., § 41-14-7; 2005, ch. 313, § 9; 1978 Comp., § 31-14-7, repealed by Laws 2009, ch. 11, § 5.

31-14-8. Repealed.

History: Laws 1929, ch. 69, § 8; C.S. 1929, § 35-328; 1941 Comp., § 42-1408; 1953 Comp., § 41-14-8; 1978 Comp., § 31-14-8, repealed by Laws 2009, ch. 11, § 5.

31-14-9. Repealed.

History: Laws 1929, ch. 69, § 9; C.S. 1929, § 35-329; 1941 Comp., § 42-1409; 1953 Comp., § 41-14-9; 1978 Comp., § 31-14-9, repealed by Laws 2009, ch. 11, § 5.

31-14-10. Repealed.

History: Laws 1929, ch. 69, § 10; C.S. 1929, § 35-330; 1941 Comp., § 42-1410; 1953 Comp., § 41-14-10; 1978 Comp., § 31-14-10, repealed by Laws 2009, ch. 11, § 5.

31-14-11. Repealed.

History: 1953 Comp., § 41-14-11.1, enacted by Laws 1955, ch. 127, § 1; 1979, ch. 150, § 8; 1978 Comp., § 31-14-11, repealed by Laws 2009, ch. 11, § 5.

31-14-12. Repealed.

History: 1978 Comp., § 31-14-12, enacted by Laws 1979, ch. 150, § 9; 1978 Comp., § 31-14-12, repealed by Laws 2009, ch. 11, § 5.

31-14-13. Repealed.

History: 1953 Comp., § 41-14-11.3, enacted by Laws 1955, ch. 127, § 3; 1978 Comp., § 31-14-13, repealed by Laws 2009, ch. 11, § 5.

31-14-14. Repealed.

History: 1953 Comp., § 41-14-11.4, enacted by Laws 1955, ch. 127, § 4; 1979, ch. 150, § 10; 1978 Comp., § 31-14-14, repealed by Laws 2009, ch. 11, § 5.

31-14-15. Repealed.

History: Laws 1929, ch. 69, § 12; C.S. 1929, § 35-332; 1941 Comp., § 42-1412; 1953 Comp., § 41-14-12; 1978 Comp., § 31-14-15, repealed by Laws 2009, ch. 11, § 5.

31-14-16. Repealed.

History: Laws 1929, ch. 69, § 13; C.S. 1929, § 35-333; 1941 Comp., § 42-1413; 1953 Comp., § 41-14-13; 1978 Comp., § 31-14-16, repealed by Laws 2009, ch. 11, § 5.

ARTICLE 15
Public Defenders

31-15-1. Short title.

Chapter 31, Article 15 NMSA 1978 may be cited as the "Public Defender Act".

History: 1953 Comp., § 41-22A-1, enacted by Laws 1973, ch. 156, § 1; 2013, ch. 195, § 2.

31-15-2. Definitions.

As used in the Public Defender Act:

A. "chief" means the chief public defender;

B. "commission" means the public defender commission;

C. "court" means the district, metropolitan and magistrate courts of this state;

D. "department" means the public defender department;

E. "district" means a public defender district; and

F. "judge" means a judge of the district or metropolitan court or a magistrate.

History: 1953 Comp., § 41-22A-3, enacted by Laws 1973, ch. 156, § 2; 1985, ch. 32, § 1; 2013, ch. 195, § 3.

31-15-2.1. Public defender commission; membership; terms; removal.

A. The public defender commission, created pursuant to Article 6, Section 39 of the constitution of New Mexico, consists of eleven members. Members shall be appointed as follows:

(1) the governor shall appoint one member;

(2) the chief justice of the supreme court shall appoint three members;

(3) the dean of the university of New Mexico school of law shall appoint three members;

(4) the speaker of the house of representatives shall appoint one member;

(5) the majority floor leaders of each chamber shall each appoint one member; and

(6) the president pro tempore of the senate shall appoint one member.

B. The appointments made by the chief justice of the supreme court and the dean of the university of New Mexico school of law shall follow the appointments made by the other appointing authorities and shall be made in such a manner so that each of the two largest major political parties, as defined in the Election Code, shall be equally divided on the commission.

C. Initial appointments to the commission shall be made by July 1, 2013. If a position remains vacant on July 1, 2013, the supreme court shall fill the vacancy. Initial terms of members appointed by the dean of the university of New Mexico school of law, the speaker of the house of representatives and the majority floor leader of the senate shall be for three years; and initial terms of members appointed by the governor and the chief justice of the supreme court shall be for two years.

D. Subsequent terms shall be for four years. A commission member shall not serve more than two consecutive terms. A commission member shall serve until the member's successor has been appointed and qualified. A vacancy on the commission shall be filled by the appointing authority for the remainder of the unexpired term.

E. A member may be removed by the commission for malfeasance, misfeasance or neglect of duty. If a member's professional status changes to render the member ineligible pursuant to the Public Defender Act, the member shall resign immediately.

F. Members of the commission are entitled to compensation pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other perquisite, compensation or allowance.

G. The commission is administratively attached to the department, and staff for the commission shall be provided by the department.

History: Laws 2013, ch. 195, § 4.

31-15-2.2. Public defender commission; member qualifications.

A. A person appointed to the commission shall have:

(1) significant experience in the legal defense of criminal or juvenile justice cases; or

(2) demonstrated a commitment to quality indigent defense representation or to working with and advocating for the population served by the department.

B. The following persons shall not be appointed to and shall not serve on the commission:

(1) current prosecutors, law enforcement officials or employees of prosecutors or law enforcement officials;

(2) current public defenders or other employees of the department;

(3) current judges, judicial officials or employees of judges or judicial officials;

(4) current elected officials or employees of elected officials; or

(5) persons who currently contract with or receive funding from the department or employees of such persons.

History: Laws 2013, ch. 195, § 5.

31-15-2.3. Public defender commission; organization; meetings.

A. The commission shall hold its first meeting by September 1, 2013 and shall organize and elect a chair at that meeting. Three subsequent meetings shall be held in 2013. Thereafter, the commission shall meet at least four times a year, as determined by a majority of commission members. Meetings shall be held at the call of the chair or the chief or at the request of four commission members.

B. The commission shall appoint the chief by October 15, 2013.

C. A majority of commission members constitutes a quorum for the transaction of business, and an action by the commission is not valid unless six or more members concur.

D. The commission may adopt rules and shall keep a record of its proceedings.

E. A commission member may select a designee to serve in the member's stead only once per year.

History: Laws 2013, ch. 195, § 6.

31-15-2.4. Public defender commission; powers and duties; restriction on individual member.

A. The commission shall exercise independent oversight of the department, set representation standards for the department and provide guidance and support to the chief in the administration of the department and the representation of indigent persons pursuant to the Public Defender Act.

B. The commission shall develop fair and consistent standards for the operation of the department and the provision of services pursuant to the Public Defender Act, including standards relating to:

(1) the minimum experience, training and qualifications for appointed, contract and staff attorneys in both adult and juvenile cases in coordination with the state personnel office;

(2) monitoring and evaluating appointed, contract and staff attorneys;

(3) ethically responsible caseload and workload levels and workload monitoring protocols for staff attorneys, contract attorneys and district defender offices;

(4) the competent and efficient representation of clients whose cases present conflicts of interest;

(5) qualifications and performance of appointed, contract and staff attorneys in capital cases at the trial, appellate and post-conviction levels; and

(6) personnel policies and procedures, including the development of public defender personnel rules, to establish an independent system of personnel administration for the department; provided that no employee of the department, except the chief, assistant chief public defenders, appellate defender and district public defenders, shall have fewer rights than under the Personnel Act [Chapter 10, Article 9 NMSA 1978] and under administrative rules applicable to state employees on the effective date of this 2014 act.

C. An individual member of the commission shall not interfere with the discretion, professional judgment or advocacy of a public defender, a public defender office, a public defender contractor or an assigned counsel in the representation of a public defender client.

History: Laws 2013, ch. 195, § 7; 2014, ch. 78, § 2.

31-15-3. Repealed.

31-15-4. Chief public defender; appointment; qualifications; removal.

A. The chief shall be the administrative head of the department. The commission shall appoint a chief for a term of four years by approval of two-thirds of its members. The commission may reappoint a chief for subsequent terms. A vacancy in the office of the chief shall be filled by appointment by the commission.

B. The commission shall appoint as chief only a person with the following qualifications:

(1) an attorney licensed to practice law in New Mexico or who will be so licensed within one year of appointment;

(2) an attorney whose practice of law has been active for at least five years immediately preceding the date of this appointment;

(3) an attorney whose practice of law has included a minimum of five years' experience in defense of persons accused of crime; and

(4) an attorney who has clearly demonstrated management or executive experience.

C. The chief may be removed by the commission; provided, however, that no removal shall be made without notice of hearing and an opportunity to be heard having been first given to the chief.

History: 1953 Comp., § 41-22A-4, enacted by Laws 1973, ch. 156, § 4; 1977, ch. 257, § 58; 1985, ch. 32, § 2; 2013, ch. 195, § 8.

31-15-5. Public defender department; administration; finance.

A. The headquarters of the department shall be maintained at Santa Fe.

B. All salaries and other expenses of the department shall be paid by warrants of the secretary of finance and administration, supported by vouchers signed by the chief or the chief's authorized representative and in accordance with budgets approved by the state budget division of the department of finance and administration.

History: 1953 Comp., § 41-22A-5, enacted by Laws 1978, ch. 14, § 1; 2013, ch. 195, § 9.

31-15-5.1. Public defender automation fund created; administration; distribution.

A. The "public defender automation fund" is created in the state treasury. The fund shall be administered by the department. The department shall report on the status of the fund to the legislative finance committee during each legislative interim.

B. All balances in the public defender automation fund are appropriated to the department for the purchase and maintenance of automation systems for the department.

C. Payments from the public defender automation fund shall be made pursuant to vouchers issued and signed by the chief upon warrants drawn by the secretary of finance and administration. Any purchase or lease-purchase agreement entered into pursuant to this section shall be entered into in accordance with the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

History: Laws 1993, ch. 79, § 2; 2013, ch. 195, § 10.

31-15-6. Public defender department; powers.

The department may receive on behalf of the state any gifts, grants-in-aid, donations or bequests from any source to be used in carrying out the purposes of the Public Defender Act.

History: 1953 Comp., § 41-22A-6, enacted by Laws 1973, ch. 156, § 6.

31-15-7. Chief public defender; general duties and powers.

A. The chief is responsible to the commission for the operation of the department. It is the chief's duty to manage all operations of the department and to:

(1) administer and carry out the provisions of the Public Defender Act with which the chief is charged;

(2) exercise authority over and provide general supervision of employees of the department; and

(3) represent and advocate for the department and its clients.

B. To perform the chief's duties, the chief has every power implied as necessary for that purpose, those powers expressly enumerated in the Public Defender Act or other laws and full power and authority to:

(1) exercise general supervisory authority over all employees of the department;

(2) delegate authority to subordinates as the chief deems necessary and appropriate;

(3) within the limitations of applicable appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the chief's duties;

(4) organize the department into those units the chief deems necessary and appropriate to carry out the chief's duties;

(5) conduct research and studies that will improve the operation of the department and the administration of the Public Defender Act;

(6) provide courses of instruction and practical training for employees of the department that will improve the operation of the department and the administration of the Public Defender Act;

(7) purchase or lease personal property and lease real property for the use of the department;

(8) maintain records and statistical data that reflect the operation and administration of the department;

(9) submit an annual report and budget covering the operation of the department together with appropriate recommendations to the commission and, upon approval by the commission, to the legislature and the governor;

(10) serve as defense counsel under the Public Defender Act as necessary and appropriate;

(11) formulate a fee schedule for attorneys who are not employees of the department who serve as counsel for indigent persons under the Public Defender Act;

(12) adopt a standard to determine indigency;

(13) provide for the collection of reimbursement from each person who has received legal representation or another benefit under the Public Defender Act after a determination is made that the person was not indigent according to the standard for indigency adopted by the department. Any amounts recovered shall be paid to the state treasurer for credit to the general fund;

(14) require each person who desires legal representation or another benefit under the Public Defender Act to enter into a contract with the department agreeing to reimburse the department if a determination is made that the person was not indigent according to the standard for indigency adopted by the department; and

(15) certify contracts and expenditures for litigation expenses, including contracts and expenditures for professional and nonprofessional experts, investigators

and witness fees, but not including attorney contracts, pursuant to the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

History: 1953 Comp., § 41-22A-7, enacted by Laws 1973, ch. 156, § 7; 1977, ch. 257, § 60; 1985, ch. 32, § 3; 1987, ch. 20, § 1; 2001, ch. 34, § 1; 2013, ch. 195, § 11; 2014, ch. 78, § 3.

31-15-8. Duty of chief public defender to establish appellate division; duty of appellate division.

A. The chief shall establish within the department an appellate division. The appellate division shall be headed by the appellate defender.

B. The appellate division shall assist the chief and district public defenders by providing representation before the court of appeals and the supreme court in appellate, review and postconviction proceedings involving persons represented under the Public Defender Act.

C. The appellate division shall assist private counsel not employed under the Public Defender Act in any appellate, review or postconviction remedy proceeding by providing representation for persons entitled to representation under the Indigent Defense Act [31-16-1 to 31-16-10 NMSA 1978].

History: 1953 Comp., § 41-22A-8, enacted by Laws 1973, ch. 156, § 8; 2014, ch. 78, § 4.

31-15-9. Duty of chief public defender to establish district public defender office; appointment of district public defender.

A. The chief shall designate one or more public defender districts having boundaries coextensive with the boundaries of one or more judicial districts of this state. The chief shall consider the demand for legal services provided under the Public Defender Act, criminal case load statistics, population, geographical characteristics and any other relevant factor in the designation of public defender districts.

B. The chief may review the designation of districts at any time. The review shall be based on the same factors enumerated in Subsection A of this section. On the basis of the review the chief may change the designation of any district so long as the new designation has boundaries coextensive with the boundaries of one or more judicial districts of this state.

C. The chief shall appoint a district public defender in each district. The district public defender shall administer the operation of the district and shall serve at the pleasure of the chief. Each district public defender shall be an attorney licensed to practice law in the highest courts of this state and a resident of this state.

History: 1953 Comp., § 41-22A-9, enacted by Laws 1973, ch. 156, § 9.

31-15-10. Duties of district public defender.

A. Under the supervision and control of the chief, each district public defender shall administer the operation of the department office within his district.

B. The district public defender or the chief may authorize the representation of a person who is without counsel and who is financially unable to obtain counsel when that person is under investigation for allegedly committing murder or any other felony criminal offense.

C. The district public defender shall represent every person without counsel who is financially unable to obtain counsel and who is charged in any court within the district with any crime that carries a possible sentence of imprisonment. The representation shall begin not later than the time of the initial appearance of the person before any court and shall continue throughout all stages of the proceedings against him, including any appeal, as directed by the chief.

D. The district public defender shall represent any person within the district who is without counsel and who is financially unable to obtain counsel in any state postconviction proceeding.

E. The district public defender shall notify the chief if, for any reason, he is unable to represent a person entitled to his representation, and the chief shall make provision for representation.

F. The district public defender may confer with any person who is not represented by counsel and who is being forcibly detained.

History: 1953 Comp., § 41-22A-10, enacted by Laws 1973, ch. 156, § 10; 2001, ch. 34, § 2.

31-15-11. Compensation; private practice of law by attorneys employed by the department prohibited.

A. For the purposes of the exempt salaries plan prepared pursuant to Section 10-9-5 NMSA 1978, each district public defender shall be considered an assistant in the offices of the chief.

B. All employees of the department other than the chief, assistant chief public defenders, appellate defender and district public defenders shall be subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978], unless the employees are exempted from the Personnel Act by the commission.

C. Before the commission may exempt the department from the Personnel Act, the commission shall develop and adopt personnel policies for the department; provided that no employee of the department, except the chief, assistant chief public defenders, appellate defender and district public defenders, shall have fewer rights under these policies than under the Personnel Act and under administrative rules applicable to state employees on the effective date of this 2014 act.

D. No chief, assistant chief public defender, appellate defender, district public defender or attorney hired on a full-time basis as an assistant to the chief or to a district public defender, while holding that office or employed in that capacity, shall engage in the private practice of law. Attorneys who serve as counsel for indigent persons under contract with the department may engage in the private practice of law.

History: 1953 Comp., § 41-22A-11, enacted by Laws 1973, ch. 156, § 11; 1977, ch. 257, § 61; 2014, ch. 78, § 5.

31-15-12. Explanation of rights; waiver of counsel; application fee; indigency determination.

A. If any person charged with any crime or a delinquent act that carries a possible sentence of imprisonment appears in any court without counsel, the judge shall inform the person of the person's right:

(1) to confer with the district public defender; and

(2) if the person is financially unable to obtain counsel, to be represented by the district public defender at all stages of the proceedings against the person.

B. Following notification of any person under Subsection A of this section, the judge shall notify the district public defender and continue the proceedings until the person has applied with the district public defender.

C. A person shall pay a nonrefundable application fee of ten dollars ($10.00) at the time the person applies with the public defender for representation. The fee shall be deposited in the public defender automation fund. The public defender shall determine if the person is indigent and unable to pay the fee, subject to review by the court. When the person remains in custody and is unable to pay the fee, the court may waive payment of the fee. A child subject to the provisions of the Delinquency Act [Chapter 32A, Article 2 NMSA 1978] shall not be required to pay the application fee.

D. Peace officers shall notify the district public defender of any person not represented by counsel who is being forcibly detained and who is charged with, or under suspicion of, the commission of any crime that carries a possible sentence of imprisonment, unless the person has previously appeared in court upon that charge.

E. Any person entitled to representation by the district public defender may intelligently waive the right to representation. The waiver may be for all or any part of the proceedings. The waiver shall be in writing and countersigned by a district public defender.

History: 1953 Comp., § 41-22A-12, enacted by Laws 1973, ch. 156, § 12; 1993, ch. 79, § 1; 2021, ch. 15, § 2.

ARTICLE 16
Defense of Indigents

31-16-1. Short title.

Sections 58 through 68 [31-16-1 to 31-16-10 NMSA 1978] of this act may be cited as the "Indigent Defense Act".

History: 1953 Comp., § 41-22-1, enacted by Laws 1968, ch. 69, § 58.

31-16-2. Definitions.

As used in the Indigent Defense Act:

A. "detain" means to have in custody or otherwise deprive of freedom of action;

B. "expenses", when used with reference to representation, includes the expenses of investigation, other preparation and trial;

C. "needy person" means a person who, at the time his need is determined by the court, is unable, without undue hardship, to provide for all or a part of the expenses of legal representation from available present income and assets; and

D. "serious crime" includes a felony and any misdemeanor or offense which carries a possible penalty of confinement for more than six months.

History: 1953 Comp., § 41-22-2, enacted by Laws 1968, ch. 69, § 59; 1973, ch. 210, § 1.

31-16-3. Right to representation.

A. A needy person who is being detained by a law enforcement officer, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled to be represented by an attorney to the same extent as a person having his own counsel and to be provided with the necessary services and facilities of representation, including investigation and other preparation. The attorney,

services and facilities and expenses and court costs shall be provided at public expense for needy persons.

B. A needy person entitled to representation by an attorney under Subsection A is entitled to be:

(1) counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney;

(2) represented in any appeal or review proceedings; and

(3) represented in any other postconviction proceeding that the attorney or the needy person considers appropriate unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense.

C. A needy person's right to a benefit under this section is unaffected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

History: 1953 Comp., § 41-22-3, enacted by Laws 1968, ch. 69, § 60.

31-16-4. Notice of right to representation.

A. If a person who is being detained by a law enforcement officer, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officers concerned, upon commencement of detention, or the court, upon formal charge, as the case may be, shall clearly inform him of the right of a needy person to be represented by an attorney at public expense and, if the person detained or charged does not have an attorney, notify the district court concerned that he is not so represented.

B. Upon commencement of any later judicial proceeding relating to the same matter, the presiding officer shall clearly inform the person so detained or charged of the right of a needy person to be represented by an attorney at public expense.

C. If the district court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly assign an attorney who shall represent the person in accordance with the terms of his assignment.

History: 1953 Comp., § 41-22-4, enacted by Laws 1968, ch. 69, § 61.

31-16-5. Determination of indigency.

A. The determination of whether a person covered by Section 60 [31-16-3 NMSA 1978] of the Indigent Defense Act is a needy person shall be deferred until his first appearance in court or in a suit for payment or reimbursement under Section 66 [31-16-9 NMSA 1978] of the Indigent Defense Act, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is a needy person.

B. In determining whether a person is a needy person and the extent of his inability to pay, the court concerned may consider such factors as income, property owned, outstanding obligations and the number and ages of his dependents. Release on bail does not necessarily prevent him from being a needy person. In each case, the person shall, subject to the penalties for perjury, certify in writing or by other record material factors relating to his ability to pay as the court prescribes.

C. To the extent that a person covered by Section 60 of the Indigent Defense Act is able to provide for an attorney, the other necessary services and facilities of representation and court costs, the court may order him to provide for their payment.

History: 1953 Comp., § 41-22-5, enacted by Laws 1968, ch. 69, § 62.

31-16-6. Waiver of right to representation.

A person who has been appropriately informed under Section 61 [31-16-4 NMSA 1978] of the Indigent Defense Act may waive in writing or by other record any right provided by the Indigent Defense Act if the court authorized to appoint counsel, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the person's age, education and familiarity with English and the complexity of the crime involved.

History: 1953 Comp., § 41-22-6, enacted by Laws 1968, ch. 69, § 63.

31-16-7. Recovery from defendant.

A. The district attorney may, on behalf of the state, recover payment or reimbursement, as the case may be, from each person who has received legal assistance or another benefit under the Indigent Defense Act:

(1) to which he was not entitled;

(2) with respect to which he was not a needy person when he received it; or

(3) with respect to which he has failed to make the certificate required by Section 62 B [31-16-5 NMSA 1978] of the Indigent Defense Act and for which he refuses to pay. Suit must be brought within six years after the date on which the aid was received.

