

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

N.M. Stat. Ann.

N.M. Stat. Ann. § 30-37-1. Definitions

- As used in this act:
 - A. "minor" means any unmarried person who has not reached his eighteenth birthday;
 - B. "nudity" means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state;
 - C. "sexual conduct" means act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;
 - D. "sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
 - E. "sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;
 - F. "harmful to minors" means that quality of any description of representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:
 - (1) predominantly appeals to the prurient, shameful or morbid interest of minors; and
 - (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (3) is utterly without redeeming social importance for minors; and
 - G. "knowingly" means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of:
 - (1) the character and content of any material described herein, which is reasonably susceptible of examination by the defendant;
 - (2) the age of the minor.

§ 30-37-2. Offenses; books; pictures

- It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:
 - A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or
 - B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

§ 30-37-2.1. Offenses; retail display

- A. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the cover of which depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement and which is harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such books, magazines or printed materials may be displayed behind an opaque covering which conceals the depiction of nudity, sado-masochistic abuse, sexual conduct or sexual excitement, provided that those books, magazines or printed materials are not within the convenient reach of minors who may frequent the retail establishment.
- B. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the content of which exploits, is devoted to or is principally made up of descriptions or depictions of nudity, sado-masochistic abuse, sexual conduct or sexual excitement and which are harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.

§ 30-37-3. Offenses; motion pictures; plays

It is unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

§ 30-37-3.1. Outdoor theaters; offenses

- A. It is unlawful for the owner or operator of an outdoor motion picture theater to show or exhibit any motion picture which in whole or in part depicts unclothed sexual conduct in an outdoor theater unless the exhibitor can prove that the outdoor screen on which the picture is to be shown cannot be seen by any minor who has not taken extraordinary measures to view the screen or who is not within the area provided for those persons who have been admitted by a ticket or pass.
- B. As used in this section, "unclothed sexual conduct" means an act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's unclothed genitals, pubic area or buttocks.
- C. The notice provisions of Section 30-37-4 NMSA 1978 shall not apply to this section.

§ 30-37-3.2. Child solicitation by electronic communication device

- A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- B. Whoever commits child solicitation by electronic communication device is guilty of a:
 - (1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or
 - (2) third degree felony if the child is under thirteen years of age.
- C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:
 - (1) third degree felony if the child is at least thirteen but under sixteen years of age; or
 - (2) second degree felony if the child is under thirteen years of age.
- D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.
- E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.
- F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

§ 30-37-3.3. Criminal sexual communication with a child; penalty

- A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.
- B. Whoever commits sexual communication with a child is guilty of a fourth degree felony.
- C. As used in this section:
 - (1) "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and
 - (2) "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

§ 30-37-4. Notice; prosecution

- A. No prosecution based under this act shall be commenced unless the district attorney of the county in which the offense occurs shall have previously determined that the matter or performance is harmful to minors and the defendant shall have received actual or constructive notice of such determination. Persons shall be presumed to have constructive notice of such determination on the fifth business day following publication of a notice of such determination in a newspaper of general circulation in the county in which the prosecution takes place.

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- B. Any person adversely affected by such determination may, at any time within thirty days after such notice is given, seek a judicial determination of its correctness. The court shall, unless otherwise agreed by the parties, render judgment not later than two court days following trial. Filing of an action under this section shall stay prosecution until a judicial determination is rendered, but no appeal shall have such effect unless so ordered by the trial court.
- C. No criminal action shall be commenced in any other judicial district within this state during the pendency of the civil action authorized by Subsection B of Section 4 [this section] regarding the same matter, exhibition or performance.

§ 30-37-5. Exclusions; defenses

- No person shall be guilty of violating the provisions of this act:
 - A. where such person had reasonable cause to believe that the minor involved had reached his eighteenth birthday, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor had reached his eighteenth birthday; or
 - B. if the minor was accompanied by his parent or guardian, or the parent or guardian has in writing waived the application of this act either generally or with reference to the particular transaction; or
 - C. where such person had reasonable cause to believe that the person was the parent or guardian of the minor; or
 - D. where such person is a bona fide school, museum or public library, or is acting in his capacity as an employee of such organization, or as a retail outlet affiliated with and serving the educational purposes of such organization.

