

CRIMINAL LAW: WHITE COLLAR CRIMES

ONLINE

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Gain a working knowledge of white collar crimes (also known as economic crimes).
- Learn the significant impact that white collar crime has on victims.
- Appreciate the seriousness of identify theft as a crime.

OBJECTIVES

Upon completion of this course, students will be able to:

- State the elements of fraud.
- State the elements of embezzlement.
- State the difference between fraud and embezzlement by giving examples.
- State elements of forgery.
- Give examples of issuing worthless checks.
- State the difference between forgery and issuing worthless checks through examples.
- Explain why identify theft is such a serious crime.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated
- State and federal case law.

ESTIMATED TIME

Included in ten hour block on Criminal Law.

PREPARED BY

Legal Instructor
Department of Public Safety
Law Enforcement Academy
Santa Fe, New Mexico

DATE APPROVED _____

ACCREDITATION NUMBER _____

INTRODUCTION

We are going to discuss and gain a working knowledge of the major white collar crimes (also known as Economic Crimes).

First we turn to NMSA 1978 Chapter 30 which is Criminal offenses

How many articles are there in Chapter 30? 52

What is the title of Article 16? Larceny

The first section that refers to a white collar crime is found in section 6.

What offense is this Fraud

But before we begin, there are a few things we should know about white collar crime:

- These crimes do not gain the attention of violent crimes but victims need to be treated with respect. Many victims of fraud, for example, are poor people who suffer greatly from their losses. People also become victims for the worst of reasons – they trusted someone and someone took advantage of that trust.
- Sometimes victims of white collar crime are stores or banks or businesses that could probably “write off” the losses. As officers, however, we must give our full respect to every victim, regardless of their status.
- Penalties for white collar crime can be serious. One reason is that this is the local version of counterfeiting. If people lose confidence in paper currency, it could have a devastating effect on our economy.
- White collar crimes sound complex: we think of accountants and bookkeepers. But there is a wide range of white collar crimes. Just as violent crime can go from simple battery to first degree murder, in white collar crimes we can go from a bad check to a complex fraud. The majority of white collar crimes, however, occur at a less complex level.

FRAUD: NMSA 1978, 30-16-6.

Legal definition

Fraud consists of the intentional misappropriation or taking of anything of value which belongs to another by means of fraudulent conduct, practices or representations.

EMBEZZLEMENT NMSA 1978, Section 30-16-8

Legal definition

Embezzlement consists of the embezzling or converting to his or her own use of anything of value, with which he or she has been entrusted, with fraudulent intent to deprive the owner thereof.

- “Entrustment” occurs when the property is committed to another with a certain confidence regarding the care, use, or disposal of that property.
- Conversion occurs when a person who has been entrusted with another’s property uses it for his own purposes.
- Another element is fraudulent intent to deprive the owner of his property.

In 2007 the statute was amended so that incidents of embezzlement that occur within a twelve month period can be aggravated or added together for one felony offense.

What is the main difference between fraud and embezzlement?

Answer:

In fraud, a person or group misrepresents something to get something. For example, after a tragedy, a group represents that they are collecting money for the victims. They keep the money for themselves. This is fraud.

In embezzlement, a cashier works for a store. The cashier gets money for an item but doesn’t give the customer a receipt. The cashier pockets the money. This is embezzlement.

FACTS:

Defendant worked for the accounting department of a small business in Sunland Park, New Mexico. She would help with payroll and other duties. Only the owners, however, could sign checks. Sometimes, when they went out of town, they would leave pre-signed blank checks with the office manager who put them in a locked filing cabinet. Defendant had access to the filing cabinet, where a number of items were stored, but only after getting a key from the office manager or an authorized person.

The Defendant took two of the pre-signed checks, filled them out, and got over \$6,000. She was charged with embezzlement. State v. Kovach (2006). Correct charge? (no)

Answer:

Court of Appeals ordered her case dismissed. The State did not prove entrustment, an element of embezzlement. It is not enough that Defendant was in a position of trust as an employee, or had access to the filing cabinet.

Her access to the filing cabinet was for other reasons, not to gain possession of the checks. In fact, the owners entrusted the pre-signed checks to the office manager only, thereby expressly not entrusting the checks to Defendant. Larceny would have been more appropriate.

What charge for the following offense?

Offender, in a vehicle, drives up to the window of a fast food business. He orders some food, pulls out a gun, points it at the clerk, and says, "Give me all your money." He escapes with the money. The frightened clerk can only give a vague description. Following a crime stoppers tip, the clerk confesses that the offender was her brother. What charge? Robbery? Or is it something else?

Answer:

This is not a robbery. The victim had no fear when she gave the money to the offender. The correct charges, for both of them, would be embezzlement and conspiracy.