B. The district attorney may, on behalf of the state, recover payment or reimbursement, as the case may be, from each person other than a person covered by Subsection A who has received legal assistance under the Indigent Defense Act and who, on the date on which suit is brought, is financially able to pay or reimburse the state for it according to the standards of ability to pay applicable under the Indigent Defense Act but refuses to do so. Suit must be brought within three years after the date on which the benefit was received.

C. Amounts recovered under this section shall be paid to the state treasurer for credit to the state general fund.

History: 1953 Comp., § 41-22-7, enacted by Laws 1968, ch. 69, § 64.

31-16-8. Payment of costs, expenses and attorney fees.

A. Payments of costs, expenses and attorney fees under the Indigent Defense Act shall be made from:

(1) funds appropriated to the supreme court with respect to habeas corpus matters initiated in that court; and

(2) funds appropriated to the district court with respect to all stages of proceedings initiated in the district court.

B. The court assigning counsel under the Indigent Defense Act shall pay costs, including the costs of transcripts where appropriate, shall reimburse counsel for direct expenses the court determines to have been properly incurred by him and shall pay to counsel fees:

(1) for services in magistrate courts and district courts where the proceedings are terminated prior to trial in the district court, a sum fixed by the court at not less than one dollar ($1.00) nor more than three hundred dollars ($300);

(2) for services in magistrate courts and district courts which include trial in the district court and, where appropriate, filing notice of appeal, a sum fixed by the court at not less than one dollar ($1.00) nor more than four hundred dollars ($400);

(3) for services in postconviction remedy proceedings in the district court, a sum fixed by the court at not less than one dollar ($1.00) nor more than one hundred fifty dollars ($150);

(4) for services in prosecuting any appeal or review in the court of appeals or the supreme court, a sum fixed by the court at not less than one dollar ($1.00) nor more than five hundred dollars ($500);

(5) for services in habeas corpus proceedings in the supreme court, a sum fixed by the court at not less than one dollar ($1.00) nor more than one hundred fifty dollars ($150); and

(6) for services in any case involving a capital offense, a sum fixed by the court.

History: 1953 Comp., § 41-22-8, enacted by Laws 1968, ch. 69, § 65.

31-16-9. Contractual services of counsel.

In order to facilitate representation in matters arising before appearance in any court in matters covered by the Indigent Defense Act, the director of the administrative office of the courts may, upon direction of the supreme court with respect to habeas corpus proceedings initiated in the supreme court, or upon request of a district court, enter into contracts with attorneys designated by these courts whereby the attorney shall undertake to perform the services of assigned counsel in all or any specified portion of the cases originating within the judicial district. All contracts shall be approved by the chief justice of the supreme court and all payments provided therein shall be made by the supreme court or in the appropriate district court requesting the contract, but in no instance shall contract payments exceed the maximums set out in Section 65 [31-16-8 NMSA 1978] of the Indigent Defense Act.

History: 1953 Comp., § 41-22-9, enacted by Laws 1968, ch. 69, § 66.

31-16-10. Counsel not subject to liability.

No attorney assigned or contracted with to perform services under the Indigent Defense Act shall be held liable in any civil action respecting his performance or nonperformance of such services.

History: 1953 Comp., § 41-22-10, enacted by Laws 1968, ch. 69, § 67.

ARTICLE 16A
Preprosecution Diversion

31-16A-1. Short title.

This act [31-16A-1 to 31-16A-8 NMSA 1978] may be cited as the "Preprosecution Diversion Act".

History: Laws 1981, ch. 33, § 1.

31-16A-2. Purpose.

The purposes of the Preprosecution Diversion Act are to remove those persons from the criminal justice system who are most amenable to rehabilitation and least likely to commit future offenses, to provide those persons with services designed to assist them in avoiding future criminal activity, to conserve community and criminal justice resources, to provide standard guidelines and to evaluate preprosecution programs.

History: Laws 1981, ch. 33, § 2.

31-16A-3. Program establishment.

Each district attorney shall establish a preprosecution diversion program in his judicial district in accordance with the provisions of the Preprosecution Diversion Act to the extent public or private funds permit.

History: Laws 1981, ch. 33, § 3.

31-16A-4. Eligibility.

A. A defendant shall meet the following minimum criteria to be eligible for a preprosecution diversion program:

(1) the defendant shall have no prior felony convictions for a violent crime;

(2) the defendant is willing to participate in the program and submit to all program requirements;

(3) any additional criteria set by the district attorney.

B. A person who meets all of the criteria pursuant to Subsection A of this section may be entered into the preprosecution diversion program; provided that the district attorney may elect not to divert a person to the preprosecution diversion program even though that person meets the minimum criteria set forth in this section.

C. A decision by the district attorney not to divert a person to the preprosecution diversion program is not subject to appeal and shall not be raised as a defense to any prosecution or habitual offender proceeding.

History: Laws 1981, ch. 33, § 4; 2019, ch. 211, § 5.

31-16A-5. Program functions and responsibilities.

The preprosecution diversion program in each judicial district shall include:

A. individual counseling and guidance for all participants;

B. required victim restitution where applicable to the extent practical. In addition to monetary restitution, a program may require public service restitution; and

C. referral resources where clients may be sent for treatment and rehabilitation.

History: Laws 1981, ch. 33, § 5.

31-16A-6. Waivers; suspension of criminal proceedings.

A. A defendant must secure or be appointed defense counsel to be present at a preprosecution diversion screening interview prior to applying for acceptance into a preprosecution diversion program, and, upon applying, the defendant shall waive his constitutional right to a preliminary hearing as set forth in Rule 15(d) of the Rules of Criminal Procedure for the Magistrate Courts [Rule 6-202D NMRA].

B. If a defendant is certified eligible by the district attorney and by the preprosecution diversion program, the defendant shall also waive his constitutional right to a speedy trial and any rights as provided by Rule 37(b) of the Rules of Criminal Procedure for the District Court [Courts] [Rule 5-604B NMRA]. Upon entry of this waiver, the district attorney shall divert the defendant into the preprosecution diversion program and criminal proceedings against the defendant shall be suspended. Participating defendants shall also waive any confidentiality provided by the Arrest Record Information Act [29-10-1 NMSA 1978] to permit scrutiny of records; provided that the publication of the personal information, except the name of the defendant, gathered while a defendant is participating in a program shall not be a public record.

History: Laws 1981, ch. 33, § 6.

31-16A-7. Program participation; reasonable conditions; termination.

A. A defendant may be diverted to a preprosecution diversion program for no less than six months and no longer than two years. A district attorney may extend the diversion period for a defendant as a disciplinary measure or to allow adequate time for restitution; provided that the extension coupled with the original period does not exceed two years.

B. A district attorney may require as a program requirement that a defendant agree to such reasonable conditions as the district attorney deems necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality.

C. If a defendant does not comply with the terms, conditions and requirements of a preprosecution diversion program, the defendant's participation in the program may be terminated, and the district attorney may proceed with the suspended criminal prosecution of the defendant.

D. If the participation of a defendant in a preprosecution diversion program is terminated, the district attorney shall state in writing the specific reasons for the termination, which reasons shall be available for review by the defendant and the defendant's counsel.

History: Laws 1981, ch. 33, § 7; 1984, ch. 110, § 5; 2019, ch. 211, § 6.

31-16A-8. Record keeping.

A. Each district attorney shall maintain an accurate record of each individual accepted into a preprosecution diversion program for the purpose of complying with the requirements of Paragraph (4) of Subsection A of Section 4 [31-16A-4A(4) NMSA 1978] of the Preprosecution Diversion Act.

B. Each district attorney shall be required to forward to the state police accurate records of acceptance, successful termination or unsuccessful termination of each individual accepted into the program. The state police shall be required to maintain accurate records of all information forwarded to them by each respective district attorney concerning acceptance, successful termination or unsuccessful termination of all preprosecution diversion programs.

History: Laws 1981, ch. 33, § 8.

ARTICLE 17
Victim Restitution

31-17-1. Victim restitution.

A. It is the policy of this state that restitution be made by each violator of the Criminal Code [30-1-1 NMSA 1978] to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section, unless the context otherwise requires:

(1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;

(2) "actual damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, "actual damages" includes damages for wrongful death;

(3) "criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and

(4) "restitution" means full or partial payment of actual damages to a victim.

B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is currently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan, taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. An order requiring an offender to pay restitution, validly entered pursuant to this section, constitutes a judgment and lien against all property of a defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property, or for garnishment. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate or any other beneficiary of the judgment in the same manner as a civil judgment. An order of restitution is enforceable, if valid, pursuant to this section, the Victims of Crime Act [31-26-1 NMSA 1978] or Article 2, Section 24 of the constitution of New Mexico. Nothing in this section shall be construed to limit the ability of a victim to pursue full civil legal remedies.

E. The probation or parole officer, when assisting the defendant in preparing the plan of restitution, and the court, before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant; the defendant's age, education, employment circumstances, potential for employment and vocational training, family circumstances and financial condition; the number of victims; the actual damages of each victim; what plan of restitution will most effectively

aid the rehabilitation of the defendant; and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of pecuniary damages of each victim.

F. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, pursuant to the provisions of Subsection C of this section.

G. At any time during the probation or parole period, the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

H. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

I. This section and proceedings pursuant to this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

J. The rightful owner of any stolen property is the individual from whom the property was stolen. When recovering his property, the rightful owner of the stolen property shall not be civilly liable to any subsequent holder, possessor or retainer of the property for the purchase or sale price of the property or for any other costs or expenses associated with the property. Any subsequent holder, possessor or retainer of returned stolen property shall return the property to the rightful owner. The subsequent holder, possessor or retainer shall have a cause of action against the person from whom he obtained the property for actual damages.

History: 1953 Comp., § 40A-29-18.1, enacted by Laws 1977, ch. 217, § 2; 1989, ch. 101, § 1; 1993, ch. 221, § 1; 2005, ch. 282, § 1.

ARTICLE 18
Criminal Sentencing

31-18-1 to 31-18-11. Repealed.

31-18-12. Short title.

Chapter 31, Article 18 NMSA 1978 may be cited as the "Criminal Sentencing Act".

History: 1953 Comp., § 40A-29-26, enacted by Laws 1977, ch. 216, § 1; 1994, ch. 24, § 1.

31-18-13. Sentencing authority; all crimes.

A. Unless otherwise provided in this section, all persons convicted of a crime under the laws of New Mexico shall be sentenced in accordance with the provisions of the Criminal Sentencing Act; provided, that a person sentenced as a serious youthful offender or as a youthful offender may be sentenced to less than the basic or mandatory sentence prescribed by the Criminal Sentencing Act.

B. Whenever a defendant is convicted of a crime under the constitution of New Mexico, or a statute not contained in the Criminal Code [30-1-1 NMSA 1978], which specifies the penalty to be imposed on conviction, the court shall set as a definite term of imprisonment the minimum term prescribed by the statute or constitutional provision and may impose the fine prescribed by the statute or constitutional provision for the particular crime for which the person was convicted; provided, that a person sentenced as a serious youthful offender or as a youthful offender may be sentenced to less than the minimum term of imprisonment prescribed by the statute or the constitutional provision.

C. A crime declared to be a felony by the constitution or a statute not contained in the Criminal Code, without specification of the sentence or fine to be imposed on conviction, shall constitute a fourth degree felony as prescribed under the Criminal Code for the purpose of the sentence, and the defendant shall be so sentenced.

D. Any other crime for which the sentence to be imposed upon conviction is not specified shall constitute, for the purpose of the sentence, a petty misdemeanor.

History: 1953 Comp., § 40A-29-27, enacted by Laws 1977, ch. 216, § 2; 1993, ch. 77, § 4.

31-18-14. Sentencing authority; capital felonies.

When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole.

History: 1978 Comp., § 31-18-14, enacted by Laws 1979, ch. 150, § 1; 1993, ch. 77, § 5; 2009, ch. 11, § 1.

31-18-14.1. Repealed.

History: 1978 Comp., § 31-18-14.1, enacted by Laws 2001, ch. 128, § 1; repealed by Laws 2009, ch. 11, § 5.

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

A. As used in a statute that establishes a noncapital felony, the following defined felony classifications and associated basic sentences of imprisonment are as follows:

FELONY CLASSIFICATION	BASIC SENTENCE
first degree felony resulting in the death of a child	life imprisonment
first degree felony for aggravated criminal sexual penetration	life imprisonment
first degree felony	eighteen years imprisonment
second degree felony resulting in the death of a human being	eighteen years imprisonment
second degree felony for a sexual offense against a child	fifteen years imprisonment
second degree felony for sexual exploitation of children	twelve years imprisonment
second degree felony	nine years imprisonment
third degree felony resulting in the death of a human being	six years imprisonment
third degree felony for a sexual offense against a child	six years imprisonment
third degree felony for sexual exploitation of children	eleven years imprisonment
third degree felony	three years imprisonment
fourth degree felony for sexual exploitation of children	ten years imprisonment
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.

C. A period of parole shall be imposed only for felony convictions wherein a person is sentenced to imprisonment of more than one year, unless the parties to a proceeding agree that a period of parole should be imposed. If a period of parole is imposed, 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 31-21-10 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. If imposed, 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 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 for sexual exploitation of children, five thousand dollars ($5,000);

(7) for a second degree felony, ten thousand dollars ($10,000);

(8) for a third degree felony resulting in the death of a human being, five thousand dollars ($5,000);

(9) for a third degree felony for a sexual offense against a child, five thousand dollars ($5,000);

(10) for a third degree felony for sexual exploitation of children, five thousand dollars ($5,000);

(11) for a third or fourth degree felony, five thousand dollars ($5,000); or

(12) for a fourth degree felony for sexual exploitation of children, 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.

History: 1953 Comp., § 40A-29-28, enacted by Laws 1977, ch. 216, § 4; 1979, ch. 152, § 1; 1980, ch. 38, § 1; 1981, ch. 285, § 1; 1987, ch. 139, § 3; 1993, ch. 38, § 1; 1993, ch. 182, § 1; 1994, ch. 23, § 3; 1999, ch. 238, § 5; 2003, ch. 75, § 4; 2003 (1st S.S.), ch. 1, § 5; 2005, ch. 59, § 2; 2007, ch. 69, § 2; 2016, ch. 2, § 2; 2019, ch. 211, § 7; 2022, ch. 56, § 29; 2024, ch. 51, § 2.

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

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.

B. When the determination of guilt or innocence for the underlying offense is made by a jury, the original trial jury shall determine whether aggravating circumstances exist. If the offender waives a jury trial for the underlying offense, the offender retains the right to a jury determination of aggravating circumstances. If the offender waives a jury determination of aggravating circumstances, the basic sentence may be altered upon a

finding 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.

D. Not less than five days prior to trial or a sentencing proceeding pursuant to a plea agreement, the state shall give notice that it intends to seek an increase to an offender's basic sentence based upon aggravating circumstances. The notice shall state the aggravating circumstances upon which the sentence increase is sought.

E. Presentation of evidence or statements regarding an alleged aggravating circumstance shall be made as soon as practicable following the determination of guilt or innocence.

F. If the judge determines to alter the basic sentence, the judge shall issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case.

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.

History: 1978 Comp., § 31-18-15.1, enacted by Laws 1979, ch. 152, § 2; 1993, ch. 77, § 6; 2009, ch. 163, § 1.

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.

History: Laws 1993, ch. 77, § 1; 1994, ch. 18, § 2; 1995, ch. 205, § 1; 1996, ch. 85, § 1.

31-18-15.3. Serious youthful offender; disposition.

A. An alleged serious youthful offender may be detained in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility for delinquent children, licensed by the children, youth and families department;

(2) any other suitable place, other than a facility for the care and rehabilitation of delinquent children, that meets standards for detention facilities, as set forth in the Children's Code [Chapter 32A NMSA 1978] and federal law; or

(3) a county jail, if a facility described in Paragraph (1) or (2) of this subsection is not appropriate.

B. When an alleged serious youthful offender is detained in a juvenile detention facility prior to trial, the time spent in the juvenile detention facility shall count toward completion of any sentence imposed.

C. At arraignment, when a metropolitan or district court judge or a magistrate determines that an alleged serious youthful offender should remain in custody, the alleged serious youthful offender may be detained in an adult or juvenile detention facility, subject to the facility's accreditation and the provisions of applicable federal law.

D. When an alleged serious youthful offender is found guilty of first degree murder, the court shall sentence the offender pursuant to the provisions of the Criminal Sentencing Act; provided that a serious youthful offender given an adult sentence shall not be sentenced to life imprisonment without the possibility of release or parole. The court may sentence the offender to less than, but not exceeding, the mandatory term for an adult. The determination of guilt becomes a conviction for purposes of the Criminal Sentencing Act.

E. Prior to the sentencing of an alleged serious youthful offender who is convicted of first degree murder, adult probation services shall prepare a presentence report and submit the report to the court and the parties five days prior to the sentencing hearing.

F. When the alleged serious youthful offender is convicted of a lesser offense than first degree murder, the court shall provide for disposition of the offender pursuant to the provisions of Section 32A-2-19 or 32A-2-20 NMSA 1978. When an offender is adjudicated as a delinquent child, the conviction shall not be used as a conviction for purposes of the Criminal Sentencing Act.

History: Laws 1993, ch. 77, § 3; 2023, ch. 24, § 1.

31-18-15.4. Felonies; public officials; enhancement of sentences.

A. When a separate finding of fact by the trier of fact shows beyond a reasonable doubt that an offender is a public official and that the felony conviction relates to, arises

out of or is in connection with the offender's holding of an elected office, the basic sentence may be increased by an additional fine not to exceed the value of the salary and fringe benefits paid to the offender, by virtue of holding an elected public office, after the commission of the first act that was a basis for the felony conviction.

B. As used in this section, "public official" means a person elected to an office in an election covered by the Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978] or a person appointed to an office that is subject to an election covered by that act.

History: Laws 2012, ch. 3, § 1.

31-18-16. Use, brandishing or discharge 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 relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year, except that when the offender is a serious youthful offender or a youthful offender who received an adult sentence, the sentence imposed by this subsection may be increased by one year.

B. When a separate finding of fact by the court or jury shows that a firearm was brandished 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 three years, except that when the offender is a serious youthful offender or a youthful offender that received an adult sentence, the sentence imposed by this subsection may be increased by one year.

C. When a separate finding of fact by the court or jury shows that a firearm was discharged 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 five years, except that when the offender is a serious youthful offender or a youthful offender who received an adult sentence, the sentence imposed by this subsection may be increased by three years.

D. For a second or subsequent offense, when a separate finding of fact by the court or jury shows that a firearm was used, brandished, or discharged in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the sentence shall be increased by five years, except that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this section may be increased by three years.

E. If the case is tried before a jury and if a prima facie case has been established showing that a firearm was used, brandished or discharged in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-

4 NMSA 1978 or a serious violent offense, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court, the court shall decide the issue and shall make a separate finding of fact thereon.

F. When a separate finding of fact by the court or jury shows that a firearm was used, brandished or discharged in relation to a drug transaction or during the commission of aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a serious violent offense, the firearm is subject to seizure and forfeiture as an instrumentality pursuant to the provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978].

G. As used in this section:

(1) "brandished" means displaying or making a firearm known to another person while the firearm is present on the person of the offending party with intent to intimidate or injure a person;

(2) "in relation to a drug transaction" means participating or attempting to participate in the trafficking of a controlled substance pursuant to Section 30-31-20 NMSA 1978, distribution of a controlled substance to a minor pursuant to Section 30-31-21 NMSA 1978 or distribution of a controlled or counterfeit substance pursuant to Section 30-31-22 NMSA 1978 as a seller, purported seller or as an accomplice; and

(3) "serious violent offense" means an offense enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978.

History: 1953 Comp., § 40A-29-29, enacted by Laws 1977, ch. 216, § 5; 1979, ch. 152, § 3; 1993, ch. 77, § 7; 2020, ch. 54, § 3; 2022, ch. 56, § 30.

31-18-16.1. Repealed.

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 [Chapter 30 NMSA 1978] or the Controlled Substances Act [Chapter 30, Article 31 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 the Controlled Substances 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.

History: 1953 Comp., § 40A-29-30, enacted by Laws 1977, ch. 216, § 6; 1979, ch. 158, § 1; 1983, ch. 127, § 1; 1993, ch. 77, § 9; 1993, ch. 283, § 1; 2002, ch. 7, § 1; 2003, ch. 90, § 1.

31-18-18. Habitual offenders; duty of public officers to report.

Whenever it becomes known to any warden or prison official or any prison, probation, parole or police officer or other peace officer that any person charged with or convicted of a noncapital felony is or may be a habitual offender, it is his duty to promptly report the facts to the district attorney of the proper district, who shall then file an information.

History: 1953 Comp., § 40A-29-31, enacted by Laws 1977, ch. 216, § 7.

31-18-19. Habitual offender; duty of district attorney to prosecute.

If at any time, either after sentence or conviction, it appears that a person convicted of a noncapital felony is or may be a habitual offender, it is the duty of the district attorney of the district in which the present conviction was obtained to file an information charging that person as a habitual offender.

History: 1953 Comp., § 40A-29-32, enacted by Laws 1977, ch. 216, § 8.

31-18-20. Habitual offenders; proceedings for prosecution.

A. The court wherein a person has been convicted of a noncapital felony and where that person has been charged as a habitual offender under the provisions of Section 31-18-19 NMSA 1978 shall bring the defendant before it, whether he is confined in prison or not. The court shall inform him of:

(1) the allegations of the information; and

(2) his right to be tried as to the truth thereof according to law.

B. The court shall require the defendant to say whether or not he is the same person as charged in the information. If the defendant denies being the same person or refuses to answer or remains silent, his plea or the fact of his silence shall be entered in the record and the court shall then conduct a hearing to determine if the offender is the same person.

