

States' Animal Cruelty Statutes: New Mexico

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

§ 17-2-7. Unlawful hunting or fishing

A. Except as permitted by regulations adopted by the state game commission or as otherwise allowed by law, it is unlawful to:

(1) hunt, take, capture, kill or attempt to take, capture or kill, at any time or in any manner, any game animal, game bird or game fish in the state; or

(2) possess, offer for sale, sell, offer to purchase or purchase in the state all or any part of any game animal, game bird or game fish.

B. Notwithstanding any other law, the owner of domestic livestock in this state or his regular employee may hunt, take, capture or kill any cougar or bear which has killed domestic livestock. The owner of livestock or his regular employee who takes action under this provision will report this action to the department of game and fish, who will verify the necessity of the action taken.

C. Violation of this section is a misdemeanor and shall be punished as provided in Section 17-2-10 NMSA 1978.

D. The provisions of this section shall not be deemed to prohibit the possession of game animals, birds or fish taken legally in any other jurisdiction.

§ 17-2-7.1. Interference prohibited; criminal penalties; civil penalties; revocation of license, certificate or permit

A. It is unlawful for a person to commit interference with another person who is lawfully hunting, trapping or fishing in an area where hunting, trapping or fishing is permitted by a custodian of public property or an owner or lessee of private property.

B. A person who commits a:

(1) first offense of interference is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(2) second or subsequent offense of interference is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. When a person who commits interference possesses a license, certificate or permit issued to him by the state game commission, the license, certificate or permit shall be subject to revocation by the commission pursuant to the provisions of Sections 17-1-14 and 17-3-34 NMSA 1978.

D. As used in this section, "interference" means:

(1) intentionally placing oneself in a location where a human presence may affect the behavior of a game animal, bird or fish or the feasibility of killing or taking a

game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing;

(2) intentionally creating a visual, aural, olfactory or physical stimulus for the purpose of affecting the behavior of a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing; or

(3) intentionally affecting the condition or altering the placement of personal property used for the purpose of killing or taking a game animal, bird or fish.

E. Nothing in this section shall be construed to include a farmer or rancher in pursuit of his normal farm or ranch operation or law enforcement officer in pursuit of his official duties.

§ 17-2-8. Unlawful taking of big game and waste of game

A. It is unlawful for any person:

(1) who hunts or fishes and takes any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978, any game bird or any game fish to fail to transport the edible portions of the meat obtained to the person's home for human consumption or to provide for the human consumption thereof under any commission regulations pertaining to exportation, transportation and donation of game;

(2) who wounds or may have wounded any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978 to fail to go to the place where the mammal sustained or may have sustained the wound and make a reasonable attempt to track the mammal and reduce it to possession; or

(3) to take or kill a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn antelope outside of the legal season or without a valid license, which taking or killing results in waste of the animal. Waste of the animal consists of removing from the animal only the head, antlers or horns or abandoning any of the four quarters, backstraps or tenderloins of the carcass. A violation of the provisions of this paragraph is intended to be separate from and cumulative to any other violation of Chapter 17 NMSA 1978.

B. Violation of Paragraph (3) of Subsection A of this section is a fourth-degree felony pursuant to Section 31-18-15 NMSA 1978, and violation of Paragraph (1) or (2) of Subsection A of this section is a misdemeanor pursuant to Section 17-2-10 NMSA 1978.

§ 17-2-10. Violation of game and fish laws or rules; penalties

A. A person violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-

19-1 NMSA 1978. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars (\$400);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars (\$1,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars (\$100);

(4) for exceeding the bag limit of any big game species, a fine of four hundred dollars (\$400);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars (\$200);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars (\$400);

(7) for using a hunting or fishing license issued to another person, a fine of one hundred dollars (\$100);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars (\$300);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars (\$1,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of two thousand dollars (\$2,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of five hundred dollars (\$500).