FORGERY NMSA 1978, 30-16-10

Legal definition

Forgery consists of:

- A. falsely making or altering any signature to, or any part of, any writing purporting to have any **legal efficacy** with intent to injure or defraud; or
- B. knowingly issuing or transferring a forged writing with intent to injure or defraud.

Note:

"Legal efficacy" is a writing which could be made the foundation of liability, that would apparently operate to the legal prejudice of another.

Defendant wanted to pay for gas at a truck stop with a forged check but the cashier refused to cash it. Defendant took the check and left. You're dispatched to the truck stop. State v. Ruffins (1990).

Before deciding what to charge, we need to answer these questions:

- does an offender have to gain something for there to be a forgery? (no)
- does a victim have to lose something for there to be a forgery? (no)
- does a victim have to accept a check for there to be a forgery? (no)
- does the forged check have to be available at trial? (no)

Forgery was committed when defendant handed the check to the teller.

Remember, two kinds of forgery exist under NMSA 1978, Section 30-16-10

- Make or alter -
- Issue or transfer -

Penalty for Forgery

A fourth degree felony if under \$2500 or no quantifiable damage; a third degree felony if \$2,500 to \$20,000.

FACTS:

San Juan County Sheriff's deputy stopped vehicle for traffic violation. Defendant signed three traffic citations but gave his brother's information instead. State v. Wasson (1998). Should this be a forgery?

Answer:

This is a forgery. Defendant argued he had no intent to injure or defraud his brother. The forgery statute, however, does not require that the victim be a particular person. The false signatures can "injure or defraud" the arresting officer and the court in which the traffic citations are filed. The false signatures allowed Defendant to obtain his release without actually agreeing to pay a penalty assessment or appear in court. Court of Appeals upheld the convictions.

Note:

We usually think of forgery as altering a document for financial gain but it can also be "any document required by law to be filed . . . or necessary . . . to the discharge of a public official's duties." These citations have legal efficacy because defendant gave his written promise to appear in court or pay the penalty assessment.

FACTS:

Defendant identified himself to a police officer using the name of his cousin. Because there was a warrant out for his cousin's arrest, Defendant was booked into the Farmington jail. His cousin's name was written or typed on Defendant's fingerprint card and Defendant signed it, using his cousin's name. State v. Martinez (2008). What charge?

Answer:

Court of Appeals affirmed conviction for forgery.

Fraud and Forgery

FACTS:

Defendant cashed a stolen check at a grocery store in Clovis, New Mexico. The check was for payment of "Labor" in the amount of \$860.49. The owner testified the signature was not his. Can we charge both fraud and forgery? Or would that be double jeopardy (using two crimes to charge an offender for the same act)? State v. Caldwell (2008).

Answer:

This isn't double jeopardy. The statutes, similar in some ways, have different purposes. Forgery is designed to uphold public confidence in currency and other documents, particularly in the business world. Fraud is designed to protect persons and companies from losing property by the misrepresentations of others.

There are other differences. Fraud, unlike forgery, does not require anything in writing. Forgery, unlike fraud, does not require that something of value be gained. Court of Appeals held there was no double jeopardy and affirmed convictions for fraud and forgery. A forgery was committed to complete a fraud.

FALSELY OBTAINING SERVICES OR ACCOMMODATION -
NMSA 1978, Section 30-16-16

Legal definition

Falsely obtaining services or accommodations consists of any person obtaining service, food, entertainment or accommodations without paying with the intent to cheat or defraud the owner or person supplying such service, food, entertainment or accommodations.

- Examples include leaving a restaurant without paying, filling a tank with gas and then leaving without paying, or sneaking into a movie or concert without paying.
- A misdemeanor arrest can be made for this offense even though it didn't occur in the officer's presence. NMSA 1978, Section 30-16-16 (B).

CREDIT CARDS

We will now look at the next major category of white collar crimes: credit cards. Note how many different statutes relate to credit cards and possible crimes.

NMSA 1978, Section 30-16-26.	Theft of a credit card by taking or retaining possession of card. Penalty	<u>Fourth degree felony</u>
NMSA 1978, Section 30-16-27.	Possession of a credit card stolen, lost, mislaid or delivered by mistake. Penalty	<u>Petty Misdemeanor</u>
NMSA 1978, Section 30-16-28.	Fraudulent transfer or receipt of a credit card. Penalty	<u>Fourth degree felony</u>
NMSA 1978, Section 30-16-29.	Fraudulent taking, receiving or transferring credit cards. Penalty	<u>Misdemeanor</u>
NMSA 1978, Section 30-16-30	Dealing in credit cards of another. Penalty	<u>Third degree felony</u>
NMSA 1978, Section 30-16-31	Forgery of a credit card. Penalty	<u>Fourth degree felony</u>

NMSA 1978, Section 30-16-32	Fraudulent signing of credit cards or sales slips or agreements. Penalty <u>Fourth degree felony</u>
NMSA 1978, Section 30-16-33	Fraudulent use of credit cards. Penalty <u>Third or fourth degree felony based on value</u>

DEBIT CARDS

FACTS:

Victim’s house was burglarized in Clovis, New Mexico. Her purse and debit cards were among items stolen. That same morning, Defendant used her debit card to make \$83 worth of purchases at two convenience stores and Lowe’s Hardware store. A fourth attempt at Walgreens was unsuccessful.