C. If the court finds that the defendant is the same person and that he was in fact convicted of the previous crime or crimes as charged, the court shall sentence him to the punishment as prescribed in Section 31-18-17 NMSA 1978.

History: 1953 Comp., § 40A-29-33, enacted by Laws 1977, ch. 216, § 9; 1983, ch. 127, § 2.

31-18-21. Consecutive sentences; inmates and persons at large.

A. Whenever an inmate in a penal institution of this state or of any county therein is sentenced for committing any felony while he is an inmate, the sentence imposed shall

be consecutive to the sentence being served, and his period of parole shall be that set according to the provisions of Section 31-21-10 NMSA 1978.

B. Any person, who commits a crime while at large under a suspended or deferred sentence or probation or parole, and who is convicted and sentenced therefor, shall serve the sentence consecutive to the remainder of the term, including remaining parole time, under which he was released unless otherwise ordered by the court in sentencing for the new crime.

History: 1953 Comp., § 40A-29-34, enacted by Laws 1977, ch. 216, § 10.

31-18-22. Special incarceration alternative program.

A. The corrections department shall develop and implement a special incarceration alternative program for certain adult male and adult female felony offenders pursuant to this section. The program shall provide substance abuse counseling and treatment, high school equivalency credential preparatory courses, manual labor assignments, physical training and drills, training in decision-making and personal development and pre-release skills training. The programs shall be conducted in a strict disciplinary environment. Emphasis shall be given to rehabilitation of alcohol and substance abusers. The corrections department shall require that program participants complete a structured, ninety-day program.

B. Participation in the program shall be limited to those offenders sentenced on or after July 1, 1990. Offenders ineligible to participate in the program are offenders:

(1) sentenced to death;

(2) who have received a life sentence;

(3) with a record of prior confinement for a felony conviction;

(4) convicted of murder in the first or second degree, child abuse resulting in death or great bodily harm, criminal sexual penetration in the first or second degree or criminal sexual contact with a minor;

(5) convicted of an offense carrying a mandatory sentence that cannot be suspended or deferred;

(6) who have participated in a special incarceration alternative program in the past;

(7) who are more than thirty years of age at time of sentencing; or

(8) who do not volunteer to participate in the program and who do not agree to the special conditions of probation for successful program participants.

C. The corrections department shall develop and adopt regulations to provide for the screening of all convicted felons sentenced to the custody of the corrections department. The regulations shall provide that the screening occurs within thirty days of sentencing. Persons deemed suitable under the regulations adopted pursuant to this subsection shall not be denied eligibility for participation in the program solely due to physical disability.

D. If the sentencing court accepts the recommendation of the corrections department that the offender is suitable for participation in a special incarceration alternative program, the court shall resentence the offender to provide that, in the event the offender successfully completes the program, the remainder of the sentence shall be suspended and the offender shall be placed on probation for the remainder of the term. The sentencing court shall be notified in writing by the corrections department of the offender's successful completion of the special incarceration alternative program.

E. The corrections department may contract for the design, construction and lease of a facility to house a special incarceration alternative program with public or private agencies, entities or persons capable of providing financing or construction of such a facility. The facility shall be operated by the corrections department.

F. Appropriate post-institutional treatment shall be made available by the corrections department to the offender.

History: Laws 1990, ch. 51, § 1; 2015, ch. 122, § 16.

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.

History: 1978 Comp., § 31-18-23, enacted by Laws 1994, ch. 24, § 2; 1996, ch. 79, § 3; 2009, ch. 11, § 2.

31-18-24. Violent felony 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 three violent felonies. Either party to the action may demand a jury trial.

B. In a jury trial, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge before the original trial jury. In a nonjury trial, the sentencing 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 a jury upon demand of the defendant.

C. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments. The jury shall retire to determine the verdict. In a nonjury sentencing proceeding, or upon a plea of guilty where no jury has been demanded, the judge shall allow argument and determine the verdict.

History: 1978 Comp., § 31-18-24, enacted by Laws 1994, ch. 24, § 3.

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 the defendant 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 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 D of Section 30-9-11 NMSA 1978; or

(2) criminal sexual penetration in the second degree, as provided in Subsection E of Section 30-9-11 NMSA 1978.

History: 1978 Comp., § 31-18-25, enacted by Laws 1996, ch. 79, § 1; 1997, ch. 140, § 1; 2015, ch. 12, § 1.

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.

History: 1978 Comp., § 31-18-26, enacted by Laws 1996, ch. 79, § 2.

ARTICLE 18A
Sentencing Guidelines (Repealed.)

31-18A-1 to 31-18A-9. Repealed.

ARTICLE 18B
Hate Crimes

31-18B-1. Short title.

This act [31-18B-1 to 31-18B-5 NMSA 1978] may be cited as the "Hate Crimes Act".

History: Laws 2003, ch. 384, § 1.

31-18B-2. Definitions.

As used in the Hate Crimes Act:

A. "age" means sixty years of age or older;

B. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

C. "disability" means that the person has a physical or mental disability that substantially limits one or more of that person's functions, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

D. "motivated by hate" means the commission of a crime with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation or gender identity of the victim, whether or not the offender's belief or perception was correct; and

E. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: Laws 2003, ch. 384, § 2; 2007, ch. 46, § 37.

31-18B-3. Hate crimes; noncapital felonies, misdemeanors or petty misdemeanors committed because of the victim's actual or perceived race, religion, color, national origin, ancestry, age, disability, gender, sexual orientation or gender identity; alteration of basic sentence.

A. When a separate finding of fact by the court or jury shows beyond a reasonable doubt that an offender committed a noncapital felony motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by one year. An increase in the basic sentence of imprisonment pursuant to the provisions of this subsection shall be in addition to an increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A sentence imposed pursuant to the provisions of this subsection may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law.

B. If a finding was entered in a previous case that the offender was convicted for committing a crime that was motivated by hate, and if a separate finding of fact by the court or jury shows beyond a reasonable doubt that in the instant case the offender committed a noncapital felony that was motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 may be increased by two years. An increase in the basic sentence of imprisonment pursuant to the provisions of this subsection shall be in addition to an increase in a basic sentence prescribed for the offense in Section 31-18-17 NMSA 1978. A sentence imposed pursuant to the provisions of this subsection may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence, or grant a conditional discharge unless otherwise provided by law.

C. If the case is tried before a jury and if a prima facie case has been established showing that in the commission of the offense the offender was motivated by hate, 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 in the commission of the offense the offender was motivated by hate, the court shall decide the issue and shall make a separate finding of fact regarding the issue. If the court or jury determines that the offender is guilty of the crime and finds beyond a reasonable doubt that the offender was motivated by hate, the court shall include that determination in the judgment and sentence.

D. When a petty misdemeanor or a misdemeanor is motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law.

History: Laws 2003, ch. 384, § 3; 2007, ch. 46, § 38.

31-18B-4. Hate crimes; data collection.

Every district attorney and every state, county and municipal law enforcement agency, to the maximum extent possible, shall provide the federal bureau of investigation with data concerning the commission of a crime motivated by hate, in accordance with guidelines established pursuant to the federal Hate Crime Statistics Act.

History: Laws 2003, ch. 384, § 4.

31-18B-5. Hate crimes; law enforcement training.

A. No later than December 31, 2003, the New Mexico law enforcement academy board shall develop and incorporate into the basic law enforcement training required, pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978], a course of instruction at least two hours in length concerning the detection, investigation and reporting of a crime motivated by hate.

B. The New Mexico law enforcement academy board shall develop a course of instruction, learning and performance objectives and training standards, in conjunction with appropriate groups and individuals that have an interest in and expertise regarding crimes motivated by hate. The groups and individuals shall include law enforcement agencies, law enforcement academy instructors, experts on crimes motivated by hate and members of the public.

C. In-service law enforcement training, as required pursuant to Section 29-7-7.1 NMSA 1978, shall include at least two hours of instruction that conform with the requirements set forth in Subsection B of this section.

D. Each certified regional law enforcement training facility shall incorporate into its basic law enforcement training and in-service law enforcement training a course of training described in Subsection B of this section that is comparable to or exceeds the standards of the course of instruction developed by the New Mexico law enforcement academy board.

History: Laws 2003, ch. 384, § 5.

ARTICLE 19
Sentencing Authority for Misdemeanors

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.

History: 1953 Comp., § 40A-29-4, enacted by Laws 1963, ch. 303, § 29-4; and recompiled as 1953 Comp., § 40A-29-35, by Laws 1977, ch. 216, § 16; 1981, ch. 18, § 1; 1984, ch. 106, § 1.

ARTICLE 19A
Penalty Assessment

31-19A-1. Penalty assessment.

A. Payment of a fine pursuant to a penalty assessment citation shall not be considered a criminal conviction.

B. Whenever a person is issued a penalty assessment under the Criminal Code, the officer shall advise the person of the option either to accept the penalty assessment and pay it to the court or to appear in court. The officer, using a uniform non-traffic citation,

shall complete the information section, prepare the penalty assessment and prepare a notice to appear in court specifying the time and place to appear. The citation shall state the address to which the penalty assessment is to be paid if the person accepts the penalty assessment and does not elect to appear in court. The officer shall have the person sign the citation as a promise either to pay the penalty assessment as prescribed or to appear in court as specified, give a copy of the citation to the person and release the person from custody. An officer shall not accept custody of payment of any penalty assessment.

C. The officer may issue a warning notice, but shall fill in the information section of the citation and give a copy to the person after requiring a signature on the warning notice as an acknowledgment of receipt.

D. In order to secure release, the person shall give a written promise to appear in court or to pay the penalty assessment prescribed or acknowledge receipt of a warning notice.

E. The magistrate court or metropolitan court in the county where the alleged violation occurred has jurisdiction for any case arising from a penalty assessment under the Criminal Code.

F. A penalty assessment citation issued by a law enforcement officer shall be submitted to the appropriate magistrate court or metropolitan court within five business days of issuance. If the citation is not submitted within three business days, it may be dismissed with prejudice.

G. A citation with a written promise to appear in court or to pay the penalty assessment is a summons. If a person fails to appear or to pay the penalty assessment by the appearance date, a warrant for failure to appear may be issued.

H. A written promise to appear in court may be complied with by appearance of counsel.

I. When a person issued a penalty assessment elects to appear in court rather than to pay the penalty assessment to the court, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment. A person who elects to appear in court shall pay the costs required by law to be collected by magistrate or metropolitan court judges.

J. Penalty assessments collected by a magistrate court or metropolitan court pursuant to this section shall be transferred to the administrative office of the courts for credit to the magistrate drug court fund.

History: Laws 2019, ch. 217, § 3.

ARTICLE 20
Sentencing

31-20-1. Sentence of corporations.

The court may sentence any corporation, club, organization or unincorporated association which has been convicted of a crime to pay a fine authorized by the Criminal Code [30-1-1 NMSA 1978].

History: 1953 Comp., § 40A-29-12, enacted by Laws 1963, ch. 303, § 29-12; and recompiled as 1953 Comp., § 40A-29-36 by Laws 1977, ch. 216, § 16.

31-20-2. Place of imprisonment; commitments.

A. Persons sentenced to imprisonment for a term of one year or more shall be imprisoned in a corrections facility designated by the corrections department, unless a new trial is granted or a portion of the sentence is suspended so as to provide for imprisonment for not more than eighteen months; then the imprisonment may be in such place of incarceration, other than a corrections facility under the jurisdiction of the corrections department, as the sentencing judge, in his discretion, may prescribe; provided that a sentence of imprisonment for one year or more but not more than eighteen months shall be subject to the provisions of Subsections D and E of this section and shall not be imposed unless the requirements set forth in Subsection D of this section are satisfied.

B. All commitments, judgments and orders of the courts of this state for the imprisonment or release of persons in the penitentiary shall run to the corrections department, but nothing contained in this section shall invalidate or impair the validity of any commitment, judgment or order of any court in this state directed to the secretary of corrections, the warden of the penitentiary of New Mexico or to the penitentiary of New Mexico, and all such commitments, judgments and orders shall be treated and construed as running to the corrections department.

C. There is created within the corrections department an "intake and classification center". The intake and classification center shall have the following duties:

(1) process all inmates sentenced or committed for purposes of diagnosis to the corrections department;

(2) classify inmates for housing assignments;

(3) develop an individualized plan for participation by each inmate in programs, work assignments and special needs;

(4) monitor each inmate's progress during incarceration and reclassify or modify classification assignments as may be necessary, taking into consideration the overall needs of the inmate population, institutional and facility requirements and the individual inmate's needs;

(5) with the approval of the secretary of corrections, may transfer inmates of the penitentiary to an institution under the control of another state if that state has entered into a corrections control agreement with New Mexico; and

(6) with the approval of the secretary of corrections, may transfer inmates to any facility, including the forensic hospital under the jurisdiction of the department of health.

D. A sentence of one year or more but not more than eighteen months and providing for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department pursuant to Subsection A of this section, which shall be known as the local sentencing option, shall not be imposed unless:

(1) the place of incarceration is located within the county in which the crime was committed; and

(2) the governing authority in charge of the place of incarceration has entered into a joint powers agreement with the corrections department setting forth:

(a) the amount of money the corrections department shall pay for offenders sentenced to a term of one year or more but not more than eighteen months and the number of offenders which may be sentenced to such terms; and

(b) any other provisions deemed appropriate and agreed to by the local governing body and the corrections department.

E. If a judge imposes a sentence of one year or more but not more than eighteen months and provides for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department:

(1) the local governing body or its agent shall have the ability to petition that judge when the capacity of the place of incarceration is filled or when any problem develops concerning that offender requesting the judge to issue an order committing the offender to the corrections department for completion of the remainder of his sentence. A hearing on a petition pursuant to this paragraph shall be held within three days of the filing of the petition. Notwithstanding any other provision of law, the judge shall retain jurisdiction over the offender for the purpose of implementing the local sentencing option; and

(2) the local governing body or its agent shall keep the district judges for the judicial district in which the place of incarceration is located informed as to the capacity for the sentencing of offenders in accordance with the local sentencing option. No judge shall sentence an offender in accordance with the local sentencing option if that sentence will result in exceeding the number of offenders set forth in the joint powers agreement.

F. The corrections department shall file an annual report with the legislature which shall contain the number of joint powers agreements in operation pursuant to this section, copies of those agreements, the number of offenders currently incarcerated pursuant to those agreements and any other relevant information relating to the implementation of this section.

G. The corrections department may enter into contracts with public or private detention facilities for the purpose of housing inmates lawfully committed to the corrections department. Any facility with which the department contracts shall meet or exceed corrections department standards prior to the housing of any inmates within the facility and shall meet certification requirements for prisons within eighteen months of entering into such contracts. The contractor shall adhere to all appropriate corrections department policies and procedures and shall agree to have staff trained at the corrections department training academy.

History: 1953 Comp., § 40A-29-13, enacted by Laws 1963, ch. 303, § 29-13; 1972, ch. 71, § 3; 1973, ch. 383, § 1; and recompiled as 1953 Comp., § 40A-29-37, by Laws 1977, ch. 216, § 16; 1978, ch. 106, § 1; 1981, ch. 9, § 1; 1987, ch. 51, § 1; 1993, ch. 81, § 1.

31-20-3. Order deferring or suspending sentence; diagnostic commitment.

Upon entry of a judgment of conviction of any crime not constituting a capital or first degree felony, any court having jurisdiction when it is satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may either:

A. enter an order deferring the imposition of sentence;

B. sentence the defendant and enter an order suspending in whole or in part the execution of the sentence; or

C. commit the convicted person, if convicted of a felony and not committed for diagnostic purposes within the twelve-month period immediately preceding that conviction, to the department of corrections [corrections department] for an indeterminate period not to exceed sixty days for purposes of diagnosis, with direction that the court be given a report when the diagnosis is complete as to what disposition appears best when the interest of the public and the individual are evaluated.

History: 1953 Comp., § 40A-29-15, enacted by Laws 1963, ch. 303, § 29-15; 1971, ch. 204, § 4; and recompiled as 1953 Comp., § 40A-29-39, by Laws 1977, ch. 216, § 16; 1985, ch. 159, § 1.

31-20-4. Application of order deferring or suspending sentence.

An order deferring or suspending sentence may be limited to one or more counts or indictments, but, in the absence of express limitation, it shall extend to the entire judgment.

History: 1953 Comp., § 40A-29-16, enacted by Laws 1963, ch. 303, § 29-16; and recompiled as 1953 Comp., § 40A-29-40, by Laws 1977, ch. 216, § 16.

31-20-5. Placing defendant on probation.

A. When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the magistrate, metropolitan or district court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish. Except for sex offenders as provided in Section 31-20-5.2 NMSA 1978, the total period of probation for district court shall not exceed five years and the total period of probation for the magistrate or metropolitan courts shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.

B. If a defendant is required to serve a period of probation subsequent to a period of incarceration:

(1) the period of probation shall be served subsequent to any required period of parole, with the time served on parole credited as time served on the period of probation and the conditions of probation imposed by the court deemed as additional conditions of parole; and

(2) in the event that the defendant violates any condition of that parole, the parole board shall cause him to be brought before it pursuant to the provisions of Section 31-21-14 NMSA 1978 and may make any disposition authorized pursuant to that section and, if parole is revoked, the period of parole served in the custody of a correctional facility shall not be credited as time served on probation.

History: 1953 Comp., § 40A-29-17, enacted by Laws 1963, ch. 303, § 29-17; and recompiled as 1953 Comp., § 40A-29-41, by Laws 1977, ch. 216, § 16; 1984, ch. 106, § 2; 1985, ch. 75, § 1; 2003 (1st S.S.), ch. 1, § 6.

31-20-5.1. Misdemeanor compliance programs; counties may establish; fees.

A. A county may create a "misdemeanor compliance program" to monitor defendants' compliance with the conditions of probation imposed by a district or magistrate court. The program shall be limited to participation by persons who have been convicted of a misdemeanor criminal offense specified in the Criminal Code [30-1-1 NMSA 1978], convicted of driving while under the influence of intoxicating liquor or drugs or convicted of driving while the person's driver's license is suspended or revoked pursuant to the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978]. A county's program shall comply with guidelines established by the administrative office of the courts.

B. As a condition of probation, the district or magistrate court may require the defendant to pay a fee of not less than fifteen dollars ($15.00) nor more than fifty dollars ($50.00) per month to the county for a public probation program for the term of the defendant's probation. Money collected by the county pursuant to this subsection shall be used only to operate the misdemeanor compliance program.

History: Laws 2000, ch. 49, § 1; 2013, ch. 104, § 1.

31-20-5.2. Sex offenders; period of probation; terms and conditions of probation.

A. When a district court defers imposition of a sentence for a sex offender, or suspends all or any portion of a sentence for a sex offender, the district court shall include a provision in the judgment and sentence that specifically requires the sex offender to serve an indeterminate period of supervised probation for a period of not less than five years and not in excess of twenty years. A sex offender’s period of supervised probation may be for a period of less than twenty years if, at a review hearing provided for in Subsection B of this section, the state is unable to prove that the sex offender should remain on probation. Prior to placing a sex offender on probation, the district court shall conduct a hearing to determine the terms and conditions of supervised probation for the sex offender. The district court may consider any relevant factors, including:

(1) the nature and circumstances of the offense for which the sex offender was convicted or adjudicated;

(2) the nature and circumstances of a prior sex offense committed by the sex offender;

(3) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere;

(4) the danger to the community posed by the sex offender; and

(5) a risk and needs assessment regarding the sex offender, developed by the sex offender management board of the New Mexico sentencing commission or another appropriate entity, to be used by appropriate district court personnel.

B. A district court shall review the terms and conditions of a sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, the district court shall also review the duration of the sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on probation.

C. The district court may order a sex offender placed on probation to abide by reasonable terms and conditions of probation, including:

(1) being subject to intensive supervision by a probation officer of the corrections department;

(2) participating in an outpatient or inpatient sex offender treatment program;

(3) a probationary agreement by the sex offender not to use alcohol or drugs;

(4) a probationary agreement by the sex offender not to have contact with certain persons or classes of persons; and

(5) being subject to alcohol testing, drug testing or polygraph examinations used to determine if the sex offender is in compliance with the terms and conditions of his probation.

D. The district court shall notify the sex offender's counsel of record of an upcoming probation hearing for a sex offender, and the sex offender's counsel of record shall represent the sex offender at the probation hearing. When a sex offender's counsel of record provides the court with good cause that the counsel of record should not represent the sex offender at the probation hearing and the sex offender is subsequently unable to obtain counsel, the district court shall notify the chief public defender of the upcoming probation hearing and the chief public defender shall make representation available to the sex offender at that hearing.

E. If the district court finds that a sex offender has violated the terms and conditions of his probation, the district court may revoke his probation or may order additional terms and conditions of probation.

F. As used in this section, "sex offender" means a person who is convicted of, pleads guilty to or pleads nolo contendere to any one of the following offenses:

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

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

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

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

(5) sexual exploitation of children by prostitution in the first or second degree, as provided in Section 30-6A-4 NMSA 1978.

History: Laws 2003 (1st S.S.), ch. 1, § 7.

31-20-6. Conditions of order deferring or suspending sentence.

