

Chapter 30. Criminal Offenses

Article 7. Weapons and Explosives

**30-7-1. "Carrying a deadly weapon."** "Carrying a deadly weapon" means being armed with a deadly weapon by having it on the person, or in close proximity thereto, so that the weapon is readily accessible for use.

**30-7-2. Unlawful carrying of a deadly weapon.**

**A.** Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

(1) in the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;

(2) in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property;

(3) by a peace officer in accordance with the policies of his law enforcement agency who is certified pursuant to the Law Enforcement Training Act [29-7-1 to 29-7-11 NMSA 1978]; or

(4) by a peace officer in accordance with the policies of his law enforcement agency who is employed on a temporary basis by that agency and who has successfully completed a course of firearms instruction prescribed by the New Mexico law enforcement academy or provided by a certified firearms instructor who is employed on a permanent basis by a law enforcement agency.

**B.** Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.

**C.** Whoever commits unlawful carrying of a deadly weapon is guilty of a petty misdemeanor.

**30-7-2.1. Unlawful carrying of a deadly weapon on school premises.**

**A.** Unlawful carrying of a deadly weapon on school premises consists of carrying a deadly weapon on school premises except by:

(1) a peace officer;

(2) school security personnel;

(3) a student, instructor or other school-authorized personnel engaged in army, navy, marine corps or air force reserve officer training corps programs or state-authorized hunter safety training instruction;

(4) a person conducting or participating in a school-approved program, class or other activity involving the carrying of a deadly weapon; or

(5) a person older than nineteen years of age on school premises in a private automobile or other private means of conveyance, for lawful protection of the person's or another's person or property.

**B.** As used in this section, "school premises" means:

(1) the buildings and grounds, including playgrounds, playing fields and parking areas and any school bus of any public elementary, secondary, junior high or high school in or on which school or school-related activities are being operated under the supervision of a local school board; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and sanctioned activities are being performed.

**C.** Whoever commits unlawful carrying of a deadly weapon on school premises is guilty of a fourth degree felony.

**30-7-2.2. Unlawful possession of a handgun by a person; exceptions; penalty.**

**A.** Unlawful possession of a handgun by a person consists of a person knowingly having a handgun in his possession or knowingly transporting a handgun, except when the person is:

(1) in attendance at a hunter's safety course or a handgun safety course;

(2) engaging in the use of a handgun for target shooting at an established range authorized by the governing body of the jurisdiction in which the range is located or in an area where the discharge of a handgun without legal justification is not prohibited by law;

(3) engaging in an organized competition involving the use of a handgun;

(4) participating in or practicing for a performance by an organization that has been granted exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered;

(5) legal hunting or trapping activities;

(6) traveling, with an unloaded handgun in his possession, to or from an activity described in Paragraph (1), (2), (3), (4) or (5) of this subsection; or

(7) on real property under the control of the person's parent, grandparent or legal guardian and the person is being supervised by his parent, grandparent or legal guardian.

**B.** A person who commits unlawful possession of a handgun by a person is guilty of a misdemeanor.

**C.** As used in this section:

(1) "person" means an individual who is less than nineteen years old; and

(2) "handgun" means a loaded or unloaded pistol, revolver or firearm which will or is designed to or may readily be converted to expel a projectile by the action of an explosion and the barrel length of which, not including a revolving, detachable or magazine breech, does not exceed twelve inches.

**30-7-2.3. Seizure and forfeiture of a handgun possessed or transported by a person in violation of unlawful possession of a handgun by a person; exception.**

**A.** A handgun is subject to seizure and forfeiture by a law enforcement agency when the handgun is possessed or transported by a person in violation of the offense of unlawful possession of a handgun by a person.

**B.** A handgun seized pursuant to a violation of unlawful possession of a handgun by a person shall not be subject to replevin, but is deemed to be in the custody of the law enforcement agency, subject only to orders and decrees of the district court.

**C.** When a handgun is seized pursuant to the provisions of this section, the handgun may be disposed of pursuant to the provisions of Section 29-1-14 NMSA 1978.

**D.** A handgun shall not be forfeited when the owner of the handgun establishes that the offense of unlawful possession of a handgun by a person was committed without the knowledge and consent of that owner. A forfeiture of a handgun encumbered by a bona fide security interest shall be subject to the interest of a

secured party if the secured party did not have knowledge of or did not consent to the offense of unlawful possession of a handgun by a person.

**30-7-4. Negligent use of a deadly weapon.**

**A.** Negligent use of a deadly weapon consists of: ...

(2) carrying a firearm while under the influence of an intoxicant or narcotic;

(3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or ...

**B.** The provisions of Paragraphs (1), (3) and (4) of Subsection A of this section shall not apply to a peace officer or other public employee who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

**C.** The exceptions from criminal liability provided for in Subsection B of this section shall not preclude or affect civil liability for the same conduct.

Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor.

**30-7-7. Unlawful sale, possession or transportation of explosives.** Unlawful sale, possession or transportation of explosives consists of:

**A.** knowingly selling or possessing any explosive or causing such explosive to be transported without having plainly marked in large letters in a conspicuous place on the box or package containing such explosive the name and explosive character thereof and the date of manufacture. For the purpose of this subsection, the term "explosive" is as defined in Section 2 [30-7-18 NMSA 1978] of the Explosives Act, but shall not include:

(1) explosive materials in medicine and medicinal agents in the forms prescribed by the official United States pharmacopoeia or the national formulary;

(2) small arms ammunition and components thereof;

(3) commercially manufactured black powder in quantities not to exceed fifty pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches and friction primers intended to be used solely for sporting, recreational or cultural purposes as defined in Section 921(a)(16) [§ 921(a)(4)] of Title 18 of the United States Code, or in antique devices as exempted from the term "destructive device" in Section 921(a)(4) [§ 921(a)(16)] of Title 18 of the United States Code; or

(4) explosive materials transported in compliance with the regulations of the United States department of transportation and agencies thereof; or

**B.** knowingly transporting or taking any explosive upon or into any vehicle belonging to a common carrier transporting passengers. For the purpose of this subsection, the term "explosives" is as defined in Section 2 of the Explosives Act, but shall not include:

(1) explosive materials in medicines and medicinal agents in the forms prescribed by the official United States pharmacopoeia or the national formulary;

(2) small arms ammunition or components thereof; or

(3) explosive materials transported in compliance with the regulations of the United States

department of transportation and agencies thereof.