B. A person convicted a second time for violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars (\$600);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand five hundred dollars (\$1,500);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars (\$400);

(4) for exceeding the bag limit of any big game species, a fine of six hundred dollars (\$600);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars (\$600);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars (\$600);

(7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars (\$250);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars (\$500);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars (\$1,500);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of four thousand dollars (\$4,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of one thousand dollars (\$1,000).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars (\$1,200);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars (\$3,000);

- (3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars (\$1,000);
- (4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars (\$1,200);
- (5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars (\$1,000);
- (6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars (\$1,200);
- (7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars (\$1,000);
- (8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars (\$1,000);
- (9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars (\$3,000);
- (10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of six thousand dollars (\$6,000); and
- (11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of two thousand dollars (\$2,000).

D. A person who is convicted of a violation of any rules adopted by the state game commission or of a violation of any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, for which a punishment is not set forth under this section, is a misdemeanor and shall be fined or imprisoned pursuant to Section 31-19-1 NMSA 1978.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to rules of the department.

§ 17-2-10.1. Game and fish penalty assessment misdemeanors; definition; schedule of assessments

A. As used in Chapter 17 NMSA 1978, “penalty assessment misdemeanor” means a violation of any of the following listed sections of the NMSA 1978 for which the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Fishing, hunting or trapping without the proper stamp or validation as required by law or adopted by state game commission rule	17-2-7	\$ 50.00
Fishing without a license	17-3-17	\$ 75.00
Hunting small game without a license	17-3-1	\$100.00
Manner and method rule infraction contrary to adoption by state game commission rule	17-2-7	\$125.00

B. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

C. With the penalty assessment collected for each penalty assessment misdemeanor pursuant to this section, there shall be assessed and collected the cost of the appropriate license and validation that the violator failed to produce. Upon presentation of proof of payment of the penalty assessment, the director of the department of game and fish shall issue the appropriate license and validation.

§ 17-2-10.2. Game and fish penalty assessment; payment

A. Unless a warning notice is given to an alleged violator, at the time the alleged violator is charged with a penalty assessment misdemeanor, the conservation officer shall offer the alleged violator the option of accepting a penalty assessment. The signature of the alleged violator on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice. The acknowledgment shall be included in accrual of points toward revocation of licenses as provided for in Section 17-3-34 NMSA 1978 or in regulations adopted to implement that section.

B. Payment of any penalty assessment, including cost of the appropriate license, shall be mailed to the state game commission within thirty days from the date of charge. Payment of penalty assessments are timely if postmarked within thirty days from the date of the charge. The commission may issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

C. No record of any penalty assessment payment is admissible as evidence in court in any civil action.

§ 17-2-10.3. Game and fish penalty assessment; license revocation

A. The state game commission is authorized to revoke the hunting or fishing license, or both, of a person who fails to pay a penalty assessment or who fails to appear, after proper notice, for hearings as required by law or regulation.

B. The state game commission may revoke the hunting or fishing license, or both, of any person, resident or nonresident, who is convicted in another state of any single offense that, if committed in New Mexico, would be grounds for revocation of license.

§ 17-2-10.4. Game and fish penalty assessment revenue; disposition

The department of game and fish shall remit all penalty assessment receipts to the state treasurer to be credited to the game protection fund in accordance with the provisions of Section 17-1-14 NMSA 1978.

§ 17-2-13. Songbirds; trapping, killing or injuring prohibited

It shall be unlawful for any person to shoot, ensnare or trap for the purpose of killing or in any other manner to injure or destroy any songbird, or birds whose principal food consists of insects, comprising all the species and varieties of birds represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (*Geococcyx novo mexicanus*), flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, wrens, and all other perching birds which feed entirely or chiefly on insects. This section does not prohibit the killing of such birds for scientific purposes under permits from the department of game and fish.

§ 17-2-14. Hawks, vultures and owls; taking, possessing, trapping, destroying, maiming or selling prohibited; exception by permit; penalty

A. It is unlawful for any person to take, attempt to take, possess, trap or ensnare or in any manner to injure, maim or destroy birds of the order Falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order Stringiformes, comprising all of the species and varieties of owls. It is also unlawful to purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of these birds.

B. The director of the department of game and fish may issue permits to allow any person to take, possess, trap, ensnare or destroy any bird protected by this section or to possess, give, purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of any birds protected by this section. Permits shall be granted for the following purposes:

(1) Indian religious purposes;

(2) scientific purposes in accordance with law and the regulations of the department of game and fish; or

(3) falconry purposes in accordance with law and the regulations of the department.

C. Notwithstanding any other law, any person engaged in the commercial raising of poultry or game birds may take, capture or kill any hawk, owl or vulture that has killed such poultry or game birds. The owner of such game or poultry farm who takes action under this provision shall report this action to the department of game and fish, which shall verify the necessity of the action taken.

D. Any person violating the provisions of this section is guilty of a petty misdemeanor.

§ 17-2-15. Horned toads; killing, selling or shipping from state unlawful

It shall be unlawful for any person to willfully kill or to sell horned toads within the state of New Mexico, or to ship them from the state.

§ 17-2-17. Storage of game or fish

No game or fish shall be received or held in storage except as follows, namely:

A. during the open season therefor and for five days thereafter when the same is stored for the person lawfully in possession of the same;

B. at any time of the year when there is attached thereto a proper and valid officer's invoice as provided in this chapter relating to the seizure of game and fish for not more than thirty days after the date of such invoice;

C. when there is attached thereto a proper and valid certificate or permit signed by the state warden [director of the department of game and fish] or deputy [conservation officer] and on its face authorizing storage of the article named therein and during the period therein stated.

§ 17-2-18. Menu as evidence of possession of game or fish

The naming of game and fish upon any menu or bill of fare as food for patrons shall be prima facie evidence of the possession of the same by the proprietor of such hotel, restaurant, cafe or boardinghouse.

§ 17-2-19. Enforcement of game laws; powers of conservation officers

A. The director of the department of game and fish, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce Chapter 17 NMSA 1978 and shall:

(1) seize any game or fish held in violation of that chapter;

(2) with or without warrant, arrest any person whom he knows to be guilty of a violation of that chapter; and

(3) open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of that chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers may, under the direction of the state game commission and the director of the department of game and fish:

(1) establish from time to time, as needed for the proper functioning of the game and fish research and management division, checking stations at points along established roads, or roadblocks, for the purpose of detecting and apprehending persons violating the game and fish laws and the regulations referred to in Section 17-2-10 NMSA 1978;

(2) under emergency circumstances and while on official duty only enforce the provisions of the Criminal Code and the Motor Vehicle Code; and

(3) while on official duty only, enforce the provisions of:

(a) Sections 30-14-1 and 30-14-1.1 NMSA 1978 pertaining to criminal trespass;

(b) Section 30-7-4 NMSA 1978 pertaining to negligent use of a deadly weapon;

(c) Section 30-15-1 NMSA 1978 pertaining to criminal damage to property;

(d) Section 30-22-1 NMSA 1978 pertaining to resisting, evading or obstructing an officer; and

(e) Section 72-1-8 NMSA 1978 pertaining to camping next to a manmade water hole.

§ 17-2-20. Seizure of devices used for violating law; nuisance; destruction; firearms excepted

Every net, trap, explosive, poisonous or stupefying substance, or device used or intended for use in taking or killing game or fish in violation of this chapter, and set, kept or found in or upon any of the streams or waters in this state or upon the shores thereof, and every trap, device, blind or deadfall found baited in violation of this chapter, is declared to be a public nuisance and may be abated and summarily destroyed by any person and it shall be the duty of every officer authorized to enforce this chapter to seize and summarily destroy the same and no prosecution or suit shall be maintained for such destruction; provided, that nothing in this chapter shall be construed as affecting the right of the state warden [director of the department of game and fish] to use such means as may be proper for the promotion of game and fish propagation and culture, nor as authorizing the seizure or destruction of firearms.

§ 17-2-20.1. Seizure and forfeiture; property subject

A. All firearms and bows and arrows may be subject to seizure and forfeiture when used as instrumentalities in the commission of the following crimes:

- (1) illegal possession or transportation of big game during closed season;
- (2) taking big game during closed season;
- (3) attempting to take big game by the use of spotlight or artificial light; and
- (4) exceeding the bag limit on any big game species during open season.