The magistrate, metropolitan or district court shall attach to its order deferring or suspending sentence reasonable conditions as it may deem necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality. The defendant upon conviction shall be required to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the defendant's arrest, prosecution or conviction, but in no event shall reimbursement to the crime stopper program preempt restitution to victims pursuant to the provisions of Section 31-17-1 NMSA l978. The defendant upon conviction shall be required to pay the actual costs of the defendant's supervised probation service to the adult probation and parole division of the corrections department or appropriate responsible agency for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars ($1,800) annually to be paid in monthly installments of not less than twenty-five dollars ($25.00) and not more than one hundred fifty dollars ($150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised probation costs shall not be waived unless the court holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the court waives the defendant's payment of the supervised probation costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the court and the court shall hold an evidentiary hearing to determine whether the waiver should be rescinded. The court may also require the defendant to:

A. provide for the support of persons for whose support the defendant is legally responsible;

B. undergo available medical or psychiatric treatment and enter and remain in a specified institution when required for that purpose;

C. be placed on probation under the supervision, guidance or direction of the adult probation and parole division for a term not to exceed five years;

D. serve a period of time in volunteer labor to be known as "community service". The type of labor and period of service shall be at the sole discretion of the court; provided that a person receiving community service shall be immune from any civil liability other than gross negligence arising out of the community service, and a person who performs community service pursuant to court order or a criminal diversion program shall not be entitled to wages, shall not be considered an employee and shall not be entitled to workers' compensation, unemployment benefits or any other benefits otherwise provided by law. As used in this subsection, "community service" means labor that benefits the public at large or a public, charitable or educational entity or institution;

E. make a contribution of not less than ten dollars ($10.00) and not more than one hundred dollars ($100), to be paid in monthly installments of not less than five dollars ($5.00), to a local crime stopper program, a local domestic violence prevention or treatment program or a local drug abuse resistance education program that operates in the territorial jurisdiction of the court; and

F. satisfy any other conditions reasonably related to the defendant's rehabilitation.

History: 1953 Comp., § 40A-29-18, enacted by Laws 1963, ch. 303, § 29-18; and recompiled as 1953 Comp., § 40A-29-42, by Laws 1977, ch. 216, § 16; 1977, ch. 217, § 1; 1981, ch. 285, § 2; 1983, ch. 159, § 1; 1984, ch. 106, § 3; 1985, ch. 23, § 15; 1985, ch. 75, § 2; 1987, ch. 139, § 2; 1988, ch. 62, § 1; 1997, ch. 215, § 1; 2004, ch. 38, § 1; 2007, ch. 101, § 1.

31-20-7. Repealed.

31-20-8. Effect of termination of period of suspension without revocation of order.

Whenever the period of suspension expires without revocation of the order, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime. He shall thereupon be entitled to a certificate from the court so reciting such facts, and upon presenting the same to the governor, the defendant may, in the discretion of the governor, be granted a pardon or a certificate restoring such person to full rights of citizenship.

History: 1953 Comp., § 40A-29-21, enacted by Laws 1963, ch. 303, § 29-21; and recompiled as 1953 Comp., § 40A-29-44, by Laws 1977, ch. 216, § 16.

31-20-9. Completion of total term of deferment.

Whenever the period of deferment expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, the court shall enter a dismissal of the criminal charges.

History: 1953 Comp., § 40A-29-22, enacted by Laws 1963, ch. 303, § 29-22; and recompiled as 1953 Comp., § 40A-29-45, by Laws 1977, ch. 216, § 16.

31-20-10. Character of order.

An order deferring or suspending sentence for the purposes of appeal shall be deemed a final judgment.

History: 1953 Comp., § 40A-29-23, enacted by Laws 1963, ch. 303, § 29-23; and recompiled as 1953 Comp., § 40A-29-46, by Laws 1977, ch. 216, § 16.

31-20-11. Credit for time pending appellate review.

A person convicted of a felony in the district court and held in official confinement while awaiting the outcome of an appeal, writ of error to, or writ of certiorari from, a state or federal appellate court or prior to his release as a result of postconviction proceedings or habeas corpus, shall be given credit for the period spent in confinement against any sentence finally imposed for that offense.

History: 1953 Comp., § 40A-29-24, enacted by Laws 1967, ch. 221, § 1; and recompiled as 1953 Comp., § 40A-29-47, by Laws 1977, ch. 216, § 16.

31-20-12. Credit for time prior to conviction.

A person held in official confinement on suspicion or charges of the commission of a felony shall, upon conviction of that or a lesser included offense, be given credit for the period spent in presentence confinement against any sentence finally imposed for that offense.

History: 1953 Comp., § 40A-29-25, enacted by Laws 1967, ch. 221, § 2; and recompiled as 1953 Comp., § 40A-29-48, by Laws 1977, ch. 216, § 16.

31-20-13. Conditional discharge order; exception.

A. When a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or suspended sentence is authorized, the court may, without entering an adjudication of guilt, enter a conditional discharge order and place the person on probation on terms and conditions authorized by Sections 31-

20-5 and 31-20-6 NMSA 1978. A conditional discharge order may only be made available once with respect to any person.

B. If the person violates any of the conditions of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

C. The court shall not enter a conditional discharge order for a person found guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Section 66-8-102 NMSA 1978.

History: Laws 1993, ch. 283, § 2 enacted as 31-20-7 NMSA 1978 and recompiled as 31-20-13 NMSA 1978; 1994, ch. 15, § 1.

ARTICLE 20A
Capital Felony Sentencing

31-20A-1. Repealed.

History: Laws 1979, ch. 150, § 2; repealed by Laws 2009, ch. 11, § 5.

31-20A-2. Capital felony; determination of sentence.

If a jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist, as enumerated in Section 31-20A-5 NMSA 1978, the defendant shall be sentenced to life imprisonment without possibility of release or parole. If the jury does not make the finding that one or more aggravating circumstances exist, the defendant shall be sentenced to life imprisonment.

History: Laws 1979, ch. 150, § 3.; 2009, ch. 11, § 3.

31-20A-2.1. Repealed.

History: 1978 Comp., § 31-20A-2.1, enacted by Laws 1991, ch. 30, § 1; repealed by Laws 2009, ch. 11, § 5.

31-20A-3. Repealed.

History: Laws 1979, ch. 150, § 4; repealed by Laws 2009, ch. 11, § 5.

31-20A-4. Repealed.

History: Laws 1979, ch. 150, § 5; repealed by Laws 2009, ch. 11, § 5.

31-20A-5. Aggravating circumstances.

The aggravating circumstances to be considered by the sentencing court or jury pursuant to the provisions of Section 31-20A-2 NMSA 1978 are limited to the following:

A. the victim was a peace officer who was acting in the lawful discharge of an official duty when he was murdered;

B. the murder was committed with intent to kill in the commission of or attempt to commit kidnaping, criminal sexual contact of a minor or criminal sexual penetration;

C. the murder was committed with the intent to kill by the defendant while attempting to escape from a penal institution of New Mexico;

D. while incarcerated in a penal institution in New Mexico, the defendant, with the intent to kill, murdered a person who was at the time incarcerated in or lawfully on the premises of a penal institution in New Mexico. As used in this subsection "penal institution" includes facilities under the jurisdiction of the corrections and criminal rehabilitation department [corrections department] and county and municipal jails;

E. while incarcerated in a penal institution in New Mexico, the defendant, with the intent to kill, murdered an employee of the corrections and criminal rehabilitation department [corrections department];

F. the capital felony was committed for hire; and

G. the capital felony was murder of a witness to a crime or any person likely to become a witness to a crime, for the purpose of preventing report of the crime or testimony in any criminal proceeding, or for retaliation for the victim having testified in any criminal proceeding.

History: Laws 1979, ch. 150, § 6; 1981, ch. 23, § 1.

31-20A-6. Repealed.

History: Laws 1979, ch. 150, § 7; repealed by Laws 2009, ch. 11, § 5.

ARTICLE 21
Sentence, Pardons and Paroles

31-21-1. [Construction of statutory provisions prescribing term of imprisonment; maximum or minimum.]

In all penal statutes of the state where by the terms of such statutes a definite punishment of imprisonment in the penitentiary is prescribed the time of such imprisonment in such statute shall be construed to be the maximum of imprisonment, unless such statutes expressly provide that such time is the minimum.

History: Laws 1909, ch. 32, § 10; Code 1915, § 5425; C.S. 1929, § 139-103; 1941 Comp., § 42-1702; 1953 Comp., § 41-17-2.

31-21-2. Clothing, money and transportation furnished to prisoners on release from correctional facility.

Upon the release of any prisoner from a correctional facility of the corrections department:

A. the superintendent shall provide him with suitable clothing as required and:

(1) in the case of release on parole, transportation to his place of employment if within this state, or if not within this state, then to any place within this state; or

(2) in the case of all other types of release, transportation to his home, if within the state, or if not within this state, then to the place of his conviction or to any other place within the state; and

B. the superintendent may provide him with not more than one hundred dollars ($100) and, in case of an exceptional situation, with the prior approval of the secretary of corrections, an additional amount not to exceed three hundred fifty dollars ($350) for purchase of transportation to a location in another state within the continental limits of the United States.

History: Laws 1909, ch. 32, § 7; Code 1915, § 5081; C.S. 1929, § 130-169; Laws 1939, ch. 55, § 18; 1941 Comp., § 42-1708; Laws 1951, ch. 99, § 1; 1953 Comp., § 41-17-8; Laws 1967, ch. 30, § 1; 1969, ch. 10, § 1; 1977, ch. 145, § 1; 1982, ch. 59, § 1.

31-21-3. Short title.

Sections 31-21-3 through 31-21-19 NMSA 1978 may be cited as the "Probation and Parole Act".

History: 1953 Comp., § 41-17-12, enacted by Laws 1955, ch. 232, § 1; 1963, ch. 301, § 1.

31-21-4. Construction and purpose of act.

The Probation and Parole Act [31-21-3 to 31-21-19 NMSA 1978] shall be liberally construed to the end that the treatment of persons convicted of crime shall take into consideration their individual characteristics, circumstances, needs and potentialities as revealed by case study, and that such persons shall be dealt with in the community by a uniformly organized system of constructive rehabilitation under probation supervision instead of in an institution, or under parole supervision when a period of institutional

treatment is deemed essential in the light of the needs of public safety and their own welfare.

History: 1953 Comp., § 41-17-13, enacted by Laws 1955, ch. 232, § 2; 1963, ch. 301, § 2.

31-21-5. Definitions.

As used in the Probation and Parole Act:

A. "probation" means the procedure under which an adult defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions;

B. "parole" means the release to the community of an inmate of an institution by decision of the board or by operation of law, subject to conditions imposed by the board and to its supervision;

C. "institution" means the state penitentiary and any other similar state institution hereinafter created;

D. "board" means the parole board;

E. "director" means the director of the adult probation and parole division of the corrections department or any employee designated by the director;

F. "adult" means any person convicted of a crime by a district court;

G. "geriatric inmate" means a person who:

(1) is serving a sentence and is confined in a prison or other correctional institution under the control of the corrections department;

(2) is fifty-five years of age or older;

(3) suffers from a debilitating and chronic infirmity, illness or disease related to aging; and

(4) does not constitute a danger to the person's own self or to society at the time of review;

H. "permanently incapacitated inmate" means a person who:

(1) is serving a sentence and is confined in a prison or other correctional institution under the control of the corrections department;

(2) by reason of an existing medical condition is permanently and irreversibly physically incapacitated; and

(3) does not constitute a danger to the person's own self or to society at the time of review; and

I. "terminally ill inmate" means a person who:

(1) is serving a sentence and is confined in a prison or other correctional institution under the control of the corrections department;

(2) has an incurable condition caused by illness or disease that will, within reasonable medical judgment, produce death within six months; and

(3) does not constitute a danger to the person's own self or to society at the time of review.

History: 1953 Comp., § 41-17-14, enacted by Laws 1978, ch. 41, § 1; 1991, ch. 52, § 1; 2023, ch. 89, § 1.

31-21-6. Protection of records.

All social records, including presentence reports, pre-parole reports and supervision histories, obtained by the board are privileged and shall not be disclosed directly or indirectly to anyone other than the board, director, sentencing guidelines commission or sentencing judge, but authorities of the institution in which the prisoner is confined shall have access to all records and reports concerning the prisoner, and the sentencing judge, board and director shall have access to all records concerning the prisoner. The board, in the case of parole records, and the sentencing judge, in the case of probation records, in their discretion, whenever the best interest or welfare of a particular probationer or prisoner makes such action desirable or helpful, may permit inspection of the reports, or parts thereof, by the probationer, prisoner or his attorney. The sentencing guidelines commission shall have access to the social records for statistical and policymaking purposes only and shall not release any information identifying any individual.

History: 1953 Comp., § 41-17-18, enacted by Laws 1955, ch. 232, § 7; 1963, ch. 301, § 7; 1989, ch. 362, § 1.

31-21-7. Duties of director.

The director shall:

A. provide probation and parole services and supervise probationers and parolees;

B. assign officers to serve in each judicial district. Selection and assignment of officers to each judicial district shall be made by the director;

C. obtain office quarters for the staff in each district as necessary;

D. assign the secretarial, bookkeeping and accounting work to clerical employees;

E. direct the work of the officers and other employees;

F. formulate methods of investigation, supervision, recordkeeping and reports;

G. conduct training courses for the staff;

H. seek to cooperate with all agencies, public and private, that are concerned with the treatment or welfare of persons on probation or parole;

I. report to the parole board concerning the status of parolees under his supervision; and

J. perform such other duties as directed by the secretary of corrections.

History: 1953 Comp., § 41-17-21, enacted by Laws 1955, ch. 232, § 10; 1963, ch. 301, § 9; 1975, ch. 194, § 7; 1977, ch. 257, § 56; 1990, ch. 7, § 1.

31-21-8. Director to administer interstate compacts relating to convicts on probation and parole.

The director is the administrator of interstate compacts relating to convicts on probation and parole.

History: 1953 Comp., § 41-17-21.1, enacted by Laws 1959, ch. 33, § 1; 1977, ch. 257, § 57.

31-21-9. Presentence and prerelease investigations.

A. Upon the order of any district or magistrate court, the director shall prepare a presentence report which shall include such information as the court may request.

B. Upon the order of any district court the director shall prepare a prerelease report which the court shall use to determine the accused's qualifications for bail. The report shall include available information about the accused's family ties, employment, financial resources, character, physical and mental condition, the length of his residence in the community, his record of convictions, his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings and any history of drug or alcohol abuse.

C. All local and state law enforcement agencies shall furnish to the director any requested criminal records.

History: 1953 Comp., § 41-17-23, enacted by Laws 1972, ch. 71, § 17.

31-21-10. Parole authority and procedure.

A. Except as provided in Section 31-21-10.2 NMSA 1978, an inmate of an institution who was sentenced to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where the inmate is committed;

(2) consider all pertinent information concerning the inmate, including:

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in the commission of the offense;

(d) whether the inmate is a habitual offender;

(e) the reports filed under Section 31-21-9 NMSA 1978; and

(f) the reports of such physical and mental examinations as have been made while in an institution;

(3) make a finding that a parole is in the best interest of society and the inmate; and

(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. An inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.

D. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

E. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating to those conditions of parole.

F. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.

G. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars ($1,800)

annually to be paid in monthly installments of not less than twenty-five dollars ($25.00) and not more than one hundred fifty dollars ($150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the inmate. The inmate's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the inmate is unable to pay the costs. If the board waives the inmate's payment of the supervised parole costs and the inmate's financial circumstances subsequently change so that the inmate is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.

H. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act.

History: 1978 Comp., § 31-21-10, enacted by Laws 1980, ch. 28, § 1; 1981, ch. 285, § 3; 1982, ch. 107, § 1; 1983, ch. 136, § 1; 1987, ch. 139, § 4; 1988, ch. 62, § 2; 1994, ch. 21, § 1; 1994, ch. 24, § 4; 1996, ch. 79, § 4; 1997, ch. 140, § 2; 2003 (1st S.S.), ch. 1, § 8; 2004, ch. 38, § 2; 2005, ch. 59, § 3; 2007, ch. 69, § 3; 2009, ch. 11, § 4; 2023, ch. 24, § 2.

31-21-10.1. Sex offenders; period of parole; terms and conditions of parole.

A. If the district court sentences a sex offender to a term of incarceration in a facility designated by the corrections department, the district court shall include a provision in the judgment and sentence that specifically requires the sex offender to serve an indeterminate period of supervised parole for a period of:

(1) not less than five years and not in excess of twenty years for the offense of kidnapping when committed with intent to inflict a sexual offense upon the victim, criminal sexual penetration in the third degree, criminal sexual contact of a minor in the fourth degree or sexual exploitation of children in the second degree; or

(2) not less than five years and up to the natural life of the sex offender for the offense of aggravated criminal sexual penetration, criminal sexual penetration in the first or second degree, criminal sexual contact of a minor in the second or third degree or sexual exploitation of children by prostitution in the first or second degree.

A sex offender's period of supervised parole may be for a period of less than the maximum if, at a review hearing provided for in Subsection C of this section, the state is unable to prove that the sex offender should remain on parole.

B. Prior to placing a sex offender on parole, the board shall conduct a hearing to determine the terms and conditions of supervised parole for the sex offender. The board may consider any relevant factors, including:

(1) the nature and circumstances of the offense for which the sex offender was incarcerated;

(2) the nature and circumstances of a prior sex offense committed by the sex offender;

(3) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere;

(4) the danger to the community posed by the sex offender; and

(5) a risk and needs assessment regarding the sex offender, developed by the sex offender management board of the New Mexico sentencing commission or another appropriate entity, to be used by appropriate parole board personnel.

C. When a sex offender has served the initial five years of supervised parole, and at two and one-half year intervals thereafter, the board shall review the duration of the sex offender's supervised parole. At each review hearing, the attorney general shall bear the burden of proving by clear and convincing evidence that the sex offender should remain on parole.

D. The board may order a sex offender released on parole to abide by reasonable terms and conditions of parole, including:

(1) being subject to intensive supervision by a parole officer of the corrections department;

(2) participating in an outpatient or inpatient sex offender treatment program;

(3) a parole agreement by the sex offender not to use alcohol or drugs;

(4) a parole agreement by the sex offender not to have contact with certain persons or classes of persons; and

(5) being subject to alcohol testing, drug testing or polygraph examinations used to determine if the sex offender is in compliance with the terms and conditions of the sex offender's parole.

E. The board shall require electronic real-time monitoring of every sex offender released on parole for the entire time the sex offender is on parole. The electronic monitoring shall use global positioning system monitoring technology or any successor technology that would give continuous information on the sex offender's whereabouts

and enable law enforcement and the corrections department to determine the real-time position of a sex offender to a high level of accuracy.

F. The board shall notify the chief public defender of an upcoming parole hearing for a sex offender pursuant to Subsection C of this section, and the chief public defender shall make representation available to the sex offender at the parole hearing.

G. If the board finds that a sex offender has violated the terms and conditions of the sex offender's parole, the board may revoke the sex offender's parole or may modify the terms and conditions of parole.

H. The provisions of this section shall apply to all sex offenders, except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act [31-21-22 to 31-21-26 NMSA 1978].

I. As used in this section, "sex offender" means a person who is convicted of, pleads guilty to or pleads nolo contendere to any one of the following offenses:

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

(2) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 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 in the second degree, as provided in Section 30-6A-3 NMSA 1978;

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

(6) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978.

History: Laws 2003 (1st S.S.), ch. 1, § 9; 2007, ch. 68, § 4; 2007, ch. 69, § 4.

31-21-10.2. Parole for children sentenced as adults.

A. Unless subject to earlier eligibility for parole pursuant to another provision of law, a serious youthful offender sentenced pursuant to Section 31-18-15.3 NMSA 1978 or a youthful offender sentenced as an adult pursuant to Section 32A-2-20 NMSA 1978 shall be eligible for parole and entitled to a parole hearing after the offender has served:

(1) twenty-five years of the sentence if the sentence is for two or more convictions of first degree murder pursuant to Section 30-2-1 NMSA 1978;

(2) twenty years of the sentence if the sentence is for one conviction of either first degree willful and deliberate murder pursuant to Paragraph (1) of Subsection A of Section 30-2-1 NMSA 1978 or first degree depraved-mind murder pursuant to Paragraph (3) of Subsection A of Section 30-2-1 NMSA 1978; or

(3) fifteen years of the sentence if the sentence is for a conviction pursuant to any other qualifying provision of law.

Parole eligibility and a parole hearing shall occur whether the offender is serving concurrent or consecutive sentences for multiple convictions arising from the same case. If the offender is serving sentences for convictions arising from multiple cases, the time counted toward parole eligibility for a particular case does not begin to accrue until that sentence for the case is being served.

B. If parole is denied, the offender shall be eligible for parole and entitled to a parole hearing every five years thereafter, unless the offender is subject to earlier eligibility for parole pursuant to any other provision of law.

C. During a parole eligibility hearing involving an offender subject to a parole hearing pursuant to this section, the board shall take into consideration, in addition to other factors the board is required by law to consider:

(1) where available, a statement by a victim or a relative of a victim of the offense for which the offender is imprisoned;

(2) the offender's age at the time of committing the offense;

(3) the nature of the offense and the history and characteristics of the offender;

(4) whether the offender has substantially complied with the rules of the institution to which the offender has been confined, including whether the offender has completed an educational, vocational or other program, where available, while confined;

(5) whether the offender has demonstrated maturity, rehabilitation and a fitness to reenter society;

(6) physical, mental or psychiatric reports or examinations of the offender conducted by licensed health care professionals;

(7) the offender's family and community circumstances at the time of committing the offense, including the offender's history of abuse, trauma or involvement in the child welfare system;

(8) the extent of the offender's role in the offense and whether an adult or peer was involved in the offense;

(9) the diminished culpability of juveniles as compared to that of adults and the hallmark features of youth, including immaturity, impetuosity and failure to appreciate risks and consequences; and

(10) other information that the board deems relevant to its decision.

D. An offender eligible for parole pursuant to this section shall be entitled to representation by counsel at all parole eligibility hearings.

E. An offender eligible for or granted parole pursuant to this section shall be subject to those provisions of the Probation and Parole Act not in conflict with this section.

F. The board shall annually conduct a review of all offenders currently serving an adult sentence for an offense committed as a child to ensure that parole eligibility hearings required pursuant to this section are timely conducted.

History: 1978 Comp., § 31-21-10.2, enacted by Laws 2023, ch. 24, § 3.

31-21-11. Parole to detainers to serve another sentence or for hospitalization and treatment.