Whoever commits unlawful sale, possession or transportation of explosives as set forth in Subsection A of this section is guilty of a petty misdemeanor. Whoever commits unlawful transportation of explosives as set forth in Subsection B of this section is guilty of a fourth degree felony.

**30-7-9. Firearms; sale and purchase.** Residents of states contiguous to New Mexico may purchase firearms in New Mexico. Residents of New Mexico may purchase firearms in states contiguous to New Mexico.

**30-7-16. Firearms or destructive devices; receipt, transportation or possession by a felon; penalty.**

**A.** It is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state.

**B.** Any person violating the provisions of this section shall be guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978].

**C.** As used in this section:

(1) **"destructive devices"** means:

- (a) any explosive, incendiary or poison gas:
  - 1) bomb;
  - 2) grenade;
  - 3) rocket having a propellant charge of more than four ounces;
  - 4) missile having an explosive or incendiary charge of more than one-quarter ounce;
  - 5) mine; or
  - 6) similar device; and
- (b) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which is generally recognized as particularly suitable for sporting purposes; and any combination of parts either designed or intended for use in converting any device into a destructive device as defined in Paragraphs (1) and (2) and from which a destructive device may be readily assembled.

The term **"destructive device"** shall not include any device which is neither designed nor redesigned for use as a weapon or any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

(2) **"felon"** means a person who has been convicted in the preceding ten years by a court of the United States or of any state or political subdivision thereof to a sentence of death or one or more years imprisonment and has not been pardoned of the conviction by the appropriate authority; and

(3) **"firearm"** means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. **"Firearm"** includes any handgun, rifle or shotgun.

**30-7-17. Short title.** Sections 1 through 6 [30-7-17 to 30-7-22 NMSA 1978] of this act may be cited as the "Explosives Act."

**30-7-18. Definitions.** As used in the Explosives Act [30-7-17 to 30-7-22 NMSA 1978]:

**A. "explosive"** means any chemical compound or mixture or device, the primary or common purpose of which is to explode and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters; and

**B. "explosive device" or "incendiary device"** means:

- (1) any explosive bomb, grenade, missile or similar device;
- (2) any device or mechanism used or created to start a fire or explosion with or without a timing mechanism except cigarette lighters and matches; or
- (3) any incendiary bomb or grenade, fire bomb or similar device or any device which includes a flammable liquid or compound and a wick or igniting agent composed of any material which is capable of igniting the flammable liquid or compound.

**30-7-19. Possession of explosives.**

**A.** Possession of explosives consists of knowingly possessing, manufacturing or transporting any explosive and either intending to use the ex-

plosive in the commission of any felony or knowingly or reasonably believing that another intends to use the explosive to commit any felony.

**B.** Any person who commits possession of explosives is guilty of a fourth degree felony.

**30-7-19.1. Possession of explosive device or incendiary device.**

**A.** Possession of an explosive device or incendiary device consists of knowingly possessing, manufacturing or transporting any explosive device or incendiary device or complete combination of parts thereof necessary to make an explosive device or incendiary device. This subsection shall not apply to any fireworks as defined in Section 60-2C-2 NMSA 1978 or any lawfully acquired household, commercial, industrial or sporting device or compound included in the definition of explosive device or incendiary device in Section 30-7-18 NMSA 1978 that has legitimate and lawful commercial, industrial or sporting purposes or that is lawfully possessed under Section 30-7-7 NMSA 1978.

**B.** Any person who commits possession of an explosive device or incendiary device is guilty of a fourth degree felony.

**30-7-20. Facsimile or hoax bomb or explosive.** Any person who intentionally gives, mails, sends or causes to be sent any false or facsimile bomb or explosive to another person or places or causes to be placed at any location any false or facsimile bomb or explosive, with the intent that any other person thinks it is a real bomb or explosive, is guilty of a fourth degree felony.

**[Current through Second Special Session of the Forty-Fourth Legislature (2000)]**

#### Publisher's Notes:

The following jurisdictions restrict the age at which it is legal for a person to purchase or receive a firearm: Albuquerque and Santa Fe.

Albuquerque prohibits the sale, possession, or receipt of firearms by particular classes of person (e.g. convicted felons, fugitives, illegal aliens, mental incompetents, illegal drug users and addicts).

## NEW YORK N.Y. PENAL LAW

### Article 265. Firearms and Other Dangerous Weapons

**265.00. Definitions.** As used in this article and in article four hundred, the following terms shall mean and include:

1. **"Machine-gun"** means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.

2. **"Firearm silencer"** means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.

3. **"Firearm"** means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen

inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm. ...

6. **"Dispose of"** means to dispose of, give, give away, lease-loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

7. **"Deface"** means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

8. **"Gunsmith"** means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm or machine-gun.

9. **"Dealer in firearms"** means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any pistol or revolver.

10. **"Licensing officer"** means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; for the purposes of section 400.01 of this chapter the superintendent of state police; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.