§ 30-37-6. Offenses by minor

- A. It is unlawful for any minor to falsely represent to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that such minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 [30-37-2 NMSA 1978] of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 [30-37-3 NMSA 1978] of this act.
- B. It is unlawful for any person to knowingly make a false representation to any person mentioned in Section 2 or Section 3 [30-37-2 or 30-37-3 NMSA 1978] of this act, or to his agent, that he is the parent or guardian of any minor, or that any minor has reached his eighteenth birthday, with the intent to procure any material set forth in Section 2 [30-37-2 NMSA 1978] of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation, as set forth in Section 3 [30-37-3 NMSA 1978] of this act.

§ 30-37-7. Penalties

- A. A person violating Section 30-37-2, 30-37-2.1, 30-37-3 or 30-37-3.1 NMSA 1978 is guilty of a misdemeanor.

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- B. Any person violating the provisions of Section 30-37-6 NMSA 1978 shall be guilty of a petty misdemeanor.

§ 30-37-8. Uniform application

In order to provide for the uniform application of this act to all minors within this state, it is intended that the sole and only regulation of the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to, or exhibition of, any performance described in Section 3 [30-37-3 NMSA 1978], shall be under this act, and no municipality, county or other governmental unit within this state shall make any law, ordinance or regulation relating to the sale, distribution or provision of any matter described in Section 2 [30-37-2 NMSA 1978], or admission to any performance described in Section 3 [30-37-3 NMSA 1978], including but not limited to criminal offenses, classification of suitable matter or performances for minors, or licenses or taxes respecting the sale, distribution, exhibition or provision of matter regulated under this act. All such laws, ordinances, regulations, taxes or licenses, whether enacted before or after this act, shall be or become void, unenforceable and of no effect upon the effective date of this act.

§ 30-37-9. Legislative findings and purpose

The legislature finds that children do not have the judgment necessary to protect themselves from harm and that the legislature has the inherent power to control commercial conduct within this state for the protection of minors in a manner that reaches beyond the scope of its authority to protect adults. The legislature also finds that regulation of content at outdoor theaters does not deprive adults from viewing that content at indoor theaters.

§ 30-37-10. Offenses; certain tie-in arrangements unlawful

- A. It is unlawful for any person offering for sale, selling or distributing books, magazines or other printed material to require, as a condition for any such sale or delivery, that the purchaser or receiver of the delivery purchase or accept the delivery of any other book, magazine or other printed matter which contains sexually oriented material harmful to minors as defined in Subsection F of Section 30-37-1 NMSA 1978. Nothing in this subsection prohibits the sale or purchase on a voluntary basis of books, magazines or other printed material containing sexually oriented material.
- B. Any person violating the provisions of Subsection A of this section shall be guilty of a misdemeanor.

§ 30-38-1. Outdoor motion picture theatres; prohibited from showing obscene films

- A. It is unlawful for the owner or operator of an outdoor motion picture theatre to exhibit any **obscene** film in an outdoor theatre.
- B. For purposes of this section, "**obscene** film" means a film that:

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (1) the average person applying contemporary community standards would find that, when considered or taken as a whole, appeals to the prurient interests;
- (2) the material depicts or describes sexual conduct in a patently offensive way by representations of ultimate sexual acts, normal or perverted, actual or simulated; masturbation, excretory functions or lewd exhibitions of the genitals of oneself or another; tactile stimulation of the genitals of oneself or another; and
- (3) the work when considered or taken as a whole lacks serious literary, artistic, political or scientific value.
- C. It is unlawful for any person to violate the provisions of Subsection A of this section. In the event a person violates the provisions of Subsection A of this section any representative of the local government involved may, upon notice to the offending person, seek an injunction in the district court to enjoin the showing of the offending film.

§ 30-38-2. Applicability

The provisions of Section 1 [30-38-1 NMSA 1978] of this act shall only be enforced in those political subdivisions that have adopted by ordinance the provisions of Section 1 of this act. Any ordinance that has been adopted by a political subdivision that is in conflict with the provisions of Section 1 of this act shall be void. In the event a county adopts by ordinance the provisions of Section 1 of this act, those provisions shall not be enforceable by the county within the territorial boundaries of any incorporated municipality located in the county.

§ 30-9-20. Voyeurism prohibited; penalties

- A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:
 - (1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or
 - (2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.
- B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.
- C. As used in this section:
 - (1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and
 - (2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

§ 30-9-14. Indecent exposure

- A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view.
- B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- C. Whoever commits indecent exposure is guilty of a misdemeanor.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.