Prisoners who are otherwise eligible for parole may be paroled to detainers to serve another sentence within the penitentiary or to the forensic treatment or alcohol treatment unit of the New Mexico behavioral health institute at Las Vegas or to any other specific hospital or residential treatment program determined necessary by the board.

History: 1953 Comp., § 41-17-24.1, enacted by Laws 1959, ch. 30, § 1; 1977, ch. 216, § 13; 1982, ch. 107, § 2; 2005, ch. 313, § 10.

31-21-12. Conditional release.

A. Any prisoner who is released by authority of the governor under any conditional release or other disposition made under the pardoning power, other than full pardon, shall, upon release, be deemed as released on parole until the expiration of the basic term or terms of imprisonment for which he was sentenced and until the expiration of any period of parole included as a part of sentence.

B. Except for a full pardon, the governor may not conditionally release or otherwise pardon a prisoner during the period for which such person is serving any enhanced term of his sentence pursuant to Section 31-18-16 NMSA 1978.

History: 1953 Comp., § 41-17-25, enacted by Laws 1955, ch. 232, § 14; 1977, ch. 216, § 14.

31-21-13. Information from prison officials.

It shall be the duty of all prison officials to grant to the members of the board, or its properly accredited representatives, access at all reasonable times to any prisoner over whom the board has jurisdiction under this act [31-21-3 to 31-21-19 NMSA 1978], to provide for the board or such representatives facilities for communicating with and interviewing such prisoner and to furnish to the board such reports and records as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: 1953 Comp., § 41-17-26, enacted by Laws 1955, ch. 232, § 15.

31-21-13.1. Intensive supervision programs.

A. As used in this section, "intensive supervision programs" means programs that provide highly structured and intense supervision, with stringent reporting requirements, of certain individuals who represent an excessively high assessment of risk of violation of probation or parole, emphasize meaningful rehabilitative activities and reasonable alternatives without seriously increasing the risk of recidivist crime and facilitate the payment of restitution by the offender to the victim. "Intensive supervision programs" include house arrest programs or electronic surveillance programs or both.

B. The corrections department shall implement and operate intensive supervision programs in various local communities. The programs shall provide services for appropriate individuals by probation and parole officers of the corrections department. The corrections department shall promulgate rules and regulations to provide that the officers providing these services have a maximum case load of forty offenders and to provide for offender selection and other criteria. The corrections department may cooperate with all recognized law enforcement authorities and share all necessary and pertinent information, records or documents regarding probationers or parolees in order to implement and operate these intensive supervision programs.

C. For purposes of this section, a judge contemplating imposition of an intensive supervision program for an individual shall consult with the adult probation and parole division of the corrections department and consider the recommendations before imposing such probation. The adult probation and parole division of the corrections department shall recommend only those individuals who would have otherwise been recommended for incarceration for intensive supervision programs. A judge has discretion to impose an intensive supervision program for an individual, regardless of recommendations made by the adult probation and parole division. Inmates eligible for parole, or within twelve months of eligibility for parole, or inmates who would otherwise remain in a correctional institution for lack of a parole plan or those parolees whose

parole the board would otherwise revoke are eligible for intensive supervision programs. The provisions of this section do not limit or reduce the statutory authority vested in probation and parole supervision as defined by any other section of the Probation and Parole Act.

D. There is created in the state treasury the "corrections department intensive supervision fund" to be administered by the corrections department upon vouchers signed by the secretary of corrections. Balances in the corrections department intensive supervision fund shall not revert to the general fund. Beginning July 1, 1988, the intensive supervision programs established pursuant to this section shall be funded by those supervision costs collected pursuant to the provisions of Sections 31-20-6 and 31-21-10 NMSA 1978. The corrections department is specifically authorized to hire additional permanent or term full-time equivalent positions for the purpose of implementing the provisions of this section.

History: 1978 Comp., § 31-21-13.1, enacted by Laws 1988, ch. 62, § 3; 1991, ch. 52, § 2; 2013, ch. 48, § 1.

31-21-14. Return of parole violator.

A. At any time during release on parole the board or the director may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release, or issue a notice to appear to answer a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize the superintendent of the institution from which the prisoner was released to return the prisoner to the actual custody of the institution or to any other suitable detention facility designated by the board or the director. If the prisoner is out of the state, the warrant shall authorize the superintendent to return him to the state.

B. The director may arrest the prisoner without a warrant or may deputize any officer with power of arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the director, violated the conditions of his release. Where an arrest is made without a warrant, the prisoner shall not be returned to the institution unless authorized by the director or the board. Pending hearing as provided by law upon any charge of violation, the prisoner shall remain incarcerated in the institution.

C. Upon arrest and detention, the board shall cause the prisoner to be promptly brought before it for a parole revocation hearing on the parole violation charged, under rules and regulations the board may adopt. If violation is established, the board may continue or revoke the parole or enter any other order as it sees fit.

D. A prisoner for whose return a warrant has been issued shall, if it is found that the warrant cannot be served, be a fugitive from justice. If it appears that he has violated the provisions of his release, the board shall determine whether the time from the date

of the violation to the date of his arrest, or any part of it, shall be counted as time served under the sentence.

History: 1953 Comp., § 41-17-28, enacted by Laws 1955, ch. 232, § 17; 1959, ch. 31, § 1; 1963, ch. 301, § 12.

31-21-15. Return of probation violator.

A. At any time during probation:

(1) the court may issue a warrant for the arrest of a probationer for violation of any of the conditions of release. The warrant shall authorize the return of the probationer to the custody of the court or to any suitable detention facility designated by the court;

(2) the court may issue a notice to appear to answer a charge of violation. The notice shall be personally served upon the probationer; or

(3) the director may arrest a probationer without warrant or may deputize any officer with power of arrest to do so by giving the officer a written statement setting forth that the probationer has, in the judgment of the director, violated the conditions of the probationer's release. The written statement, delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention, is sufficient warrant for the detention of the probationer. Upon the probationer's arrest and detention, the director shall immediately notify the court and submit in writing a report showing in what manner the probationer has violated the conditions of release.

B. The court shall then hold a hearing, which may be informal, on the violation charged. If the violation is established, the court may continue the original probation or revoke the probation and either order a new probation with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978 or require the probationer to serve the balance of the sentence imposed or any lesser sentence. If imposition of sentence was deferred, the court may impose any sentence that might originally have been imposed, but credit shall be given for time served on probation.

C. If it is found that a warrant for the return of a probationer cannot be served, the probationer is a fugitive from justice. After hearing upon return, if it appears that the probationer has violated the provisions of the probationer's release, the court shall determine whether the time from the date of violation to the date of the probationer's arrest, or any part of it, shall be counted as time served on probation. For the purposes of this subsection, "probationer" means a person convicted of a crime by a district, metropolitan, magistrate or municipal court.

D. The board shall budget funds to cover expenses of returning probationers to the court. The sheriff of the county in which the probationer was convicted is the court's agent in the transportation of the probationer, but the director, with the consent of the

court, may utilize other state agencies for this purpose when it is in the best interest of the state.

History: 1953 Comp., § 41-17-28.1, enacted by Laws 1963, ch. 301, § 13; 1989, ch. 139, § 1; 2016, ch. 27, § 1; 2016, ch. 31, § 1.

31-21-16. Repealed.

31-21-17. Executive clemency; investigation and reports.

On request of the governor the board shall investigate and report to him with respect to any case of pardon, commutation of sentence or reprieve.

History: 1953 Comp., § 41-17-31, enacted by Laws 1955, ch. 232, § 20.

31-21-17.1. Medical or geriatric parole; procedures; duties of the corrections department; duties of the board.

A. The corrections department shall promulgate rules and implement a medical and geriatric parole program, including the application form for medical or geriatric parole.

B. An inmate who is geriatric, permanently incapacitated or terminally ill may seek parole consideration upon written application to the board or consent to submission of an application by and through a family member, attorney or corrections department care provider. When an inmate is physically or mentally incapable of knowingly and voluntarily consenting to submission of an application due to mental or physical infirmity, a family member, attorney, corrections department care provider or other individual with a power of attorney may submit the application on the inmate's behalf.

C. The corrections department shall identify geriatric, permanently incapacitated and terminally ill inmates, notify those inmates of the opportunity to apply for medical or geriatric parole and recommend the release of those inmates who are eligible for medical or geriatric parole.

D. A classification officer shall provide an inmate over the age of fifty-five with a copy of the medical and geriatric parole policy and any other applicable forms at least once a year. An inmate arriving at a long-term care or geriatric unit managed by the corrections department or placed by the corrections department into long-term care or a facility not managed by the department shall be provided with a copy of the medical and geriatric parole policy, written in the inmate's preferred language, during orientation. A copy of the medical and geriatric parole policy shall be placed and maintained in the law library at each institution of the corrections department.

E. An application for medical or geriatric parole shall be submitted to the inmate's classification officer. A classification officer who receives an application shall review the

application, make a recommendation, attach any relevant documentation and forward the application package to the appropriate authority as defined by corrections department rule.

F. The corrections department shall determine whether to recommend an inmate for medical or geriatric parole and make any recommendations to the board no later than thirty days after receipt of the application by the classification officer. All applications received by the department shall be processed and forwarded to the board. The recommendation shall include the inmate's age, medical history and prognosis and, if applicable, institutional behavior, adjustment and any evidence suggesting rehabilitation during incarceration. When the department recommends an inmate for medical or geriatric parole, the director shall submit a statement to the board that the inmate's release is not incompatible with the welfare of society. In the event that the department is unable to make a determination of recommendation for medical or geriatric parole within thirty days, the department shall document in writing any justification for the delay.

G. When considering an inmate for medical or geriatric parole, the director may request that reasonable medical and mental health examinations be conducted; provided that the examinations do not cause delay in the processing time of applications required by this section.

H. When determining an inmate's eligibility for medical or geriatric parole, the director shall consider the totality of the circumstances, including:

(1) the inmate's age;

(2) the severity of the inmate's illness, disease or infirmity;

(3) a comprehensive health evaluation of the inmate;

(4) the inmate's institutional behavior, including evidence indicating rehabilitation;

(5) the inmate's current level of risk for violence; and

(6) any alternative to maintaining the geriatric, permanently incapacitated or terminally ill inmate in a traditional setting.

I. Upon receipt of an application and recommendation and supporting documentation from the corrections department for medical or geriatric parole, the board shall review the documentation, schedule a hearing and issue a decision within fifteen days. In the event that a hearing cannot be scheduled and a decision issued within fifteen days, the board shall document in writing any justification for the delay. If an inmate is denied medical or geriatric parole, the board shall notify the inmate and

provide service of the copy of the written decision. A copy of the decision shall be sent to the secretary of corrections and the warden of the facility in which the inmate resides.

J. The board shall release an inmate on medical or geriatric parole upon recommendation from the director unless the board finds by clear and convincing evidence that the inmate's release is incompatible with the welfare of society and states in writing its reason for the finding. The board may consider the totality of the circumstances, including an inmate's criminal history, but shall not deny medical or geriatric parole solely because of the nature of the charge resulting in the inmate's conviction or the inmate's criminal history.

K. A rebuttable presumption that an inmate does not constitute a danger to the inmate's self or to society and is therefore eligible for medical or geriatric parole is established if the inmate:

(1) is fifty-five years of age or older and suffers from a debilitating or chronic infirmity, illness or disease related to aging;

(2) by reason of an existing medical condition, is permanently and irreversibly physically incapacitated; or

(3) has an incurable condition caused by illness or disease that would, within reasonable medical judgment, produce death within six months.

L. Pursuant to Section 39-3-1.1 NMSA 1978, an inmate whose decision is denied by the board pursuant to the provisions of this section may appeal the board's decision in the district court in the jurisdiction where the sentence was imposed. When an inmate is physically or mentally incapable of knowingly and voluntarily consenting to submission of an appeal because of a mental or physical infirmity, a family member, attorney, corrections department health care provider or other individual with a power of attorney may submit an appeal on the inmate's behalf. The notice of appeal shall include a statement of any applicable appellate issues. No later than forty-eight hours after the filing of the notice of appeal with the board, the board shall file the record on appeal with the district court, including any applicable appellee response. The district court shall rule on the appeal no later than seventy-two hours after the record on appeal is filed.

M. An inmate who has not served the inmate's minimum sentence may be considered eligible for parole under the medical and geriatric parole program. Medical and geriatric parole shall be in addition to any other parole for which a geriatric, permanently incapacitated or terminally ill inmate may be eligible.

N. The parole term of a geriatric, permanently incapacitated or terminally ill inmate on medical or geriatric parole shall be for the remainder of the inmate's basic sentence and parole without diminution of sentence for good behavior.

O. In the event that the inmate is a terminally ill inmate, the corrections department shall determine whether to recommend an inmate for medical or geriatric parole within fifteen days of the receipt of the inmate's application by the classification officer, and the board shall issue a decision within seven days. In the event that the department is unable to determine whether to recommend an inmate for medical or geriatric parole within fifteen days pursuant to this subsection, the department or the board shall document any justification for the delay in writing.

P. An inmate who has been denied parole pursuant to the provisions of this section may reapply if additional information is received or if the inmate's condition so warrants.

Q. An inmate convicted of first degree murder shall not be considered eligible for medical or geriatric parole.

History: Laws 1994, ch. 21, § 2; 2023, ch. 89, § 2.

31-21-18. Application to persons now on probation or parole.

The provisions of the Probation and Parole Act [31-21-3 NMSA 1978] apply to all persons who, at the effective date, are on probation or parole, or eligible to be placed on probation or parole under existing laws, with the same effect as if the act had been in operation at the time they were placed on probation or parole or become [became] eligible to be placed thereon.

History: 1953 Comp., § 41-17-32, enacted by Laws 1955, ch. 232, § 21; 1963, ch. 301, § 14.

31-21-19. Participation of the United States and other states.

The board, in its discretion and with the written consent of the governor, may accept from the United States or any of its agencies, and from any state of the United States, advisory services, funds, equipment and supplies available to this state for any of the purposes contemplated by the Probation and Parole Act, and may enter into contracts and agreements with the United States or any of its agencies, and any state of the United States as necessary, proper and convenient.

History: 1953 Comp., § 41-17-33, enacted by Laws 1955, ch. 232, § 22; 1959, ch. 48, § 1; 1963, ch. 301, § 15.

31-21-20. Information from courts.

The director shall obtain from each district court statistical data regarding dispositions of all defendants, whether found guilty or discharged.

History: 1953 Comp., § 41-17-35, enacted by Laws 1963, ch. 301, § 16.

31-21-21. Conditions of probation.

The board shall adopt general regulations concerning the conditions of probation which apply in the absence of specific conditions imposed by the court. All probationers are subject to supervision of the board unless otherwise specifically ordered by the court in the particular case. Nothing in the Probation and Parole Act limits the authority of the court to impose or modify any general or specific condition of probation. The board may recommend and by order the court may impose and modify any conditions of probation. The court shall transmit to the board and to the probationer a copy of any order.

History: 1953 Comp., § 41-17-36, enacted by Laws 1963, ch. 301, § 17.

31-21-22. Short title.

Sections 1 through 5 [31-21-22 to 31-21-26 NMSA 1978] of this act may be cited as the "Parole Board Act".

History: 1953 Comp., § 41-17-37, enacted by Laws 1975, ch. 194, § 1.

31-21-23. Purpose.

The purpose of the Parole Board Act [31-21-22 to 31-21-26 NMSA 1978] is to create a professional parole board.

History: 1953 Comp., § 41-17-38, enacted by Laws 1975, ch. 194, § 2; 1999, ch. 202, § 2.

31-21-24. Parole board; members; appointment; terms; qualifications; compensation; organization.

A. The "parole board" is created, consisting of fifteen members appointed by the governor with the consent of the senate.

B. The terms of the members of the parole board shall be six years. To provide for staggered terms, five members shall be appointed every two years. Members serve until their successors have been appointed and qualified.

C. Members of the parole board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Members of the parole board shall be persons qualified by such academic training or professional experience as is deemed necessary to render them fit to serve

as members of the board. No member of the board shall be an official or employee of any other federal, state or local government entity.

E. Members of the parole board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. The governor shall designate one member of the parole board to serve as chair, who in addition to other duties shall coordinate with the corrections department in the furnishing of services pursuant to Section 9-3-11 NMSA 1978.

G. A parole may be granted, denied or revoked by a quorum of two on a panel consisting of three parole board members appointed on a rotating basis by the chair of the board.

History: 1953 Comp., § 41-17-39, enacted by Laws 1975, ch. 194, § 3; 1976, ch. 18, § 1; 1989, ch. 23, § 1; 1999, ch. 202, § 1; 2005, ch. 227, § 1.

31-21-25. Powers and duties of the board.

A. The parole board shall have the powers and duties of the former state board of probation and parole pursuant to Sections 31-21-6 and 31-21-10 through 31-21-17 NMSA 1978 and such additional powers and duties relating to the parole of adults as are enumerated in this section.

B. The parole board shall have the following powers and duties to:

(1) grant, deny or revoke parole;

(2) conduct or cause to be conducted such investigations, examinations, interviews, hearings and other proceedings as may be necessary for the effectual discharge of the duties of the board;

(3) summon witnesses, books, papers, reports, documents or tangible things and administer oaths as may be necessary for the effectual discharge of the duties of the board;

(4) maintain records of its acts, decisions and orders and notify each corrections facility of its decisions relating to persons who are or have been confined therein;

(5) adopt an official seal of which the courts shall take judicial notice;

(6) employ such officers, agents, assistants and other employees as may be necessary for the effectual discharge of the duties of the board;

(7) contract for services, supplies, equipment, office space and such other provisions as may be necessary for the effectual discharge of the duties of the board; and

(8) adopt such rules and regulations as may be necessary for the effectual discharge of the duties of the board.

C. The parole board shall provide a prisoner or parolee with a written statement of the reason or reasons for denying or revoking parole.

D. The parole board shall adopt a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a parolee.

E. When the parole board conducts a parole hearing for an offender, and upon request of the victim or family member the board shall allow the victim of the offender's crime or a family member of the victim to be present during the parole hearing. If the victim or a family member of the victim requests an opportunity to speak to the board during the hearing in public or private, the board shall grant that request. As used in this subsection, "family member of the victim" means a mother, father, sister, brother, child or spouse of the victim or a person who has custody of the victim.

History: 1953 Comp., § 41-17-40, enacted by Laws 1975, ch. 194, § 4; 1983, ch. 320, § 1; 1989, ch. 210, § 1; 2001, ch. 224, § 1.

31-21-25.1. Repealed.

History: Laws 1994, ch. 21, § 3; repealed by Laws 2023, ch. 89, § 3.

31-21-26. Transitional provisions.

A. The records, property, equipment and unencumbered and unexpended funds previously belonging to or appropriated for the use of the former parole hearing board shall become, on the effective date of the Parole Board Act [31-21-22 to 31-21-26 NMSA 1978], a part of the property of the parole board.

B. The provisions of the Parole Board Act apply to all persons who, on the effective date, are on parole or eligible to be placed on parole with the same effect as if that act had been in effect at the time they were placed on parole or became eligible to be placed on parole.

History: 1953 Comp., § 41-17-41, enacted by Laws 1975, ch. 194, § 5.

31-21-27. Reentry drug court program for inmates; district court supervision.

A. The corrections department shall develop criteria regarding the eligibility of an inmate for early release into a reentry drug court program, including requirements that the inmate:

(1) was incarcerated following conviction for a nonviolent, drug-related offense; and

(2) is within eighteen months of release or eligibility for parole.

B. The corrections department may petition a district court that operates a reentry drug court program to accept limited jurisdiction of an inmate. If the district court grants the petition, the district court shall have jurisdiction over the inmate and the corrections department shall retain its jurisdiction over the inmate pursuant to the terms of the inmate's judgment and sentence.

C. The provisions of this section shall not be interpreted to change the jurisdictional authority of the sentencing court, pursuant to the provisions of the Rules of Criminal Procedure for the District Courts, as promulgated by the supreme court. The jurisdictional authority conferred upon a reentry drug court pursuant to this section is limited to acceptance and supervision of a released inmate by the reentry drug court program.

D. The provisions of this section shall not be interpreted to limit the statutory authority vested in the adult probation and parole division of the corrections department, pursuant to the provisions of the Probation and Parole Act [31-21-22 to 31-21-26 NMSA 1978].

History: Laws 2001, ch. 35, § 1.

ARTICLE 22
Crime Victims Reparations

31-22-1. Short title.

Chapter 31, Article 22 NMSA 1978 may be cited as the "Crime Victims Reparation Act".

History: Laws 1981, ch. 325, § 1; 1993, ch. 207, § 1.

31-22-2. Purpose.

The purpose of the Crime Victims Reparation Act is to protect the citizens of New Mexico from the impact of crime and to promote a stronger criminal justice system through the encouragement of all citizens to cooperate with law enforcement efforts.

Implementation of the Crime Victims Reparation Act will promote the public health, welfare and safety of the citizens of New Mexico.

History: Laws 1981, ch. 325, § 2.

31-22-3. Definitions.

As used in the Crime Victims Reparation Act:

A. "child" means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;

B. "collateral source" includes benefits for economic loss otherwise reparable under the Crime Victims Reparation Act which the victim or claimant has received or which are readily available to him from:

(1) the offender;

(2) social security, medicare and medicaid;

(3) workers' compensation;

(4) proceeds of a contract of insurance payable to the victim;

(5) a contract providing prepaid hospital and other health care services or benefits for disability, except for the benefits of any life insurance policy;

(6) applicable indigent funds; or

(7) cash donations;

C. "commission" means the crime victims reparation commission;

D. "dependents" means those relatives of the deceased or disabled victim who are more than fifty percent dependent upon the victim's income at the time of his death or disability and includes the child of a victim born after his death or disability;

E. "family relationship group" means any person related to another person within the fourth degree of consanguinity or affinity;

F. "injury" means actual bodily harm or disfigurement and includes pregnancy and extreme mental distress. For the purposes of this subsection, "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition that impairs judgment, behavior or ability to cope with the ordinary demands of life;

G. "permanent total disability" means loss of both legs or arms, loss of one leg and one arm, total loss of eyesight, paralysis or other physical condition permanently incapacitating the worker from performing any work at any gainful occupation;

H. "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents; and

I. "victim" means:

(1) a person in New Mexico who is injured or killed by any act or omission of any other person that is a crime enumerated in Section 31-22-8 NMSA 1978;

(2) a resident of New Mexico who is injured or killed by such a crime occurring in a state other than New Mexico if that state does not have an eligible crime victims compensation program; or

(3) a resident of New Mexico who is injured or killed by an act of international terrorism, as provided in 18 U.S.C. Section 2331.

History: Laws 1981, ch. 325, § 3; 1985 (1st S.S.), ch. 5, § 1; 1989, ch. 246, § 1; 1990, ch. 10, § 1; 1993, ch. 207, § 2; 1997, ch. 268, § 1; 2001, ch. 214, § 1.

31-22-4. Crime victims reparation commission created; membership; reimbursement.

A. There is created in the executive branch of government a "crime victims reparation commission" which shall consist of five members appointed by the governor for staggered terms of four years each. Not more than three of the members shall belong to the same political party. One of the members shall be an attorney licensed to practice law in the state, one of the members shall be a physician licensed to practice medicine in the state and one of the members shall be a representative of a law enforcement agency. In making the initial appointments, the governor shall appoint three members for a term of two years each and two members for a term of four years each. Thereafter, appointments shall be for a term of four years. The governor may appoint a person to fill a vacancy for the balance of the unexpired term.

B. The members of the commission shall annually elect from their membership a chairman and vice chairman.

C. Members of the commission, while in the actual performance of their duties pursuant to the Crime Victims Reparation Act, shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. The commission may employ a director and such staff as is necessary to perform its functions.

History: Laws 1981, ch. 325, § 4; 1989, ch. 246, § 2; 1993, ch. 207, § 3.

31-22-4.1. Domestic violence homicide review team; creation; membership; duties; confidentiality; civil liability.

A. The "domestic violence homicide review team" is created within the commission for the purpose of reviewing the facts and circumstances of domestic violence related homicides and sexual assault related homicides in New Mexico, identifying the causes of the fatalities and their relationship to government and nongovernment service delivery systems and developing methods of domestic violence prevention.

B. The team shall consist of the following members appointed by the director of the commission:

(1) medical personnel with expertise in domestic violence;

(2) criminologists;

(3) representatives from the New Mexico district attorneys association;

(4) representatives from the attorney general;

(5) victim services providers;

(6) civil legal services providers;

(7) representatives from the public defender department;

(8) members of the judiciary;

(9) law enforcement personnel;

(10) representatives from the department of health, the aging and long-term services department and the children, youth and families department who deal with domestic violence victims' issues;

(11) representatives from tribal organizations who deal with domestic violence; and

(12) any other members the director of the commission deems appropriate.

C. The domestic violence homicide review team shall:

(1) review trends and patterns of domestic violence related homicides and sexual assault related homicides in New Mexico;

(2) evaluate the responses of government and nongovernment service delivery systems and offer recommendations for improvement of the responses;

(3) identify and characterize high-risk groups for the purpose of recommending developments in public policy;

(4) collect statistical data in a consistent and uniform manner on the occurrence of domestic violence related homicides and sexual assault related homicides; and

(5) improve collaboration between tribal, state and local agencies and organizations to develop initiatives to prevent domestic violence.

D. The following items are confidential:

(1) all records, reports or other information obtained or created by the domestic violence homicide review team for the purpose of reviewing domestic violence related homicides or sexual assault related homicides pursuant to this section; and

(2) all communications made by domestic violence homicide review team members or other persons during a review conducted by the team of a domestic violence related homicide or a sexual assault related homicide.

E. The following persons shall honor the confidentiality requirements of this section and shall not make disclosure of any matter related to the team's review of a domestic violence related homicide or a sexual assault related homicide, except pursuant to appropriate court orders:

(1) domestic violence homicide review team members;

(2) persons who provide records, reports or other information to the team for the purpose of reviewing domestic violence related homicides and sexual assault related homicides; and

(3) persons who participate in a review conducted by the team.

F. Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable or admissible merely because the evidence was presented during the review of a domestic violence related homicide or a sexual assault related homicide pursuant to this section.

G. Domestic violence homicide review team members shall not be subject to civil liability for any act related to the review of a domestic violence related homicide or a sexual assault related homicide; provided that the members act in good faith, without malice and in compliance with other state or federal law.

H. An organization, institution, agency or person who provides testimony, records, reports or other information to the domestic violence homicide review team for the purpose of reviewing domestic violence related homicides or sexual assault related homicides shall not be subject to civil liability for providing the testimony, records, reports or other information to the team; provided that the organization, institution, agency or person acts in good faith, without malice and in compliance with other state or federal law.

I. At least thirty days prior to the convening of each regular session of the legislature, the domestic violence homicide review team shall transmit a report of its activities pursuant to this section to:

(1) the governor;

(2) the legislative council;

(3) the chief justice of the supreme court;

(4) the secretary of public safety;

(5) the secretary of children, youth and families;

(6) the secretary of health; and

(7) any other persons the team deems appropriate.

History: Laws 2007, ch. 235, § 1.

31-22-5. Claims; review; hearings and evidence.

A. Where an application is made to the commission pursuant to the Crime Victims Reparation Act, the director of the commission shall determine if a claim for a reparation award is eligible for consideration pursuant to the provisions of the Crime Victims Reparation Act. All claims arising from the injury or death of a person as a direct result of a single crime shall be considered together by a single staff member. When the director determines that a claim for a reparation award is not eligible for consideration, the director shall notify the commission of his determination at the next regular meeting of the commission. If the commission concurs with the director's determination that a claim for a reparation award is not eligible for consideration, the claimant shall be notified that his claim was denied. When the director determines that a claim for a reparation award is eligible for consideration, the director shall order that the claim be processed and he shall assign the claim to a member of the commission staff.

B. The staff member to whom such claim is assigned shall examine the papers filed in support of the claim and shall cause an investigation to be conducted into the validity of the claim. The investigation may include, but not be limited to, an examination of

police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury or death upon which the claim is based and other benefits received or to be received.

C. The staff member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the staff member is unable to make a recommendation upon the basis of the papers and report, he shall present the claim to the commission without a recommendation.

D. When the claim has been processed, the director shall assign the claim to a commission member.

E. After examining the papers filed in support of the claim and the report of investigation and after a hearing, if any, the commission member to whom the claim was assigned shall make a recommendation to the entire commission either granting an award or denying the claim.

F. A quorum of the commission shall act upon the recommendation of the commission member. A quorum of the commission, by majority vote, may affirm, increase, decrease or deny the award.

G. Upon a request from a victim or claimant, the commission shall grant the victim or claimant an informal appearance at a commission meeting. The purpose of the informal appearance shall be for the victim or claimant to present any evidence or information in support of his claim.

H. A formal hearing may be called for by a majority of the commission. The purpose of the hearing shall be for the commission to hear evidence to assist it in making a determination regarding a claim.

I. At the hearing, the claimant and the commission's legal advisor shall be entitled to appear and be heard, and any other person may appear and be heard who has satisfied the commission member that he has a substantial interest in the proceedings. In any case in which the claimant is a child or is mentally incompetent, the application may be made on behalf of such claimant by his parent, guardian, custodian or any other person authorized to administer his estate.

J. Where any person is entitled to appear and be heard, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the member of the commission assigned to the claim determines that the hearing or a portion thereof shall be held in private, having regard to the fact that the offender has not been convicted or in the interest of the victim of an alleged sexual offense.

K. Every person appearing under the provisions of this section shall have the right to produce evidence and to cross-examine witnesses. The commission member may

receive in evidence any statement, document, information or matter that may, in his opinion, contribute to the functions of the hearing under the Crime Victims Reparation Act, whether or not such statement, document, information or other matter would be admissible in a court of law.

History: Laws 1981, ch. 325, § 5; 1989, ch. 246, § 3; 1991, ch. 36, § 1; 1993, ch. 207, § 4.

31-22-6. Medical examination; attorneys' fees; penalty.

A. The commission may appoint an impartial physician, licensed in New Mexico, to examine any person making an application for reparation under the Crime Victims Reparation Act, and the fees for the examination shall be paid from funds appropriated for the commission's administrative expenses.

B. None of the appropriation in this act [31-22-1 to 31-22-21 NMSA 1978] shall be used to pay attorney fees either as part of or in addition to awards of reparation. In cases where no reparation is awarded, attorney fees shall not be paid.

History: Laws 1981, ch. 325, § 6.

31-22-7. Eligibility for reparation.

A. If a person is injured or killed by an act or omission of another person coming within the criminal jurisdiction of the state after July 1, 1981, which act or omission includes a crime enumerated in Section 31-22-8 NMSA 1978, and upon application for reparation, the commission may award reparation in accordance with the Crime Victims Reparation Act:

(1) to the victim;

(2) in the case of the victim's death, to or for the benefit of any one or more of the deceased victim's dependents; or

(3) to any individual who voluntarily assumes funeral or medical expenses of the victim.

B. For the purpose of the Crime Victims Reparation Act, a person shall be deemed to have intentionally committed an act or omission constituting a crime, notwithstanding that by reason of age, insanity, drunkenness or otherwise the person was legally incapable of forming a criminal intent.

C. In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant. The commission shall consider the behavior of the victim and whether, because of provocation or otherwise, the victim bears responsibility for the act or omission constituting a crime that caused

the victim's injury or death and shall reduce the amount of reparation in accordance with its assessment of the degree of responsibility attributable to the victim.

D. An order may be made under this section whether or not any person is prosecuted for or convicted of a crime enumerated in Section 31-22-8 NMSA 1978; provided an arrest has been made or the act or omission constituting a crime has been reported to the police in a reasonable time or the act or omission constituting a crime has been reported to a licensed medical, mental health or counseling provider, or tribal health provider. No order may be made under this section unless the commission finds that:

(1) the act or omission constituting a crime did occur;

(2) the injury or death of the victim resulted from the act or omission constituting a crime; and

(3) the claimant or victim fully cooperated with the appropriate law enforcement agencies or the commission finds that the claimant or victim acted reasonably under the circumstances.

E. Upon application from the district attorney of the appropriate district, the commission may suspend proceedings under the Crime Victims Reparation Act for such period as it deems desirable on the grounds that a prosecution for the act or omission constituting a crime has commenced or is imminent.

History: Laws 1981, ch. 325, § 7; 1993, ch. 207, § 5; 2019, ch. 211, § 8.

31-22-8. Crimes enumerated.

A. The crimes to which the Crime Victims Reparation Act applies and for which reparation to victims may be made are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

(1) arson resulting in bodily injury;

(2) aggravated assault or aggravated battery;

(3) dangerous use of explosives resulting in bodily injury;

(4) negligent use of a deadly weapon;

(5) murder;

(6) voluntary manslaughter;

(7) involuntary manslaughter;

(8) kidnapping;

(9) criminal sexual penetration;

(10) criminal sexual contact of a minor;

(11) failure to give information and render aid, as provided in Section 66-7-201 or 66-7-203 NMSA 1978;

(12) homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978;

(13) abandonment or abuse of a child;

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

(15) stalking;

(16) human trafficking;

(17) assault against a household member; and

(18) battery against a household member.

B. No award shall be made for any loss or damage to property.

History: Laws 1981, ch. 325, § 8; 1983, ch. 319, § 1; 1989, ch. 246, § 4; 1990, ch. 10, § 2; 1997, ch. 268, § 2; 2001, ch. 214, § 2; 2013, ch. 200, § 4; 2015, ch. 10, § 1; 2018, ch. 33, § 1.

31-22-9. Award of reparation.

The commission may order payment of reparation for:

A. expenses actually and reasonably incurred as a result of the victim's injury or death;

B. loss to the victim of earning power as a result of total or partial incapacity;

C. any other pecuniary loss directly resulting from the victim's injury or death which the commission determines to be reasonable and proper; and

D. any expenses incurred for rehabilitation services provided to a victim of child abuse or neglect, including child sexual abuse, but awards made pursuant to this

subsection shall be made directly to the provider of the rehabilitation services for payment of those services.

History: Laws 1981, ch. 325, § 9; 1989, ch. 246, § 5.

31-22-10. Relationship to offender.

Except for amounts payable pursuant to Subsection D of Section 31-22-9 NMSA 1978, no reparation shall be awarded if the victim:

A. was a member of the offender's family relationship group where payment of reparation would unjustly enrich the offender; or

B. was an accomplice of the offender.

History: Laws 1981, ch. 325, § 10; 1989, ch. 246, § 6; 1990, ch. 10, § 3.

31-22-11. No award to certain confined persons.

No award shall be made pursuant to the provisions of the Crime Victims Reparation Act to a victim injured while confined in a county or municipal jail, penitentiary or other correctional facility.

History: Laws 1981, ch. 325, § 11.

31-22-12. Recovery from offender.

Whenever an award of reparation is made pursuant to the Crime Victims Reparation Act, the state is, upon payment of the award, subrogated to the right of action of the victim or his dependents against the person responsible for the injury or death and may bring an action against such person for the amount of the reparation paid.

History: Laws 1981, ch. 325, § 12.

31-22-13. Terms of order.

Any order for the payment of reparation under the Crime Victims Reparation Act may be made on such terms as the commission deems appropriate. The order may provide for apportionment of reparation or for the holding of reparation or any part thereof in trust and for the payment of reparation in a lump sum or in periodic installments. All such orders shall contain words clearly informing the claimant that all awards and orders for reparation under the Crime Victims Reparation Act are subject to the making of an appropriation by the legislature to pay the claim.

History: Laws 1981, ch. 325, § 13.

31-22-14. Limitations on award; collateral recovery; preliminary award.

A. No order for the payment of reparation shall be made unless application has been made within two years after the date of the injury or death and the injury or death was the result of a crime enumerated in Section 31-22-8 NMSA 1978. An application for reparation shall be made within two years after the injury or death, except for minors who are victims of criminal activity under the provisions of Section 30-6-1 NMSA 1978, regarding abandonment or abuse of a child, Section 30-9-11 NMSA 1978, regarding criminal sexual penetration, or Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor.

B. No award of reparation shall be in excess of twenty thousand dollars ($20,000) per victim, except that the commission may award up to an additional thirty thousand dollars ($30,000) for extraordinary pecuniary losses, if the personal injury to a victim is catastrophic and results in a permanent total disability. The extraordinary losses compensated may include:

(1) loss of wages;

(2) the cost of home health care;

(3) the cost of making a home or automobile accessible;

(4) the cost of training in the use of special application; or

(5) job training.

C. Except as provided by Subsection E of this section, the commission shall deduct from any reparation awarded any payments received from a collateral source or from the United States or the state or any of its political subdivisions for injury or death subject to reparation under the Crime Victims Reparation Act. If the claimant receives an award of reparation from the commission and also receives payment as set forth in the preceding sentence for which no deduction was made, the claimant shall refund to the state the lesser of the amount of reparation paid or the sums not so deducted.

D. If the claimant receives an award of reparation from the commission and also receives an award pursuant to a civil judgment arising from a criminal occurrence for which a reparation award was paid, the claimant shall refund to the state the amount of the reparation paid to the claimant. The commission may negotiate a reasonable settlement regarding repayment of the reparation award if special circumstances exist.

E. If it appears that a final award of reparation will be made by the commission, a preliminary award may be authorized by the director of the commission or the commission's designee when the commission chair concurs. The amount of the preliminary award shall be deducted from any final award made by the commission.

History: Laws 1981, ch. 325, § 14; 1989, ch. 246, § 7; 1991, ch. 37, § 1; 1993, ch. 207, § 6; 1997, ch. 268, § 3; 2001, ch. 214, § 3; 2015, ch. 10, § 2; 2019, ch. 211, § 9.

31-22-15. Exemption from execution.

No reparation payable under the Crime Victims Reparation Act shall be, prior to its actual receipt by the victim or dependents entitled thereto or their legal representatives, assignable or subject to garnishment, execution, attachment or other process whatsoever, including process to satisfy an order or judgment for support or alimony.

History: Laws 1981, ch. 325, § 15.

31-22-16. Survival or abatement.

The rights to reparation created by the Crime Victims Reparation Act are personal and shall not survive the death of the victim or dependents entitled thereto; provided that if such death occurs after an application for reparation has been filed with the commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

History: Laws 1981, ch. 325, § 16.

31-22-17. Rule-making powers.

In performance of its functions the commission may adopt, amend and repeal rules and regulations in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], not inconsistent with the Crime Victims Reparation Act, prescribing procedures to be followed in the filing of applications and the proceedings under the Crime Victims Reparation Act and such other matters as the commission deems appropriate. Unless otherwise provided by law, no regulation affecting any person or agency outside the commission shall be adopted, amended or repealed without a public hearing on the proposed action before the commission or a hearing officer designated by them. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act. In filing the rule or regulation with the state records center, the commission shall certify that the record contains arguments presented both for and against each rule or regulation promulgated.

History: Laws 1981, ch. 325, § 17.

31-22-18. Confidentiality of records, reports and claim files.

Any record or report acquired by the commission, the confidentiality of which is protected by law, rule or regulation, shall be disclosed only under the same terms and conditions which protected its confidentiality prior to such acquisition. The claim file, which contains confidential reports, records and personal information, shall not be released.

History: Laws 1981, ch. 325, § 18; 1993, ch. 207, § 7; 2001, ch. 214, § 4.

31-22-19. Annual report.

At least thirty days prior to the convening of each regular session of the legislature, the commission shall transmit to the governor, the department of finance and administration and the legislature a report of its activities under the Crime Victims Reparation Act. The department of finance and administration shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount awarded and the amount of any judgments collected, to the senate finance committee and to the house appropriations and finance committee or any successor committees.

History: Laws 1981, ch. 325, § 19; 1989, ch. 246, § 8; 1993, ch. 207, § 8.

31-22-20. Penalty.

Any person who knowingly makes a false claim or a false statement in connection with a claim filed pursuant to the Crime Victims Reparation Act shall be guilty of a fourth degree felony and for conviction thereof shall:

A. be punished by imprisonment in the state penitentiary for a determinate term of not less than one year nor more than five years; or by the payment of a fine not to exceed five thousand dollars ($5,000) or both such imprisonment and fine in the discretion of the court; and

B. forfeit any reparation paid pursuant to the Crime Victims Reparation Act.

History: Laws 1981, ch. 325, § 20.

31-22-21. Crime victims reparation fund created; purposes.

A. There is created in the state treasury the "crime victims reparation fund".

B. Money in the crime victims reparation fund may be expended by the commission to:

(1) pay any award of reparation to victims made pursuant to the Crime Victims Reparation Act;

(2) pay costs and expenses including staff salaries and expenses incurred in carrying out the provisions of the Crime Victims Reparation Act; and

(3) contract with one or more attorneys or law firms on a per hour basis to provide legal services to the commission.

C. The provisions of this section are effective July 1, 1990.

History: Laws 1981, ch. 325, § 21; 1989, ch. 324, § 24.

31-22-22. Distribution of money received as result of crime; escrow account.

A. Every firm, person, corporation, association or other legal entity contracting with a person or the representative or assignee of any person charged or convicted of a violent crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment or with respect to the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the crime shall submit a copy of the contract to the crime victims reparation commission and pay to the commission any money that would otherwise by terms of such contract be owing to the accused or convicted person or his representatives. The commission shall deposit the money in an escrow account.

B. Money placed in an escrow account pursuant to this section shall be available to satisfy a civil judgment against the convicted person or the accused person, if eventually convicted of the crime, in favor of a victim of the crime if the court in which the civil judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

C. Upon dismissal of charges or acquittal of any accused person, the commission shall immediately pay over to the accused person the money in the escrow account.

D. For purposes of this section, a person found not guilty by reason of insanity at the time of commission of an offense shall be deemed to be a convicted person.

E. Notwithstanding the provisions of Subsections A through C of this section, the commission shall make payments from the escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that the money shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process.

F. Upon a showing by any accused or convicted person that five years have elapsed from the establishment of the escrow account, that any claims brought pursuant to this section have been disposed of and that no such claims are pending against him, the commission shall immediately pay over to such accused or convicted person any money in the escrow account.

G. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise to defeat the purpose of this section, shall be null and void as against the public policy of the state.

History: 1978 Comp., § 31-22-22, enacted by Laws 1983, ch. 321, § 1.

31-22-23. Authority to compel production.

The commission has the power to compel the production of books, records and papers pertinent to any investigation or hearing authorized by the Crime Victims Reparation Act and can seek enforcement of any subpoena so issued through the district court in the county in which the custodian of the document is located to be held in camera.

History: 1978 Comp., § 31-22-23, enacted by Laws 1989, ch. 246, § 9.

31-22-24. Repealed.

History: Laws 1993, ch. 207, § 10; 2000, ch. 4, § 3; repealed by Laws 2005, ch. 208, § 27.

ARTICLE 23
Crime Victims Immunity

31-23-1. Civil action; crime; damages; immunity.

No person shall be liable to a plaintiff in any civil action for damages if by a preponderance of the evidence the damages were incurred as a consequence of:

A. the commission, attempted commission or flight subsequent to the commission of a crime by the plaintiff; and

B. the use of force or deadly force by the defendant which is justified pursuant to common law or the law of the state.

History: Laws 1985, ch. 152, § 1.

ARTICLE 24
Crime Victims' and Witnesses' Bill of Rights (Repealed.)

31-24-1 to 31-24-7. Repealed.

ARTICLE 25
Victim Counselor Confidentiality

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".

History: Laws 1987, ch. 349, § 1.

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.

History: Laws 1987, ch. 349, § 2.

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.

History: Laws 1987, ch. 349, § 3.

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.

History: Laws 1987, ch. 349, § 4.

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.

History: Laws 1987, ch. 349, § 5.

31-25-6. Rules.