B. Any motor vehicle shall be subject to seizure and forfeiture when operated in violation of the provisions of Section 17-2-31 NMSA 1978, regarding hunting by spotlight.

C. The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property subject to forfeiture pursuant to Subsections A and B of this section.

§ 17-2-20.3. Penalties

The following violations shall constitute a misdemeanor:

- A. illegal possession or transportation of big game during closed season;
- B. taking or attempting to take big game during closed season;
- C. taking or attempting to take big game by the use of spotlight or artificial light;
- D. selling or attempting to sell big game or parts thereof, except as permitted by regulation of the state game commission; and
- E. exceeding the bag limit on any big game species during open season.

§ 17-2-21. Sale or disposition of game or fish after seizure; invoice furnished purchaser or donee; disposition of proceeds of sale

All game and fish seized under the game laws shall without unnecessary delay be sold by the officer making such seizure, or by the state warden [director of the department of game and fish], except when such sale is impracticable or likely to incur expenses exceeding the proceeds, in which case the same shall be donated to some charitable institution or needy person not concerned in the unlawful killing, or possession thereof. The officer making such seizure shall sign and give to each purchaser or donee an invoice stating the time and place of disposition, the kind and weight as near as may be of the game or fish disposed of and the name of the purchaser or donee. Such invoice shall authorize possession, transportation and use within the state, and storage for thirty days from date. The proceeds from such sale, after deducting the cost of seizure and sale shall, if made by the state warden [director] or any deputy [conservation officer] under salary, be paid into the game protection fund, but if made by a deputy warden [conservation officer] not under salary, or any other officer, shall be paid one-half to the officer making such seizure.

§ 17-2-22. Sale of evidence in cases of appeal

A. For the purpose of avoiding waste, game or fish confiscated and held as evidence in any prosecution for violation of the game laws, if fit for human consumption, shall be sold

by the conservation officer or other officer having jurisdiction in the prosecution as soon as possible after the filing of any appeal from the decision of the court to any higher court.

B. The evidence shall be sold for the highest cash price offered and the proceeds of the sale forwarded to the main office of the department of game and fish at Santa Fe to be deposited in the game protection fund. A copy of the receipt of sale shall be delivered to the court and shall be attached to the papers forwarded to the higher court on appeal.

C. If the higher court finds the defendant to be not guilty of the charge he shall be reimbursed within ten days after such decision by the department of game and fish for the full amount of the proceeds from the sale of evidence.

§ 17-2-23. Reports of seizures and sales

In all cases the officer making a seizure or sale shall, within ten days thereafter, report all the particulars thereof and an itemized statement of the proceeds, expenses and fees and the disposition thereof, and pay the remainder of the proceeds, if any, to the state treasurer to be by him paid into the game protection fund.

§ 17-2-24. Officer's right to use animal or vehicle transporting seized game or fish; public conveyances excepted

Where game or fish while being transported is seized under this chapter, the officer making such seizure shall have authority upon payment of reasonable compensation therefor, to also take possession of and use any animals and vehicles used in such transportation for the purpose of conveying the game or fish seized to a convenient railroad station or place of safekeeping or sale, and also for conveying any person arrested for the unlawful possession of such game or fish to a place of hearing or trial, and no liability shall attach to such officer by reason thereof, but this section shall not apply to any animal or vehicle while being used as a public conveyance for passengers or mails, or any railroad car.

§ 17-2-25. Game or fish in possession of passenger; carrier exempt from liability; seizure

Nothing in this chapter shall make a common carrier liable for transportation of game and fish when same is in the possession of a passenger, but such fact shall not exempt the same from seizure if unlawfully taken, killed, held in possession or transported.

§ 17-2-26. Civil liability

A. The director of the department of game and fish, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadruped, bird or fish, or part thereof and recover judgment for the following minimum sums as damages for the taking, killing or injuring:

for each elk \$ 500.00
for each deer 250.00

for each antelope	250.00
for each mountain sheep	1,000.00
for each Barbary sheep	250.00
for each black bear	500.00
for each cougar	500.00
for each bison	600.00
for each ibex	1,000.00
for each oryx	1,000.00
for each javelina	100.00
for each beaver	65.00
for each bird	20.00
for each fish	5.00
for each endangered species	500.00
for each raptor	200.00
for each turkey	150.00
for each jaguar	2,000.00.