§ 30-9-14.1. Indecent dancing

Indecent dancing consists of a person knowingly and intentionally exposing his intimate parts to public view while dancing or performing in a licensed liquor establishment.

"Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola, and "exposing" does not include any act in which the intimate part is covered by any nontransparent material. Whoever commits indecent dancing is guilty of a petty misdemeanor.

A liquor licensee, his transferee or their lessee or agent who allows indecent dancing on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [[60-3A-1 NMSA 1978](#)].

§ 30-9-14.2. Indecent waitering

Indecent waitering consists of a person knowingly and intentionally exposing his intimate parts to public view while serving beverage or food in a licensed liquor establishment.

"Intimate parts" means the mons pubis, penis, testicles, mons veneris, vulva, female breast or vagina. As used in this section, "female breast" means the areola and "exposing" does not include any act in which the intimate part is covered by any nontransparent material. Whoever commits indecent waitering is guilty of a petty misdemeanor.

A liquor licensee or his lessee or agent who allows indecent waitering on the licensed premises is guilty of a petty misdemeanor and his license may be suspended or revoked pursuant to the provisions of the Liquor Control Act [[60-3A-1 NMSA 1978](#)].

§ 30-9-14.3. Aggravated indecent exposure

- A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:
 - (1) exposure to a child less than eighteen years of age;
 - (2) assault, as provided in [Section 30-3-1 NMSA 1978](#);
 - (3) aggravated assault, as provided in [Section 30-3-2 NMSA 1978](#);

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (5) battery, as provided in Section 30-3-4 NMSA 1978;
- (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- or
- (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.
- B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.
- C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.
- D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

§ 30-9-1. Enticement of child

- Enticement of child consists of:
 - A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 to 30-9-9 NMSA 1978] of the Criminal Code; or
 - B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.
- Whoever commits enticement of child is guilty of a misdemeanor.

§ 30-6A-1. Short title

- Sections 1 through 4 [30-6A-1 to 30-6A-4 NMSA 1978] of this act may be cited as the "Sexual Exploitation of Children Act."

§ 30-6A-2. Definitions

- As used in the Sexual Exploitation of Children Act [30-6A-1 NMSA 1978]:
 - A. "prohibited sexual act" means:
 - (1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
 - (2) bestiality;
 - (3) masturbation;
 - (4) sadomasochistic abuse for the purpose of sexual stimulation; or
 - (5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;
 - B. "visual or print medium" means:
 - (1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;
- C. "performed publicly" means performed in a place that is open to or used by the public;
- D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and
- E. "obscene" means any material, when the content if taken as a whole:
 - (1) appeals to a prurient interest in sex, as determined by the average person applying contemporary community standards;
 - (2) portrays a prohibited sexual act in a patently offensive way; and
 - (3) lacks serious literary, artistic, political or scientific value.

§ 30-6A-3. Sexual exploitation of children

- A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.
- B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.
- C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.
- D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony.
- E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- F. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.
- G. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978.

§ 30-6A-4. Sexual exploitation of children by prostitution

- A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.
- B. Any person hiring or offering to hire a child over the age of thirteen and under the age of sixteen to engage in any prohibited sexual act is guilty of a second degree felony.
- C. Any parent, legal guardian or person having custody or control of a child under sixteen years of age who knowingly permits that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act is guilty of a third degree felony.

§ 30-6-3. Contributing to delinquency of minor

Contributing to the delinquency of a minor consists of any person committing any act or omitting the performance of any duty, which act or omission causes or tends to cause or encourage the delinquency of any person under the age of eighteen years.

Whoever commits contributing to the delinquency of a minor is guilty of a fourth degree felony.