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

History: Laws 1987, ch. 349, § 6.

ARTICLE 26
Victims of Crime

31-26-1. Short title.

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

History: Laws 1994, ch. 144, § 1; 2005, ch. 283, § 2.

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 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.

History: Laws 1994, ch. 144, § 2.

31-26-3. Definitions.

As used in the Victims of Crime Act:

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 [Chapter 30, Article 3A 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.

History: Laws 1994, ch. 144, § 3; 1997, ch. 10, § 6; 2003, ch. 411, § 1.

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;

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; and

M. be notified by the district attorney of the availability of and procedures to apply for crime victims reparation.

History: Laws 1994, ch. 144, § 4; 1999, ch. 238, § 6; 2019, ch. 211. § 10.

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 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.

History: Laws 1994, ch. 144, § 5.

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 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.

History: Laws 1994, ch. 144, § 6.

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. 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.

History: Laws 1994, ch. 144, § 7.

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.

History: Laws 1994, ch. 144, § 8.

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;

(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.

History: Laws 1994, ch. 144, § 9; 2005, ch. 283, § 3.

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.

History: Laws 1994, ch. 144, § 10.

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 Section 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.

History: Laws 2005, ch. 283, § 1.

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.

History: Laws 1994, ch. 144, § 11; 1999, ch. 103, § 1.

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.

History: Laws 1994, ch. 144, § 12; 1999, ch. 103, § 2; 2009, ch. 239, § 5.

31-26-13. Disclaimer.

Nothing in the Victims of Crime Act 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.

History: Laws 1994, ch. 144, § 13.

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.

History: Laws 1994, ch. 144, § 14.

31-26-15. Identity theft passport; database.

A. The attorney general, in cooperation with the department of public safety and the motor vehicle division of the taxation and revenue department, shall issue an identity theft passport to a person who claims to be a victim of identity theft pursuant to Section 30-16-24.1 NMSA 1978 and who provides to the attorney general:

(1) a certified copy of a court order obtained pursuant to Section 5 [31-26-16 NMSA 1978] of this 2009 act or a full set of fingerprints;

(2) a driver's license or other government-issued identification or record; and

(3) other information as required by the attorney general.

B. An identity theft passport shall contain a picture of the person to whom it was issued and other information as the attorney general deems appropriate.

C. The attorney general may enter into a memorandum of understanding with the motor vehicle division of the taxation and revenue department for the development and issuance of a secure form of identity theft passport. When an identity theft passport is issued, the motor vehicle division shall note on the person's driver record that an identity theft passport has been issued.

D. An identify [identity] theft passport shall be accepted as evidence of identity by law enforcement officers and others who may challenge the person's identity.

E. The attorney general shall maintain a database of identity theft victims who have reported to a law enforcement agency or have been issued an identity theft passport. The attorney general may provide access to the database only to criminal justice agencies. For purposes of identification and authentication, the attorney general may allow access to specific information about a person who has become a victim of identity theft to that person or to that person's authorized representative.

F. The attorney general shall keep on file each application for an identity theft passport and each police report of identity theft submitted by a law enforcement agency.

G. The attorney general shall prepare and make available to local law enforcement agencies and to the general public an information packet that includes information on how to prevent and stop identity theft.

History: Laws 2009, ch. 95, § 4.

31-26-16. Repealed.

History: Laws 2009, ch. 95, § 5; repealed by Laws 2019, ch. 203, § 8.

ARTICLE 27
Forfeiture

31-27-1. Short title.

Chapter 31, Article 27 NMSA 1978 may be cited as the "Forfeiture Act".

History: Laws 2002, ch. 4, § 1; 2015, ch. 152, § 1.

31-27-2. Purpose of act; applicability; no additional remedies.

A. The purposes of the Forfeiture Act are to:

(1) make uniform the standards and procedures for the seizure and forfeiture of property subject to forfeiture;

(2) protect the constitutional rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture;

(3) deter criminal activity by reducing its economic incentives;

(4) increase the pecuniary loss from criminal activity;

(5) protect against the wrongful forfeiture of property; and

(6) ensure that only criminal forfeiture is allowed in this state and only pursuant to state law.

B. The Forfeiture Act:

(1) applies to all seizures, forfeitures and dispositions of property subject to forfeiture pursuant to laws that specifically apply the Forfeiture Act in this state; and

(2) does not apply to:

(a) contraband, which is subject to seizure pursuant to applicable state laws, but is not subject to forfeiture pursuant to the Forfeiture Act;

(b) animals that are subject to seizure, impoundment, alteration, permanent removal from custody or destruction for animal welfare, public health and safety or compliance and enforcement purposes pursuant to applicable state and local laws;

(c) real property or personal property that is located on that real property that is subject to destruction pursuant to state and local laws to protect public health and safety; and

(d) forfeiture that results from a lien for charges or assessments that are provided for or fixed by state or local laws.

History: Laws 2002, ch. 4, § 2; 2015, ch. 152, § 2; 2019, ch. 133, § 1.

31-27-3. Definitions.

As used in the Forfeiture Act:

A. "abandoned property":

(1) is not subject to the provisions of Section 29-1-14 NMSA 1978;

(2) means personal property the rights to which and the control of which an owner has intentionally relinquished; and

(3) does not mean real property;

B. "actual knowledge" means a direct and clear awareness of information, a fact or a condition;

C. "contraband" means goods that may not be lawfully imported, exported or possessed, including drugs that are listed in Schedule I, II, III, IV or V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] and that are possessed without a valid prescription;

D. "conveyance" means a device used for transportation and:

(1) includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment attached to the conveyance; but

(2) does not include property that is stolen or taken in violation of a law;

E. "conviction" or "convicted" means that a person has been found guilty of a crime in a trial court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is deferred or suspended;

F. "crime" means a violation of a criminal statute for which property of the offender is subject to seizure and forfeiture;

G. "instrumentality" means all property that is otherwise lawful to possess that is used in the furtherance or commission of an offense to which forfeiture applies and

includes land, a building, a container, a conveyance, equipment, materials, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a negotiable instrument and other devices used for exchange of property;

H. "law enforcement agency" means the employer of a law enforcement officer who is authorized to seize or has seized property pursuant to the Forfeiture Act;

I. "law enforcement officer":

(1) means a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes; but

(2) does not mean a correctional officer;

J. "owner" means a person who has a legal or equitable ownership interest in property;

K. "property" means tangible or intangible personal property or real property;

L. "property subject to forfeiture" means property or an instrumentality declared to be subject to forfeiture by the Forfeiture Act or a state law outside of the Forfeiture Act; and

M. "secured party" means a person with a security or other protected interest in property, whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of which interest is to secure the payment of a debt or protect a potential debt owed to the secured party.

History: Laws 2002, ch. 4, § 3; 2015, ch. 152, § 3; 2019, ch. 133, § 2.

31-27-4. Forfeiture; conviction required; seizure of property; with process; without process.

A. A person's property is subject to forfeiture pursuant to state law if:

(1) the person was arrested for an offense to which forfeiture applies;

(2) the person is convicted by a criminal court of the offense; and

(3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.

B. Following a person's conviction for an offense to which forfeiture applies, a court may order the person to forfeit:

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense; and

(3) any instrumentality the person used in the commission of the offense.

C. Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement to a felony that is approved by a court or by other agreement of the parties to a criminal proceeding.

D. Subject to the provisions of Section 31-27-5 NMSA 1978, at any time, at the request of the state, a court may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on the order to seize the property and the return of the property, if applicable, are subject to the Forfeiture Act and other applicable state laws. Before issuing an order pursuant to this subsection, the court shall make a determination that:

(1) there is a substantial probability that:

(a) the property is subject to forfeiture;

(b) the state will prevail on the issue of forfeiture; and

(c) failure to enter the order will result in the property being destroyed, removed from the state or otherwise made unavailable for forfeiture; and

(2) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming interests in the property.

E. Property subject to forfeiture may be seized at any time, without a prior court order, if:

(1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property;

(2) the property subject to seizure is the subject of a previous judgment in favor of the state; or

(3) the law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to

obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure.

History: Laws 2002, ch. 4, § 4; 2015, ch. 152, § 4; 2019, ch. 133, § 3.

31-27-4.1. Receipt for seized property; replevin hearing.

A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall provide an itemized receipt to the person possessing the property or, in the absence of a person to whom the receipt could be given, shall leave the receipt in the place where the property was found, if possible.

B. Within five business days of the seizure, the law enforcement officer shall provide notice by personal service or first class mail to all owners of record of the seized property.

C. Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in the seized property may, at any time before the one-hundred-twentieth day following the filing of the forfeiture action in court, claim an interest in the seized property by a motion requesting the court to issue a writ of replevin. A motion filed pursuant to this section shall include facts to support the person's alleged interest in the seized property.

D. A person who makes a timely motion pursuant to this section shall have a right to a hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding and within sixty days of the date on which the motion is filed.

E. At least ten days before a hearing on a motion filed pursuant to this section, the state shall file an answer or responsive motion that shows probable cause for the seizure.

F. A court shall grant a claimant's motion if the court finds that:

(1) it is likely that the final judgment will require the state to return the property to the claimant;

(2) the property is not reasonably required to be held for investigatory reasons; or

(3) the property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding and the law enforcement agency did not make a prima facie showing that the property was stolen or proceeds from or is an instrumentality of a crime.

G. In its discretion, the court may order the return of funds or property sufficient for a defendant to obtain legal counsel but less than the total amount seized. If the court

makes such an order, it shall require an accounting. An accounting report of reasonable legal fees held before the resolution of the relevant criminal and forfeiture proceedings shall be held in camera. If the court finds in favor of the state in both the criminal and forfeiture proceedings, the court shall:

(1) hear arguments by the parties as to what portion of the funds or property should be paid to the defendant's counsel and what portion should be forfeited; and

(2) issue an order on how the funds or property shall be distributed.

H. In lieu of ordering the issuance of a writ of replevin, a court may order:

(1) the state to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action; or

(2) any other relief the court deems to be just; provided that the relief does not prejudice an innocent owner, including a secured lienholder.

History: 1978 Comp., § 31-27-4.1, enacted by Laws 2015, ch. 152, § 5; 2019, ch. 133, § 4.

31-27-5. Notice of intent to forfeit; service of process.

A. Within thirty days of making a seizure of property or simultaneously upon filing a related criminal indictment, the state shall file a notice of intent to forfeit or return the property to the person from whom it was seized. The notice shall include:

(1) a description of the property seized;

(2) the date and place of seizure of the property;

(3) the name and address of the law enforcement agency making the seizure;

(4) the specific statutory and factual grounds for the seizure;

(5) whether the property was seized pursuant to an order of seizure, and if the property was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal and factual grounds why an order of seizure was not required; and

(6) in the notice, the names of persons known to the state who may claim an interest in the property and the basis for each person's alleged interest.

B. The notice shall be served upon the person from whom the property was seized, the person's attorney of record and all persons known or reasonably believed by the

state to claim an interest in the property. A copy of the notice shall also be published on the sunshine portal until the forfeiture proceeding is resolved.

History: Laws 2002, ch. 4, § 5; 2015, ch. 152, § 6; 2019, ch. 133, § 5.

31-27-6. Forfeiture proceedings; determination; substitution of property; constitutionality; appeal.

A. A person who claims an interest in seized property shall file a response within thirty days of the date of service of the notice of intent to forfeit. The response shall include facts to support the claimant's alleged interest in the property.

B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter related to the seized property.

C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. If the criminal defendant in the related criminal matter is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding.

D. Discovery conducted in an ancillary forfeiture proceeding is subject to the rules of criminal procedure.

E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than twenty thousand dollars ($20,000) shall be held before a judge only.

F. If the state fails to prove, by clear and convincing evidence, that a person whose property is alleged to be subject to forfeiture is an owner of the property:

(1) the forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless the owner's possession of the property is illegal; and

(2) the owner shall not be subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

G. The court shall enter a judgment of forfeiture and the seized property shall be forfeited to the state if the state proves by clear and convincing evidence that:

(1) the seized property is subject to forfeiture;

(2) the criminal prosecution of the owner of the seized property resulted in a conviction; and

(3) the value of the property to be forfeited does not unreasonably exceed:

(a) the pecuniary gain derived or sought to be derived by the crime;

(b) the pecuniary loss caused or sought to be caused by the crime; or

(c) the value of the convicted owner's interest in the property.

H. A court shall not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding.

I. Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of the property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by a preponderance of the evidence that the person intentionally transferred, sold or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property.

J. A person is not jointly and severally liable for orders for forfeiture of another person's property. When ownership of property is unclear, a court may order each person to forfeit the person's property on a pro rata basis or by another means the court deems equitable.

K. Within the time period for filing an appeal following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was unconstitutionally excessive pursuant to the state or federal constitution.

L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted.

M. In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors, including:

(1) the seriousness of the criminal offense and its impact on the community, the duration of the criminal activity and the harm caused by the defendant;

(2) the extent to which the defendant participated in the offense;

(3) the extent to which the property was used in committing the offense;

(4) the sentence imposed for the commission of the crime that relates to the property that is subject to forfeiture; and

(5) whether the criminal offense was completed or attempted.

N. In determining the value of the property subject to forfeiture, the court may consider relevant factors, including the fair market value of the property and the hardship from the loss of a primary residence, motor vehicle or other property to the defendant's family members or others if the property is forfeited, in addition to any non-monetary intrinsic value of property that would cause the defendant to suffer if the forfeiture is realized.

O. The court shall not consider the value of the property to the state when it determines whether the forfeiture of the property is constitutionally excessive.

P. A party to a forfeiture proceeding may appeal a district court's decision regarding the seizure, forfeiture and distribution of property.

History: Laws 2002, ch. 4, § 6; 2015, ch. 152, § 7; 2019, ch. 133, § 6.

31-27-7. Title to seized property; disposition of forfeited property and abandoned property; proceeds.

A. The state acquires provisional title to seized property at the time the property was used or acquired in connection with an offense that subjects the property to forfeiture. Provisional title authorizes the state to hold and protect the property. Title to the property shall vest with the state when a trier of fact renders a final forfeiture verdict and the title relates back to the time when the state acquired provisional title; provided that the title is not subject to claims by third parties that are adjudicated pursuant to the Forfeiture Act.

B. Unless possession of the property is illegal or a different disposition is specifically provided for by law and except as provided in this section, forfeited property that is not currency shall be delivered along with any abandoned property to the state treasurer or the state treasurer's designee for disposition at a public auction. Forfeited currency and all proceeds of the sale of forfeited or abandoned property shall be distributed by the state treasurer as follows:

(1) first, to reimburse the reasonable expenses related to the storage, protection and transfer of the property incurred by a law enforcement agency or the state treasurer;

(2) second, to pay any reasonable expenses incurred to dispose of the property by a law enforcement agency or the state treasurer; and

(3) third, any remaining balance shall be deposited in the general fund.

C. Proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.

D. A law enforcement agency or public body that receives reimbursement pursuant to Subsection B of this section shall inform the state auditor of that fact at the time of the agency's or body's annual audit.

E. A forfeited property interest is subject to the interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and convincing evidence that the secured party had actual knowledge of the crime that relates to the seizure of the property.

F. Abandoned property shall be disposed of in the same manner as provided in Subsection B of this section.

G. Property subject to forfeiture that is in a law enforcement agency's possession becomes abandoned property and may be disposed of as such without a conviction if:

(1) there is no innocent owner; and

(2) the criminal prosecution of the owner of the seized property cannot proceed because for a period in excess of one year and one day:

(a) a bench warrant has been pending as a result of the defendant failing to appear; or

(b) the owner fugitates.

History: Laws 2002, ch. 4, § 7; 2015, ch. 152, § 8; 2019, ch. 133, § 7.

31-27-7.1. Innocent owners.

A. The property of an innocent owner, as provided in this section, shall not be forfeited.

B. A person who claims to be an innocent owner has the burden of production to show that the person:

(1) holds a legal right, title or interest in the property seized; and

(2) held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

C. The state shall immediately return property to an established innocent owner who has an interest in homesteaded property, a motor vehicle valued at less than ten

thousand dollars ($10,000) or a conveyance that is encumbered by a security interest that was perfected pursuant to state law or that is subject to a lease or rental agreement, unless the secured party or lessor had actual knowledge of the criminal act upon which the forfeiture was based.

D. If a person establishes that the person is an innocent owner pursuant to Subsection B of this section and the state pursues a forfeiture proceeding with respect to that person's property, other than property described in Subsection D of Section 31-27-7 NMSA 1978, to successfully forfeit the property, the state shall prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying crime giving rise to the forfeiture.

E. A person who acquired an ownership interest in property subject to forfeiture after the commission of a crime that gave rise to the forfeiture and who claims to be an innocent owner has the burden of production to show that the person has legal right, title or interest in the property seized under this section.

F. If a person establishes that the person is an innocent owner as provided in Subsection B of this section and the state pursues a forfeiture proceeding against the person's property, to successfully forfeit the property, the state shall prove by clear and convincing evidence that at the time the person acquired the property or an interest in the property, the person:

(1) had actual knowledge that the property was subject to forfeiture; or

(2) was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.

G. If the state fails to meet its burdens as provided in Subsections C and D of this section, the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the innocent owner's property without delay and the property shall be released without assessment of fees or costs.

H. Seized property that is firearms, ammunition or explosives subject to forfeiture under the protections of this section and that is not returned to an innocent owner shall be destroyed upon a motion by the law enforcement agency and an order of the court.

History: 1978 Comp., § 31-27-7.1, enacted by Laws 2015, ch. 152, § 9; 2019, ch. 133, § 8.

31-27-8. Safekeeping of seized property pending disposition.

With regard to seized property in the state courts:

A. seized currency alleged to be subject to forfeiture shall be deposited with the clerk of the district court in an interest-bearing account;

B. seized property other than currency or real property, not required by federal or state law to be destroyed, shall be placed under seal at a place designated by the district court;

C. seized property shall be kept by the custodian in a manner to protect it from theft or damage and, if ordered by the district court, insured against those risks; and

D. unless it is returned to an owner, a law enforcement agency shall dispose of forfeited or abandoned property as provided in Section 31-27-7 NMSA 1978.

History: Laws 2002, ch. 4, § 8; 2015, ch. 152, § 10; 2019, ch. 133, § 9.

31-27-9. Reporting.

A. Within sixty days following the conclusion of each fiscal year, every law enforcement agency shall prepare on a form approved by the department of public safety an annual report of the agency's seizures and forfeitures conducted pursuant to applicable state law, and seizures and forfeitures conducted pursuant to federal forfeiture law, and the report shall include:

(1) the total number of seizures of currency and the total amount of currency seized in each seizure;

(2) the total number of seizures of property and the number and types of items seized in each seizure;

(3) the market value of each item of property seized;

(4) the total number of occurrences of each class of crime that resulted in the agency's seizure of property;

(5) the costs incurred by the agency for storage, maintenance and transportation of seized property; and

(6) any proceeds received through equitable sharing, along with the federal case number and the final disposition of the case.

B. A law enforcement agency shall submit its annual reports to the department of public safety and to the district attorney's office in the agency's district. An agency that did not engage in seizure or forfeiture pursuant to the Forfeiture Act or local, state or federal forfeiture law shall report that fact in its annual report.

C. The department of public safety shall compile the reports submitted by each law enforcement agency and issue an aggregate report of all forfeitures in the state.

D. By November 1 of each year, the department of public safety shall publish on its website the department's aggregate report and individual law enforcement agency reports submitted for the previous fiscal year.

History: Laws 2015, ch. 152, § 11; 2019, ch. 133, § 10.

31-27-10. Return of property; damages; costs.

A. A law enforcement agency that holds seized property shall return the seized property to the owner of the property within a reasonable period of time that does not exceed five days after:

(1) a court finds that a person had a bona fide security interest in the property;

(2) a court finds that the owner was an innocent owner;

(3) the acquittal of or dismissal of related criminal charges against the owner of the property; or

(4) the disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

B. A law enforcement agency that holds seized property is responsible for any damages, storage fees and related costs applicable to property that is returned to an owner pursuant to this section.

History: Laws 2015, ch. 152, § 12.

31-27-11. Transfer of forfeitable property to the federal government.

A. A law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless:

(1) the value of the seized property exceeds fifty thousand dollars ($50,000), excluding the potential value of the sale of contraband; and

(2) the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or

(3) the seized property may only be forfeited under federal law.

B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property.

History: Laws 2015, ch. 152, § 13.

ARTICLE 28
Crime Reduction Grant

31-28-1. Short title.

Chapter 31, Article 28 NMSA 1978 may be cited as the "Crime Reduction Grant Act".

History: Laws 2019, ch. 192, § 5; 2022, ch. 56, § 31.

31-28-2. Definition.

As used in the Crime Reduction Grant Act, "commission" means the New Mexico sentencing commission.

History: Laws 2019, ch. 192, § 6; 2023, ch. 60, § 1.

31-28-3. Criminal justice coordinating councils created; composition; duties.

A. A criminal justice coordinating council is created for each judicial district and shall include representation from within the district for:

(1) each court in the district;

(2) the district attorney;

(3) the district public defender office;

(4) law enforcement agencies;

(5) jails;

(6) behavioral health programs; and

(7) other agencies and entities agreed upon by the council.

B. Each criminal justice coordinating council shall be convened by the chief judge of the district court in the judicial district. The commission shall assist in the organization of the criminal justice coordinating councils.

C. Each criminal justice coordinating council shall select a chair at its first meeting. The first meeting of each council shall take place by August 1, 2019, and the council shall subsequently meet at the call of the chair, but not less than ten months per year.

D. Each criminal justice coordinating council shall organize itself and adopt rules in a manner appropriate to accomplish its duties pursuant to the Crime Reduction Grant Act.

