

1 enhancement for depictions of children under the age of 13. 2016 N.M. Laws, ch. 2, § 1 (eff.
2 Feb. 25, 2016). This enhancement is applicable to possession offenses only. *Id.*

3 Because the enhancement requires an additional fact not required for conviction, the
4 age of a depicted child becomes an essential fact that must be submitted to the jury and
5 proved beyond a reasonable doubt. *See generally Apprendi v. New Jersey*, 530 U.S. 466
6 (2000) (holding that any fact that increases the permissible penalty range for a crime must
7 be submitted to a jury and proved beyond a reasonable doubt).

8 [Adopted by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed
9 on or after December 31, 2019.]