§ 3-18-17. Nuisances and offenses; regulation or prohibition

- A municipality, including a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, may by ordinance:
 - A. define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist; provided that:
 - (1) the total amount of assessed penalties, fines, fees and costs imposed by an ordinance for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall not exceed one hundred dollars (\$ 100), provided that the total for unlawful parking in a space or for blocking an access intended for persons with

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

significant mobility limitation shall not be less than or exceed the fines provided in Section 66-7-352.5 NMSA 1978;

- (2) in a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines, fees, costs and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:
 - (a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties, fines, fees and costs assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;
 - (b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed in penalties, fines, fees and costs by the municipality shall be remitted to the state treasurer and distributed to the administrative office of the courts, of which ten percent shall be credited to DWI drug court programs and ninety percent shall be transferred to the New Mexico finance authority for deposit into the metropolitan court bond guarantee fund; and 2) one-half shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;
 - (c) in fiscal year 2009, and annually thereafter, the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;
 - (d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and
 - (e) a hearing provided for a contested nuisance ordinance offense or violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance; and

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (3) in a municipality other than a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines, fees, costs and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:
 - (a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties, fines, fees and costs assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;
 - (b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed in penalties, fines, fees and costs by the municipality shall be remitted to the state treasurer, of which sixty-five percent shall be credited to the court automation fund, twenty percent to the traffic safety education and enforcement fund and fifteen percent to the judicial education fund; and 2) one-half of the net total amount assessed in penalties, fines, fees and costs shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;
 - (c) in fiscal year 2009, and annually thereafter, the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph and the money collected and distributed pursuant to this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;
 - (d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and
 - (e) a hearing provided for a contested nuisance ordinance offense or violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for offenses or violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance;

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- B. regulate or prohibit any amusement or practice that tends to annoy persons on a street or public ground; and
- C. prohibit and suppress:
 - (1) gambling and the use of fraudulent devices or practices for the purpose of obtaining money or property;
 - (2) the sale, possession or exhibition of **obscene** or immoral publications, prints, pictures or illustrations;
 - (3) public intoxication;
 - (4) disorderly conduct; and
 - (5) riots, noises, disturbances or disorderly assemblies in any public or private place.

§ 30-20-12. Use of telephone to terrify, intimidate, threaten, harass, annoy or offend; penalty

- A. It shall be unlawful for any person, with intent to terrify, intimidate, threaten, harass, annoy or offend, to telephone another and use any **obscene**, lewd or profane language or suggest any lewd, criminal or lascivious act, or threaten to inflict injury or physical harm to the person or property of any person. It shall also be unlawful for any person to attempt by telephone to extort money or other thing of value from any other person, or to otherwise disturb by repeated anonymous telephone calls the peace, quiet or right of privacy of any other person at the place where the telephone call or calls were received, or to maliciously make a telephone call, whether or not conversation ensues, with intent to annoy or disturb another, or to disrupt the telecommunications of another.
- B. The use of **obscene**, lewd or profane language or the making of a threat or statement as set forth in Subsection A shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.
- C. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.
- D. Whosoever violates this section is guilty of a misdemeanor, unless such person has previously been convicted of such offense or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, in which case such person is guilty of a fourth degree felony.

§ 32A-4-2. Definitions

- As used in the Abuse and Neglect Act [32A-4-1 NMSA 1978]:
 - A. "abandonment" includes instances when the parent, without justifiable cause:
 - (1) left the child without provision for the child's identification for a period of fourteen days; or
 - (2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- (a) three months if the child was under six years of age at the commencement of the three-month period; or
- (b) six months if the child was over six years of age at the commencement of the six-month period;
- B. "abused child" means a child:
 - (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
 - (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
 - (3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;
 - (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
 - (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;
- C. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:
 - (1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
 - (2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;
 - (3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
 - (4) had parental rights over a sibling of the child terminated involuntarily;
- D. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;
- E. "neglected child" means a child:
 - (1) who has been abandoned by the child's parent, guardian or custodian;
 - (2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
 - (3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;
 - (4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or
 - (5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code [32A-1-1 NMSA 1978] shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected

NEW MEXICO STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

- child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;
- F. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:
 - (1) there is not a justifiable explanation for the condition or death;
 - (2) the explanation given for the condition is at variance with the degree or nature of the condition;
 - (3) the explanation given for the death is at variance with the nature of the death; or
 - (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;
 - G. "sexual abuse" includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;
 - H. "sexual exploitation" includes but is not limited to:
 - (1) allowing, permitting or encouraging a child to engage in prostitution;
 - (2) allowing, permitting, encouraging or engaging a child in **obscene** or pornographic photographing; or
 - (3) filming or depicting a child for **obscene** or pornographic commercial purposes, as those acts are defined by state law; and
 - I. "transition plan" means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation.