



1           Section 30-6A-3(E) defines the crime of child pornography manufacture. UJIs were  
2           not created for statutory definitions that are contained in NMSA 1978, Section 30-6A-2  
3           (2001), including “manufacture,” “visual or print medium,” “prohibited sex act,” and  
4           “obscene.”

5           The New Mexico Court of Appeals held that “copying the information from a  
6           computer to an external drive to another computer” falls within the statutory definition of  
7           manufacture as “copying by any means.” *State v. Smith*, 2009-NMCA-028, ¶¶ 14-15, 145  
8           N.M. 757, 204 P.3d 1267.

9           In 2011, the New Mexico Court of Appeals held that the unit of prosecution of  
10          manufacture was unambiguous so that each act of taking a photograph constituted a count  
11          of manufacture. *State v. Leeson*, 2011-NMCA-068, ¶ 17, 149 N.M. 823, 255 P.3d 401 (“A  
12          violation of the statute occurs where a criminal defendant intentionally produces or copies  
13          a photograph, electronic image, or video that constitutes child pornography.”); *see also* §  
14          30-6A-2(D) (defining “manufacture” to include “the production, processing, copying by any  
15          means, printing, packaging or repackaging” of exploitation materials). The Supreme Court  
16          subsequently distinguished *Leeson* to find the units of prosecution for possession and  
17          distribution ambiguous and that only one count could be punished for multiple images if the  
18          defendant acted unitarily. *State v. Olsson*, 2014-NMSC-012, ¶¶ 23, 31, 43-47, 324 P.3d  
19          1230; *see also State v. Sena*, 2016-NMCA-062, ¶¶ 3-4, 9-19, 376 P.3d 887. The Court of  
20          Appeals held that convictions for possession and manufacture-by-recording do not violate

1 double jeopardy if distinct evidence can support a continuing knowing possession after the  
2 manufacture crime was complete. *State v. Gwynne*, 2018-NMCA-033, ¶¶ 12-15,417 P.3d  
3 1157.

4 The Legislature amended Section 30-6A-3 in 2016, recompiling distribution as  
5 Subsection E. *See* 2016 N.M. Laws Ch. 2, § 1 (eff. Feb. 25, 2016). The Legislature also  
6 amended the basic sentence from a “second-degree felony” to a “second-degree felony for  
7 sexual exploitation of children,” and added new subsections for felonies “for sexual  
8 exploitation of children” to NMSA 1978, Section 31-18-15 (2016). *See* 2016 N.M. Laws Ch.  
9 2, §§ 1, 2.

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