E. A criminal justice coordinating council shall develop a strategic plan to meet the requirements of this section and shall:

(1) review the criminal justice system in the judicial district, including judicial processes, law enforcement, community corrections alternatives and sufficiency of jail and detention facilities;

(2) identify criminal justice system problems in the judicial district;

(3) develop data-driven policies and evidence-based best practices designed to improve public safety outcomes, cost-effective responses to crime and fair and efficient adjudication processes;

(4) facilitate applications from its members for crime reduction grants pursuant to the Crime Reduction Grant Act;

(5) facilitate sharing of criminal justice information between agencies as permitted by law; and

(6) in consultation with the commission, develop data-sharing agreements and methods of data sharing to allow system-wide analysis of criminal justice operations within the judicial district and throughout the state.

F. Executive agencies and the administrative office of the courts shall provide prompt responses to criminal justice coordinating council requests for information.

History: Laws 2019, ch. 192, § 7; 2023, ch. 60, § 2.

31-28-4. Applications for grants; purposes; conditions.

A. A member of a criminal justice coordinating council with the consent of the council may apply to the commission for a grant to accomplish any of the enumerated purposes provided in Subsection B of this section.

B. Crime reduction grants may be made to:

(1) develop, expand and improve evidence-based treatment and supervision alternatives to incarceration;

(2) reduce barriers to participation by criminal offenders in preprosecution diversion or specialty court programs;

(3) develop or improve pretrial service programs;

(4) develop or improve coordination of services between law enforcement agencies and treatment programs;

(5) establish law enforcement crisis intervention teams;

(6) coordinate access to programs for transitional or reentry homes for individuals recently released from incarceration;

(7) recruit or retain law enforcement officers, prosecutors, public defenders, corrections officers and mental health workers;

(8) develop or expand digitized records;

(9) develop or expand the ability of a criminal justice coordinating council member to share data with, and access data on, the statewide criminal justice data integration platform;

(10) develop or expand data-driven policing programs and pretrial services;

(11) staff a criminal justice coordinating council; and

(12) purchase equipment or provide training to support any of the purposes provided in this section.

C. Crime reduction grants shall be conditioned on the criminal justice coordinating council and the recipient member complying with the following:

(1) using not more than five percent of a grant for administrative costs of the recipient;

(2) in consultation with the commission, developing data-sharing agreements and methods of data sharing among criminal justice agencies and with the commission to allow system-wide analysis of criminal justice operations within the judicial district and statewide;

(3) using or developing evidence-based best practices for any programs operated with crime reduction grants;

(4) developing performance measures in consultation with the commission relevant to the grantee's application;

(5) collecting data to evaluate the effectiveness of programs operated with crime reduction grants;

(6) evaluating quarterly the process, outputs, outcomes and other performance measures of programs funded with grants for compliance with all provisions of the Crime Reduction Grant Act;

(7) providing a quarterly report to the commission for review and comparison with other programs receiving grants for similar purposes; and

(8) providing an annual report to the commission by October 1 of each year regarding program outcomes from use of the grant.

D. The commission shall assist with the implementation of data-sharing agreements to ensure compliance with crime reduction grants.

E. The commission may consider any outcome reported to it by a grant recipient from a previous year in making a determination of whether to make subsequent grants or the amount of a subsequent grant.

History: Laws 2019, ch. 192, § 8; 2022, ch. 56, § 32; 2023, ch. 60, § 3.

31-28-5. Rules.

The commission shall promulgate uniform procedural rules necessary to administer the provisions of the Crime Reduction Grant Act.

History: Laws 2019, ch. 192, § 9; 2023, ch. 60, § 4.

31-28-6. Reports.

The commission shall report to the legislature annually by November 1 of each year regarding the:

A. applications for grants made during the previous fiscal year by each criminal justice coordinating council;

B. purpose and amount of each grant approved by the commission for each member for the previous fiscal year; and

C. processes, outputs and outcomes resulting from the use of the grant.

History: Laws 2019, ch. 192, § 10; 2023, ch. 60, § 5.

31-28-7. Crime reduction grant fund created; purpose.

The "crime reduction grant fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The commission shall administer the fund, and money in the fund is subject to appropriation to the commission to administer the provisions of the Crime Reduction Grant Act and award crime reduction grants to members of criminal justice coordinating councils to spur local innovation in criminal justice reform, pursuant to the Crime Reduction Grant Act. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the chair of the commission or the chair's authorized representative. The commission may expend no more than three percent of the balance of the fund each fiscal year for administering the Crime Reduction Grant Act. No money in the fund may be expended in any way except as provided by the Crime Reduction Grant Act.

History: Laws 2023, ch. 60, § 6.

ARTICLE 29
Uniform Collateral Consequences of Conviction

31-29-1. Short title.

This act [31-29-1 to 31-29-16 NMSA 1978] may be cited as the "Uniform Collateral Consequences of Conviction Act".

History: Laws 2021, ch. 58, § 1.

31-29-2. Definitions.

As used in the Uniform Collateral Consequences of Conviction Act:

A. "collateral consequence" means a collateral sanction or a disqualification;

B. "collateral sanction" means a penalty, disability or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense that applies by operation of law, whether or not the penalty, disability or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment or costs of prosecution;

C. "convicted" and "conviction" include an adjudication as a youthful offender or serious youthful offender that results in an adult sentence;

D. "decision-maker" means the state acting through the following entities or their employees:

(1) a department;

(2) an agency;

(3) an officer; or

(4) an instrumentality, including a political subdivision, an educational institution, a board or a commission or a government contractor, including a subcontractor, made subject to the Uniform Collateral Consequences of Conviction Act by contract, by law other than the Uniform Collateral Consequences of Conviction Act or by ordinance;

E. "disqualification" means a penalty, disability or disadvantage, however denominated, that an administrative agency, governmental official or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense;

F. "identification agency" means the New Mexico sentencing commission, acting in conjunction with the district attorneys of New Mexico and the attorney general;

G. "offense" means a felony pursuant to the law of New Mexico, another state or the United States;

H. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity; and

I. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

History: Laws 2021, ch. 58, § 2.

31-29-3. Limitation on scope.

A. The Uniform Collateral Consequences of Conviction Act does not provide a basis for:

(1) invalidating a plea, conviction or sentence;

(2) a cause of action for money damages; or

(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with the Uniform Collateral Consequences of Conviction Act.

B. The Uniform Collateral Consequences of Conviction Act does not affect:

(1) the duty an individual's attorney owes to the individual, except as provided in Section 5 [31-29-5 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy pursuant to law other than the Uniform Collateral Consequences of Conviction Act available to an individual convicted of an offense.

History: Laws 2021, ch. 58, § 3.

31-29-4. Identification, collection and publication of laws regarding collateral consequences.

A. The identification agency:

(1) shall identify or cause to be identified:

(a) any provision in the constitution of New Mexico and New Mexico's statutes published in the New Mexico Statutes Annotated that imposes a collateral sanction or authorizes the imposition of a disqualification; and

(b) any provision of law that may afford relief from a collateral consequence;

(2) not later than six months after the effective date of the Uniform Collateral Consequences of Conviction Act, shall prepare or cause to be prepared a collection of citations to, and the text or short descriptions of, the provisions identified pursuant to Paragraph (1) of this subsection;

(3) shall update or cause to be updated the collection provided for in Paragraph (2) of this subsection within three months after the laws enacted during each session of the legislature are published in the New Mexico Statutes Annotated; and

(4) in complying with Paragraphs (1) and (2) of this subsection, may rely on the study of New Mexico's collateral sanctions, disqualifications and relief provisions prepared by the national institute of justice described in Section 510 of the federal Court Security Improvement Act of 2007, Pub. L. 110-177.

B. As required by Subsection A of this section, the identification agency shall include or cause to be included the following statements in a prominent manner at the beginning of the collection:

(1) "This collection has not been enacted into law and does not have the force of law.";

(2) "An error or omission in this collection, or in any reference work cited in this collection, is not a reason for invalidating a plea, conviction or sentence or for not imposing a collateral sanction or authorizing a disqualification.";

(3) "The laws of other jurisdictions and New Mexico counties and municipalities and the New Mexico Administrative Code are not included in this collection and may impose additional collateral sanctions and authorize additional disqualifications."; and

(4) "This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after [insert date the collection was prepared or last updated].".

C. The identification agency shall publish or cause to be published in the manner provided in Subsection D of this section the collection prepared and updated as required by Subsection A of this section. If available, the identification agency shall publish or cause to be published, as part of the collection, the title and internet address of:

(1) the most recent collection of collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral consequence.

D. The collection provided for in Subsection C of this section shall be published on the website of the identification agency and shall be available to the public on the internet without charge not later than three weeks after it is created or updated.

History: Laws 2021, ch. 58, § 4.

31-29-5. Notice of collateral consequences in pretrial proceeding and at guilty plea.

A. Except as provided in Subsection C of this section, counsel representing an individual charged with an offense shall cause written notice substantially similar to the following to be communicated to the individual:

"NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

If you plead guilty or no contest to an offense, or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, probation, periods of parole and fines. These consequences may include:

1. being unable to get or keep some licenses, permits or jobs;

2. being unable to get or keep benefits such as public housing or education;

3. receiving a harsher sentence if you are convicted of another offense in the future;

4. having the government take your property; and

5. being unable to vote or possess a firearm.

If you are not a United States citizen, a guilty plea or no contest plea or conviction may also result in your deportation, removal or exclusion from admission to the United States or denial of citizenship.

The law may provide ways to obtain some relief from these consequences.

Further information about the consequences of conviction is available on the internet at [*insert internet address of the collection of laws published pursuant to Subsections C and D of Section 4 [31-29-4 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act*].".

B. Before a court accepts a plea of guilty or no contest from an individual, the court shall confirm that the individual received and understands the notice required by Subsection A of this section and has had an opportunity to discuss the notice with counsel.

C. The notice required pursuant to Subsection A of this section need not be given until six months have elapsed after the collection of laws required pursuant to Section 4 of the Uniform Collateral Consequences of Conviction Act is first available on the internet pursuant to Subsections C and D of Section 4 of that act.

D. This section does not limit the duty that an individual's counsel otherwise owes to the individual.

History: Laws 2021, ch. 58, § 5.

31-29-6. Notice of collateral consequences at sentencing and upon release.

A. An individual convicted of an offense shall be given notice as provided in Subsections B and C of this section:

(1) that collateral consequences may apply because of the conviction;

(2) of the internet address of the collection of laws published pursuant to Subsections C and D of Section 4 [31-29-4 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act;

(3) that there may be ways to obtain relief from collateral consequences;

(4) of contact information for government or nonprofit agencies, groups or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

(5) of when an individual convicted of an offense may vote pursuant to New Mexico law.

B. Except as provided in Subsection D of this section, the court shall provide the notice set forth in Subsection A of this section as a part of sentencing.

C. Except as provided in Subsection D of this section, if an individual is sentenced to imprisonment or other incarceration, the officer or agency releasing the individual shall provide the notice set forth in Subsection A of this section not more than thirty and, if practicable, at least five days before release.

D. The notice required pursuant to Subsection A of this section need not be given until six months have elapsed after the collection of laws required pursuant to Section 4 of the Uniform Collateral Consequences of Conviction Act is first available on the internet pursuant to Subsections C and D of Section 4 of that act.

History: Laws 2021, ch. 58, § 6.

31-29-7. Authorization required for sanction; ambiguity.

A. A collateral sanction may be imposed only by statute or ordinance or by a rule authorized by law and adopted in accordance with applicable law.

B. A law creating a collateral consequence that is ambiguous as to whether it imposes a collateral sanction or authorizes a disqualification shall be construed as authorizing a disqualification.

History: Laws 2021, ch. 58, § 7.

31-29-8. Decision to disqualify.

In deciding whether to impose a disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision-maker may consider, if substantially related to the benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the essential elements of the offense. A conviction itself shall not be considered except as having established the elements of the offense. The decision-maker shall also consider other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief.

History: Laws 2021, ch. 58, § 8.

31-29-9. Effect of conviction by another state or the United States; relieved or pardoned conviction.

A. For purposes of authorizing or imposing a collateral consequence in New Mexico, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in New Mexico with the same elements. If there is no offense in New Mexico with the same elements, the conviction is deemed a conviction of the most serious offense in New Mexico that is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction shall not be deemed a felony in New Mexico, and an offense lesser than a misdemeanor in the jurisdiction of conviction shall not be deemed a conviction of a felony or misdemeanor in New Mexico.

B. For purposes of authorizing or imposing a collateral consequence in New Mexico, a juvenile adjudication in another state or the United States shall not be deemed a conviction of a felony, misdemeanor or offense lesser than a misdemeanor in New Mexico.

C. A conviction that is reversed, overturned or otherwise vacated by a court of competent jurisdiction of New Mexico, another state or the United States on grounds other than rehabilitation or good behavior shall not serve as the basis for authorizing or imposing a collateral consequence in New Mexico.

D. A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing and relieving a collateral consequence in New Mexico as it has in the issuing jurisdiction.

E. A conviction that has been relieved by expungement, sealing, annulment, set-aside or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in New Mexico as it has in the jurisdiction of conviction; provided, however, that such relief or restoration of civil rights does not relieve collateral consequences applicable pursuant to the law of New Mexico for which relief could not be granted pursuant to Section 11 [31-29-11 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief pursuant to Section 10 [31-29-10 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act from any collateral consequence for which relief was not granted in the issuing jurisdiction except those consequences listed in Section 11 of that act.

F. A charge or prosecution in any jurisdiction that has been finally terminated without a conviction and imposition of sentence based on participation in a deferred

adjudication or diversion program shall not serve as the basis for authorizing or imposing a collateral consequence in New Mexico. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program before or after the termination of the charge or prosecution.

History: Laws 2021, ch. 58, § 9.

31-29-10. Order of limited relief.

A. An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing. The petition shall be presented to the sentencing court before sentencing.

B. Except as otherwise provided in Section 11 [31-29-11 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in Subsection A of this section only if, after reviewing the petition, the individual's criminal history, any filing by a victim pursuant to Section 14 [31-29-14 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act or a prosecutor and any other relevant evidence, the court finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

C. An order of limited relief may be issued as a part of sentencing. The order of limited relief shall specify:

(1) the collateral sanction from which relief is granted; and

(2) any restriction imposed pursuant to Subsection A of Section 12 [31-29-12 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act.

D. An order of limited relief relieves a collateral sanction to the extent provided in the order.

E. If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in Section 8 [31-29-8 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act.

History: Laws 2021, ch. 58, § 10.

31-29-11. Collateral sanctions not subject to order of limited relief.

An order of limited relief shall not be issued to relieve the following collateral sanctions:

A. requirements imposed by the Sex Offender Registration and Notification Act;

B. a motor vehicle license suspension, revocation, limitation or ineligibility pursuant to the Motor Vehicle Code [66-1-1 NMSA 1978], for which restoration or relief is available pursuant to law other than the Uniform Collateral Consequences of Conviction Act;

C. ineligibility for certification as a law enforcement officer pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978] or for employment as a correctional officer pursuant to the Corrections Act [33-1-1 to 33-1-9 NMSA 1978]; or

D. prohibitions imposed pursuant to Section 30-7-16 NMSA 1978 making it unlawful for felons to receive, transport or possess a firearm or destructive device while in this state.

History: Laws 2021, ch. 58, § 11.

31-29-12. Issuance of order of limited relief.

A. The prosecutor shall be notified of a request for an order of limited relief. The court may issue an order of limited relief subject to restriction, condition or additional requirement.

B. The court shall order any test, report, investigation or disclosure by the individual it reasonably believes necessary to its decision to issue an order of limited relief. If there are disputed issues of material fact or law, the individual and any prosecutor notified pursuant to Subsection A of this section or another prosecutorial agency designated by a prosecutor notified pursuant to Subsection A of this section may submit evidence and be heard on those issues.

History: Laws 2021, ch. 58, § 12.

31-29-13. Reliance on order as evidence of due care.

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program or otherwise transacting business or engaging in activity with the individual to whom the order was issued if the person knew of the order at the time of the alleged negligence or other fault.

History: Laws 2021, ch. 58, § 13.

31-29-14. Victim's rights.

A victim of an offense may participate in a proceeding for issuance of an order of limited relief in the same manner as at a sentencing proceeding pursuant to the Victims of Crime Act [Chapter 31, Article 26 NMSA 1978].

History: Laws 2021, ch. 58, § 14.

31-29-15. Uniformity of application and construction.

In applying and construing the Uniform Collateral Consequences of Conviction Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2021, ch. 58, § 15.

31-29-16. Saving and transitional provisions.

A. Except as provided in Subsection B of this section, the Uniform Collateral Consequences of Conviction Act applies to collateral consequences whenever enacted or imposed unless the law creating the collateral consequence expressly states that the Uniform Collateral Consequences of Conviction Act does not apply.

B. The Uniform Collateral Consequences of Conviction Act does not apply to the imposition of a collateral sanction on an individual until the date that is six months after the collection of laws required pursuant to Section 4 [31-29-4 NMSA 1978] of the Uniform Collateral Consequences of Conviction Act is first available on the internet pursuant to Subsections C and D of Section 4 of that act, but a collateral sanction validly imposed before that date may be the subject of relief pursuant to that act.

History: Laws 2021, ch. 58, § 16.

ARTICLE 30
Violence Intervention Program

31-30-1. Short title.

Sections 38 through 46 [31-30-1 to 31-30-9 NMSA 1978] of this act may be cited as the "Violence Intervention Program Act".

History: Laws 2022, ch. 56, § 38.

31-30-2. Definitions.

As used in the Violence Intervention Program Act:

A. "commission" means the New Mexico sentencing commission;

B. "community-based service provider" means an entity that is eligible to be awarded a contract to provide services that accomplish the purposes of the Violence Intervention Program Act;

C. "department" means the department of health; and

D. "grantee" means a state agency, county, municipality or tribal government that has applied for and received funding pursuant to the Violence Intervention Program Act for the purposes of addressing gun violence and aggravated assaults in a locally focused geographic area.

History: Laws 2022, ch. 56, § 39.

31-30-3. Violence intervention program fund; created; purpose.

The "violence intervention program fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The department shall administer the fund, and money in the fund is appropriated to the department to administer the provisions of the Violence Intervention Program Act and award violence intervention program grants to state agencies, counties, municipalities or tribal governments that the department finds are disproportionately impacted by violent crimes, including homicides, shootings and aggravated assaults. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of health. The department may expend no more than three percent of the balance of the fund each fiscal year for administering the Violence Intervention Program Act. No money in the fund may be expended in any way except as provided by the Violence Intervention Program Act.

History: Laws 2022, ch. 56, § 40.

31-30-4. Violence intervention program requirements.

A violence intervention program shall:

A. use an evidence- or research-based public health approach to reduce gun violence and aggravated assaults;

B. use focused deterrence, problem-oriented policing and proven law enforcement strategies to reduce gun violence and aggravated assaults;

C. target a population that is at high risk for victimization or retaliation that results from gun violence or aggravated assault through engaging in the cycles of violence in the community;

D. use data-driven methods for program development; and

E. use program funding in a manner that is directly related to the reduction of gun violence and aggravated assaults.

History: Laws 2022, ch. 56, § 41.

31-30-5. Grant awards.

A. On or after July 1, 2022, the department shall receive and review applications for grants from the violence intervention program fund. The department may make grants from the fund to state agencies, counties, municipalities or tribal governments that the department finds are disproportionately impacted by violent crimes, including homicides, shootings and aggravated assaults.

B. The department shall make awards of grants from the fund in accordance with the following limitations:

(1) grant awards shall be made to at least two counties, municipalities or tribal governments with a population of fifty thousand or less according to the most recent annual university of New Mexico intercensal population estimate;

(2) at least twenty percent of the total annual amount appropriated to the fund shall be awarded to counties or municipalities with a population of five hundred forty thousand or greater according to the most recent federal decennial census; and

(3) the department of health shall utilize the funds in accordance with department of finance and administration guidelines.

History: Laws 2022, ch. 56, § 42.

31-30-6. Application requirements.

A. Each application for a grant from the violence intervention program fund shall include:

(1) clearly defined, measurable objectives for a proposal to improve public health and safety through evidence-based violence reduction interventions;

(2) a comprehensive violence reduction strategic plan, including consistent quality improvement and quality assurance measures, and a description of the strategies and tasks developed by a state agency, county, municipality or tribal

government describing the goals of the plan, including community-based services or joint community-based services and law enforcement intervention strategies;

(3) a description of how a grant award would be used if awarded; and

(4) a list of community-based service providers in the locally focused geographic area in which the grant funds would be used, including those with an expressed commitment to participating in a violence intervention program.

B. The commission shall provide state agencies, counties, municipalities and tribal governments with data relevant to grant applications.

C. An applicant shall notify the appropriate criminal justice coordinating council established pursuant to Section 31-28-3 NMSA 1978 of its grant application.

History: Laws 2022, ch. 56, § 43.

31-30-7. Conditions of grant.

A. As a condition of each grant made pursuant to the Violence Intervention Program Act, the department shall require each grantee to use at least fifty percent of its grant for the purpose of entering into contracts with one or more community-based service providers.

B. Each grantee shall report to the appropriate criminal justice coordinating council established pursuant to Section 31-28-3 NMSA 1978 regarding outcomes of the grant.

C. A grant may be awarded to a county or municipality, but shall not be awarded to both a county and a municipality falling within the county.

History: Laws 2022, ch. 56, § 44.

31-30-8. Rules.

The department shall adopt rules necessary to administer the provisions of the Violence Intervention Program Act, including standardized rules pertaining to the collection and sharing of data by grantees.

History: Laws 2022, ch. 56, § 45.

31-30-9. Reports.

A. Each grantee shall report to the department and the commission by November 1 of each year regarding the:

(1) purpose and amount of each grant received by the grantee for the previous fiscal year; and

(2) processes, outputs and outcomes resulting from each grant approved by the department for the previous fiscal year, including relevant data as required by department rules.

B. Each year through 2027, the department and the commission shall report to the legislature by December 1 regarding the awards and outcomes of each grantee.

History: Laws 2022, ch. 56, § 46.