

1 SENATE BILL 257

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla and Phelps Anderson

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10 AN ACT

11 RELATING TO DELINQUENCY; EXPANDING THE SCOPE OF DELINQUENCY
12 PLACEMENTS; PROVIDING FOR PETITIONS FOR ALTERNATIVE PLACEMENTS
13 FOR DELINQUENCY PLACEMENTS; ENSURING THAT PLACEMENTS FOR INDIAN
14 CHILDREN PROVIDE ACCESS TO CULTURAL PRACTICES; ENACTING
15 REQUIREMENTS FOR COURT ORDERS FOR DELINQUENCY PLACEMENTS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 32A-2-3 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 32, as amended) is amended to read:

20 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

21 A. "delinquent act" means an act committed by a
22 child that would be designated as a crime under the law if
23 committed by an adult, not including a violation of Section
24 30-9-2 NMSA 1978, including the following offenses:

25 (1) any of the following offenses pursuant to

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1 municipal traffic codes or the Motor Vehicle Code:

2 (a) driving while under the influence of
3 intoxicating liquor or drugs;

4 (b) failure to stop in the event of an
5 accident causing death, personal injury or damage to property;

6 (c) unlawful taking of a vehicle or
7 motor vehicle;

8 (d) receiving or transferring of a
9 stolen vehicle or motor vehicle;

10 (e) homicide by vehicle;

11 (f) injuring or tampering with a
12 vehicle;

13 (g) altering or changing of an engine
14 number or other vehicle identification numbers;

15 (h) altering or forging of a driver's
16 license or permit or any making of a fictitious license or
17 permit;

18 (i) reckless driving;

19 (j) driving with a suspended or revoked
20 license; or

21 (k) an offense punishable as a felony;

22 (2) buying, attempting to buy, receiving,
23 possessing or being served any alcoholic liquor or being
24 present in a licensed liquor establishment, other than a
25 restaurant or a licensed retail liquor establishment, except in

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1 the presence of the child's parent, guardian, custodian or
2 adult spouse. As used in this paragraph, "restaurant" means an
3 establishment where meals are prepared and served primarily for
4 on-premises consumption and that has a dining room, a kitchen
5 and the employees necessary for preparing, cooking and serving
6 meals. "Restaurant" does not include an establishment, as
7 defined in regulations promulgated by the director of the
8 special investigations unit of the department of public safety,
9 that serves only hamburgers, sandwiches, salads and other fast
10 foods;

11 (3) a violation of Section 30-29-2 NMSA 1978,
12 regarding the illegal use of a glue, aerosol spray product or
13 other chemical substance;

14 (4) a violation of the Controlled Substances
15 Act;

16 (5) escape from the custody of a law
17 enforcement officer or a juvenile probation or parole officer
18 or from any placement made by the department by a child who has
19 been adjudicated a delinquent child;

20 (6) a violation of Section 30-15-1.1 NMSA 1978
21 regarding unauthorized graffiti on personal or real property;
22 or

23 (7) a violation of an order of protection
24 issued pursuant to the provisions of the Family Violence
25 Protection Act;

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1 B. "delinquent child" means a child who has
2 committed a delinquent act;

3 C. "delinquent offender" means a delinquent child
4 who is subject to juvenile sanctions only and who is not a
5 youthful offender or a serious youthful offender;

6 D. "detention facility" means a place where a child
7 may be detained under the Children's Code pending court hearing
8 and does not include a facility for the care and rehabilitation
9 of an adjudicated delinquent child;

10 E. "felony" means an act that would be a felony if
11 committed by an adult;

12 F. "fictive kin" means a non-relative who has a
13 significant and familial relationship with a child or a child's
14 family that existed prior to the child entering foster care, or
15 a non-relative who developed a significant and familial
16 relationship with a child after the child entered foster care,
17 and who has been identified by the department as the child's
18 permanent connection. For an Indian child, "fictive kin" is
19 also a person defined according to tribal or pueblo law, custom
20 or tradition. "Fictive kin" may also be a person chosen by a
21 child fourteen years of age or older, without regard to when
22 the relationship was established or for how long, when it is in
23 the best interest of the child to identify that person as
24 fictive kin;

25 [F.] G. "misdemeanor" means an act that would be a

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1 misdemeanor or petty misdemeanor if committed by an adult;