B. Notwithstanding the provisions of Subsection A of this section, the state game commission shall establish damages recoverable by civil judgment on a game animal, bird or fish designated to be a trophy animal by commission rule.

C. Damages recovered pursuant to this section are intended to compensate the state for the loss of unique public resources and shall not be limited or reduced by the extent of fines assessed pursuant to any criminal statute. The department of game and fish shall not award or issue a license, permit or certificate to a debtor owing damages pursuant to this section until the judgment has been paid in full to the department.

D. No verdict or judgment recovered by the state in an action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery may be had for the possession as well as the damages.

E. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

F. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

G. The provisions of this section shall not apply to a landowner or lessee, or employee of either, who kills an animal, on private land in which the person has an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to rules of the department.

§ 17-2-27. District attorneys to prosecute and defend actions under fish and game laws

It shall be the duty of each of the district attorneys in this state to prosecute and defend for the state in all courts of the county or counties in their respective districts, all causes, criminal and civil, arising under the provisions of this chapter, in which the state may be a party or interested or concerned.

§ 17-2-28. Indians hunting off reservations; hunting on reservations; application of laws

The provisions of this chapter shall apply to all Indians off the reservation within this state, or coming into this state from adjoining states, and to all persons hunting on any Indian reservation within this state; provided, however, that no Indian shall be required to have a license to hunt or fish within the limits of the reservation where said Indian resides.

§ 17-2-29. Hunting and boating while intoxicated or under the influence of narcotic drugs prohibited

In order to prevent hunting and boating accidents and to promote the public safety, it shall hereafter be unlawful for any person, while clearly intoxicated as a result of drinking alcoholic liquors or under the influence of any narcotic drug, to hunt, kill or attempt to take in any manner any game or nongame mammal or bird, or to carry firearms of any kind or bow and arrows in any hunting area; or to go or to be upon the waters of any lake in a boat or on a raft.

§ 17-2-30. Person convicted of hunting or boating while intoxicated or under influence of narcotic drugs; revocation and withholding of hunting and fishing license privileges

In the event any person shall be convicted of a violation of this act, his hunting and fishing license shall be revoked and all hunting and fishing license privileges withheld for a period of twelve months.

§ 17-2-31. Use of artificial light while hunting prohibited

It is unlawful for a person or a group of persons together in possession or control of a firearm or other implement to throw or cast the rays of a spotlight or other artificial light into any field, pasture, woodland, forest or prairie where big game or domestic livestock may be, or are reasonably expected to be, whereby any big game animal or domestic animal could be killed by aid of an artificial light. However, the following shall be exempt from the provisions of this section:

- A. an officer authorized to enforce the game and livestock laws of the state;
- B. a government employee acting in an official capacity;

C. a landowner or lessee or employee of such landowner or lessee, while on the land owned or leased in connection with legitimate activities; or

D. a person who has received a permit or authorization from the department of game and fish to conduct such activities.

§ 17-2-32. Diseased rabbits; hunting and trapping

The department of game and fish may restrict hunting and trapping of rabbits in any area when notified by the department of public health [department of health] that rabbits in the area are infected with bubonic plague. Any restriction under this section shall be terminated when the department of public health [department of health] notifies the department of game and fish that danger, of public health significance, no longer exists in the area with respect to these diseased rabbits.

§ 30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

(1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or

(2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

(1) humanely destroying a sick or injured animal; or

(2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth-degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth-degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a

mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;
- (5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;
- (6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or
- (7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

§ 30-18-1.1. Seizure of animals; notice

A. A peace officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court or the metropolitan court in the county where the animal is located for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the state for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

F. If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978.

§ 30-18-1.2. Disposition of seized animals

A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.

B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

C. An agent of the New Mexico livestock board, an animal control agency operated by the state, a county or a municipality, or an animal shelter or other animal welfare organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.