Defendant argued he should be charged with fraudulent use of a credit card, a petty misdemeanor if the amount is under \$250. Is there a more appropriate charge?

ANSWER:

Yes. Court of Appeals upheld Defendant’s convictions of four counts of violating the Remote Financial Service Unit Act (RFSUA), NMSA 1978, Section 58-16-16(B), a fourth degree felony. This statute (RFSUA) applies when one unlawfully uses a debit card, an ATM card, or a credit card with a pre-approved limit.

Court of Appeals held the credit card statute does not include debit cards. It noted some differences between the two cards. Debit cards are tied to an individual’s checking account, as opposed to lines of credit or a guarantee of payment by the issuing bank. With a debit card, money is immediately deducted from a checking account.

His conviction for identity theft (a felony) was also upheld. Nor does a violation of RFSUA require that an offender be successful or obtain something. State v. Castillo (2011).

RENTAL PROPERTY FRAUD

NMSA 1978, Section 30-16-39

FRAUDULENT ACTS TO OBTAIN OR RETAIN POSSESSION OF RENTED OR LEASED VEHICLE OR OTHER PERSONAL PROPERTY.

NMSA 1978, Section 30-16-40

FRAUDULENT REFUSAL TO RETURN A LEASED VEHICLE OR OTHER PERSONAL PROPERTY.

WORTHLESS CHECKS

NMSA 1978, Section 30-36-4

Legal definition

It is unlawful for a person to issue in exchange for anything of value, with **intent** to defraud, any check, draft or order for payment of money upon any bank or other depository, knowing at the time of issuing that the offender has insufficient funds in or credit with the bank or depository for the payment of such check, draft or order in full upon its presentation.

At what dollar amount does issuing worthless checks become a felony? **\$25**

Note the word intent. It's possible for someone to write a bad check, not realizing that there are insufficient funds in their account.

How does issuing worthless checks differ from forgery?

Answer:

A simplified answer: A person knows they have insufficient funds in their bank account but, using their own name, writes checks anyway. That would be issuing worthless checks. If a person writes another person's name on a check, without authorization, it's forgery.

The following charge is a combination of white collar and narcotics.

CONTROLLED SUBSTANCES

NMSA 1978, Section 30-31-25

Legal definition

It is unlawful for any person to intentionally acquire or obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. NMSA 1978, Section 30-31-25 (A) (3)

Example

A man went into a pharmacy and gave the pharmacist an improperly written prescription for percodan. The pharmacist called the prescribing physician in Ruidoso who advised him the prescription was invalid. When the pharmacist returned to the counter, the man had already left. Defendant was charged under this statute. Is this the correct charge? State v. Mirabel (1989).

Answer:

Defendant was correctly charged under this statute. Court of Appeals noted there is no distinction between the attempt to acquire and the actual acquisition of a controlled substance. Either way, it's a fourth degree felony. His conviction was affirmed.

Sometimes an officer is dispatched to meet someone and it's difficult to figure out exactly what to charge. Consider the following:

- A person housekeeping for a senior citizen for several weeks leaves. The

senior citizen had no complaints until she got her telephone bill. It had over \$800 in unauthorized long distance calls by the person! The person is located a short time later.

What charge? Is this larceny or embezzlement?

Answer:

Neither. The correct charge would be the following:

NMSA 1978, Section 30-33-13. Crime to procure or to attempt to procure telecommunications services without paying charges.

- A. It is unlawful for a person with intent to defraud a person, firm or corporation, to obtain or to attempt to obtain any telecommunications service without paying the lawful charge . . .

This can be done in several ways including . . .

1. charging the service to an existing telephone number or credit card number without the authority of the subscriber or legitimate holder;
2. charging the service to a nonexistent, false, fictitious or counterfeit telephone number or credit card number or to a suspended, terminated, expired, canceled or revoked telephone number or credit card number.

IDENTITY THEFT

NMSA 1978, Section 30-16-24.1

- Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another.
- This didn't become a criminal offense until 2001. In 2005, because there were so many cases of identity theft, the penalty became a felony offense.

CONCLUSION

We have covered many white collar crimes including fraud, embezzlement, credit card fraud, forgery, issuing worthless checks, and others.