2 ~~[G.]~~ H. "restitution" means financial reimbursement
3 by the child to the victim or community service imposed by the
4 court and is limited to easily ascertainable damages for injury
5 to or loss of property, actual expenses incurred for medical,
6 psychiatric and psychological treatment for injury to a person
7 and lost wages resulting from physical injury, which are a
8 direct and proximate result of a delinquent act. "Restitution"
9 does not include reimbursement for damages for mental anguish,
10 pain and suffering or other intangible losses. As used in this
11 subsection, "victim" means a person who is injured or suffers
12 damage of any kind by an act that is the subject of a complaint
13 or referral to law enforcement officers or juvenile probation
14 authorities. Nothing contained in this definition limits or
15 replaces the provisions of Subsections A and B of Section
16 32A-2-27 NMSA 1978;

17 ~~[H.]~~ I. "serious youthful offender" means an
18 individual fifteen to eighteen years of age who is charged with
19 and indicted or bound over for trial for first degree murder.
20 A "serious youthful offender" is not a delinquent child as
21 defined pursuant to the provisions of this section;

22 ~~[I.]~~ J. "supervised release" means the release of a
23 juvenile, whose term of commitment has not expired, from a
24 facility for the care and rehabilitation of adjudicated
25 delinquent children, with specified conditions to protect

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1 public safety and promote successful transition and
2 reintegration into the community. A juvenile on supervised
3 release is subject to monitoring by the department until the
4 term of commitment has expired and may be returned to custody
5 for violating conditions of release; and

6 ~~[J-]~~ K. "youthful offender" means a delinquent
7 child subject to adult or juvenile sanctions who is:

8 (1) fourteen to eighteen years of age at the
9 time of the offense and who is adjudicated for at least one of
10 the following offenses:

11 (a) second degree murder, as provided in
12 Section 30-2-1 NMSA 1978;

13 (b) assault with intent to commit a
14 violent felony, as provided in Section 30-3-3 NMSA 1978;

15 (c) kidnapping, as provided in Section
16 30-4-1 NMSA 1978;

17 (d) aggravated battery, as provided in
18 Subsection C of Section 30-3-5 NMSA 1978;

19 (e) aggravated battery against a
20 household member, as provided in Subsection C of Section
21 30-3-16 NMSA 1978;

22 (f) aggravated battery upon a peace
23 officer, as provided in Subsection C of Section 30-22-25 NMSA
24 1978;

25 (g) shooting at a dwelling or occupied

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1 building or shooting at or from a motor vehicle, as provided in
2 Section 30-3-8 NMSA 1978;

3 (h) dangerous use of explosives, as
4 provided in Section 30-7-5 NMSA 1978;

5 (i) criminal sexual penetration, as
6 provided in Section 30-9-11 NMSA 1978;

7 (j) robbery, as provided in Section
8 30-16-2 NMSA 1978;

9 (k) aggravated burglary, as provided in
10 Section 30-16-4 NMSA 1978;

11 (l) aggravated arson, as provided in
12 Section 30-17-6 NMSA 1978; or

13 (m) abuse of a child that results in
14 great bodily harm or death to the child, as provided in Section
15 30-6-1 NMSA 1978;

16 (2) fourteen to eighteen years of age at the
17 time of the offense, who is adjudicated for any felony offense
18 and who has had three prior, separate felony adjudications
19 within a three-year time period immediately preceding the
20 instant offense. The felony adjudications relied upon as prior
21 adjudications shall not have arisen out of the same transaction
22 or occurrence or series of events related in time and location.
23 Successful completion of consent decrees is not considered a
24 prior adjudication for the purposes of this paragraph; or

25 (3) fourteen years of age and who is

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1 adjudicated for first degree murder, as provided in Section
2 30-2-1 NMSA 1978."

3 SECTION 2. Section 32A-2-12 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 41, as amended) is amended to read:

5 "32A-2-12. PLACEMENT OR DETENTION.--

6 A. The department may place or detain a child
7 alleged or adjudicated to be a delinquent child [~~may be placed~~
8 ~~or detained~~], pending a court hearing, in any of the following
9 places:

10 (1) a licensed foster home or a home otherwise
11 authorized under the law to provide foster or group care;

12 (2) a facility operated by a licensed child
13 welfare services agency;

14 (3) a shelter-care facility provided for in
15 the Children's Shelter Care Act that is in compliance with all
16 standards, conditions and regulatory requirements and that
17 shall be considered a temporary placement subject to judicial
18 review within thirty days of placement;

19 (4) a detention facility certified by the
20 department for children alleged to be delinquent children;

21 (5) any other suitable place, other than a
22 facility for the long-term care and rehabilitation of
23 delinquent children to which children adjudicated as delinquent
24 may be confined pursuant to Section 32A-2-19 NMSA 1978,
25 designated by the court [~~and~~] that meets the standards for

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1 detention facilities pursuant to the Children's Code and
2 federal law; [ø#]

3 (6) the child's home or place of residence
4 with a parent or guardian, under conditions and restrictions
5 approved by the court; or

6 (7) an approved home of a relative or fictive
7 kin.