D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay, and may conduct periodic reviews of its order. If the posting of security is ordered, the animal control agency, animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the animal control agency, animal shelter or animal welfare organization for adoption or humane destruction; provided that if the animal is livestock other than poultry associated with cockfighting, the animal may be sold pursuant to the procedures set forth in Section 77-18-2 NMSA 1978.

F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.

G. Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.

H. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

§ 30-18-1.3. Costs

A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to Section 30-18-1.2 NMSA 1978. Unexpended security funds shall be returned to the defendant.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to Section 30-18-1.2 NMSA 1978.

§ 30-18-3. Unlawful branding

Unlawful branding consists of either:

A. branding, marking or causing to be branded or marked any animal, which is the property of another, with any brand not the brand of the owner of the animal;

B. defacing or obliterating any brand or mark upon any animal which is the property of another; or

C. using any brand unless said brand shall have been duly recorded in the office of the cattle sanitary board of New Mexico or the sheep sanitary board of New Mexico, whichever is applicable, and the person holds a certificate from the cattle sanitary board or the sheep sanitary board certifying to the fact of such record.

Whoever commits unlawful branding is guilty of a fourth-degree felony.

§ 30-18-4. Unlawful disposition of animal

Unlawful disposition of animal consists of:

A. skinning or removing without the permission of the owner any part of the hide of any neat cattle found dead;

B. abandoning any livestock without giving reasonable notice to the owner, where the livestock has been entrusted by the owner to such person for the herding, care or safekeeping upon a contract for a valuable consideration;

C. taking any livestock for use or work, without the consent of the owner;

D. driving or leading any animal being the property of another from its usual range, without the consent of the owner;

E. contracting, selling or otherwise disposing of any animal, which a person has in his possession or under his control on shares or under contract, without the consent of the owner of such animal; or

F. knowingly buying, taking or receiving from any person having in his possession, or under his control, any animal on shares or under contract, without the consent of the owner of such animal.

Whoever commits unlawful disposition of animal is guilty of a misdemeanor.

§ 30-18-5. Illegal confinement of animals

Illegal confinement of animals consists of:

- A. detaining for more than two (2) hours for the purpose of milking any cow, without the permission of the owner;
- B. taking and detaining any bull for the purpose of improving livestock, without the consent of the owner;
- C. intentionally separating offspring of livestock from the mother, unless branded. Provided that, when milk cows, which are actually used to furnish milk for household or dairy purposes, have calves, that are unbranded, such young animals may be separated from their mother and inclosed; or
- D. confining, or in any manner interfering with the freedom of, or selling, or offering to sell, any freshly branded animal, unless such animal has been previously branded with an older and duly recorded brand for which the person has a legally executed bill of sale from the owner of such brand or unless such animals are with their mother, or unless such animals are the calves of milk cows when such cows are actually used to furnish milk for household purposes or for carrying on a dairy; but in every such case the person, firm or corporation, separating calves from their mother for either of these purposes shall, upon the demand of any sheriff, inspector or other officer, produce, in a reasonable time, the mother of each of such calves so that interested parties may ascertain if the cow does or does not claim and suckle such calf.

Whoever commits illegal confinement of animals is guilty of a misdemeanor.

§ 30-18-6. Transporting stolen livestock

Transporting stolen livestock consists of knowingly transporting or carrying any stolen or unlawfully possessed livestock or any unlawfully possessed game animal, or any parts thereof.

Whoever commits transporting stolen livestock is guilty of a fourth-degree felony.

§ 30-18-7. Misrepresentation of pedigree

Misrepresentation of pedigree consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any animal, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

Whoever commits misrepresentation of pedigree is guilty of a misdemeanor.

§ 30-18-8. Killing unbranded cattle or cattle having another's brand

Any person, firm or corporation, who shall kill or cause to be killed, for sale or use any unbranded neat cattle, or any cattle on which the brand has not peeled off and fully healed, unless such cattle shall have an older and duly recorded brand; or shall kill, or cause to be killed for sale or use any neat cattle having a brand not legally owned by such person, firm or corporation, without having taken a duly acknowledged bill of sale for the same from the owner thereof, shall be deemed guilty of a petty misdemeanor.

§ 30-18-9. Dog fighting and cockfighting; penalty

A. It is unlawful for any person to cause, sponsor, arrange, hold or participate in a fight between dogs or cocks for the purpose of monetary gain or entertainment. Participation in a fight between dogs or cocks for the purpose of monetary gain or entertainment consists of an adult knowingly:

(1) being present at a dog fight without attempting to interfere with or stop the contest; or

(2) owning or equipping one of the participating dogs or cocks with knowledge of the contest.

B. It is unlawful to train, equip or sponsor a dog or cock for the purpose of having it participate in a fight with another dog or cock, respectively, for monetary gain or entertainment.

C. Any person violating the provisions of Subsection A or B of this section, as it pertains to dogs, is guilty of a fourth-degree felony.

D. Any person violating the provisions of Subsection A or B of this section as it pertains to cocks:

(1) upon a first conviction, is guilty of a petty misdemeanor;

(2) upon a second conviction, is guilty of a misdemeanor; and

(3) upon a third or subsequent conviction, is guilty of a fourth-degree felony.

§ 30-18-10. Exclusion

Nothing in this act shall be construed to prohibit or make unlawful the taking of game animals, game birds or game fish by the use of dogs, provided the person so doing is licensed as provided by law and is using such dogs in a lawful manner.

§ 30-18-11. Unlawful tripping of an equine; exception

A. Unlawful tripping of an equine consists of intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment.

B. The provisions of Subsection A of this section do not apply to laying an equine down for medical or identification purposes.

C. As used in this section, "equine" means a horse, pony, mule, donkey or hinny.

D. Whoever commits unlawful tripping of an equine is guilty of a misdemeanor.

E. Whoever commits unlawful tripping of an equine that causes the maiming, crippling or death of the equine is guilty of a fourth-degree felony.

§ 30-18-12. Injury to livestock

A. Injury to livestock consists of willfully and maliciously poisoning, killing or injuring livestock that is the property of another.

B. As used in this section, "livestock" means cattle, sheep, buffalo, horses, mules, goats, swine and ratites.

C. Whoever commits injury to livestock is guilty of a fourth-degree felony.

§ 30-18-13. Injury to a police dog, police horse or fire dog; harassment of a police dog, police horse or fire dog

A. As used in this section:

(1) "fire dog" means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

(2) "police dog" means a dog used by a law enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection; and

(3) "police horse" means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.

B. Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

(1) striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

(2) throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31- 19-1 NMSA 1978.

D. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of the animal is guilty of a fourth-degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog, police horse or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog, police horse or fire dog by frightening, agitating, harassing or hindering the animal.

G. Whoever commits harassment of a police dog, police horse or fire dog is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

H. Whoever commits harassment of a police dog, police horse or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog, police horse or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures.

§ 30-18-14. Livestock crimes; livestock inspectors to enforce

Livestock inspectors who are certified peace officers shall enforce the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock.

§ 30-18-15. Intracardiac injection prohibited on conscious animal

A. It is unlawful for an employee or agent of an animal control service or facility, animal shelter or humane society to use intracardiac injection to administer euthanasia on a conscious animal if the animal could first be rendered unconscious in a humane manner.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

§ 30-18-16. Coyote-killing contests prohibited; definition; penalties

A. It is unlawful for a person to organize, cause, sponsor, arrange, hold or participate in a coyote-killing contest.

B. As used in this section, "coyote-killing contest" means an organized or sponsored competition with the objective of killing coyotes for prizes or entertainment.

C. Organizing, causing, sponsoring, arranging or holding a coyote-killing contest consists of a person knowingly:

(1) planning, organizing or enticing a person to participate in a coyote-killing contest; or

(2) providing the venue for a coyote-killing contest.

D. Participation in a coyote-killing contest consists of a person knowingly taking part in a coyote-killing contest.

E. A person who organizes, causes, sponsors, arranges or holds a coyote-killing contest is guilty of a misdemeanor.

F. A person who participates in a coyote-killing contest is guilty of a petty misdemeanor.

G. Nothing in this section shall be construed to prohibit a person from protecting a person or property or the state game commission from carrying out the statutory authority allowed by Chapter 17 NMSA 1978 in a non-coyote-killing contest setting.