8 B. When the child is an Indian child, the
9 department shall consider the Indian child's cultural needs
10 when making a placement pursuant to Subsection A of this
11 section, and the placement shall provide the Indian child with
12 reasonable access to cultural practices and traditional
13 treatment.

14 C. If a child's initial placement in the home or
15 place of residence of a parent or guardian is disrupted for any
16 reason, the department may temporarily move the child to an
17 alternative placement pursuant to the provisions of Subsection
18 A of this section. Pursuant to the provisions of Section
19 32A-2-19 NMSA 1978, the department shall petition the court for
20 an order authorizing the child's removal from the custody of
21 the parent or guardian no later than three days from the date
22 of the change in placement.

23 D. At any stage in the proceeding to place or
24 detain a child pursuant to this section, the department, the
25 child or the child's attorney may petition the court for an

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1 order authorizing the child's removal from the custody of the
2 parent or guardian or otherwise modifying a previous placement
3 order issued pursuant to Section 32A-2-19 NMSA 1978 and
4 authorizing the department to make an alternative placement
5 pursuant to the provisions of Subsection A of this section.

6 E. When the court grants an order authorizing the
7 child's removal from the custody of a parent or legal guardian
8 pursuant to the provisions of Section 32A-2-19 NMSA 1978, the
9 court shall specify in writing that the continuance of the
10 child in the home of the parent or legal guardian is contrary
11 to the welfare of the child and that reasonable efforts were
12 made by the department to prevent the need to remove the child
13 and order that the responsibility for temporary placement be
14 with the juvenile probation services office of the department
15 in accordance with the provisions of Section 32A-2-12 NMSA
16 1978.

17 ~~[B.]~~ F. A child alleged to be a youthful offender
18 may be detained, pending a court hearing, in any of the
19 following places:

20 (1) a detention facility, licensed by the
21 department, for children alleged to be delinquent children; or

22 (2) any other suitable place, other than a
23 facility for the long-term care and rehabilitation of
24 delinquent children to which children adjudicated as delinquent
25 children may be confined pursuant to Section 32A-2-19 NMSA

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1 1978, designated by the court [~~and~~] that meets the standards
2 for detention facilities pursuant to the Children's Code and
3 federal law.

4 ~~[G.]~~ G. A child adjudicated as a youthful offender
5 who is violent toward staff or other residents in a detention
6 facility may be transferred and detained, pending a court
7 hearing, in a county jail. In the event that a child is
8 detained in a jail, the director of the jail shall presume that
9 the child is vulnerable to victimization by inmates within the
10 adult population because of the child's age and shall take
11 measures to provide protection to the child. However,
12 provision of protective measures shall not result in
13 diminishing a child's civil rights to less than those existing
14 for an incarcerated adult.

15 ~~[D.]~~ H. A child who has previously been
16 incarcerated as an adult or a person who is eighteen years of
17 age or older shall not be detained in a juvenile detention
18 facility or a facility for the long-term care and
19 rehabilitation of delinquent children but may be detained in a
20 county jail. A child shall not be transferred to a county jail
21 solely on the basis of attaining the age of eighteen while
22 detained in a juvenile detention facility. In the event that a
23 child is detained in a jail, the director of the jail shall
24 presume that the child is vulnerable to victimization by
25 inmates within the adult population because of the child's age,

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1 and shall take measures to provide protection to the child.
2 However, provision of protective measures shall not result in
3 diminishing a child's civil rights to less than those existing
4 for an incarcerated adult.

5 ~~[E-]~~ I. A child alleged to be a serious youthful
6 offender may be detained pending a court hearing in any of the
7 following places, prior to arraignment in metropolitan,
8 magistrate or district court:

9 (1) a detention facility, licensed by the
10 department, for children alleged to be delinquent children;

11 (2) any other suitable place, other than a
12 facility for the long-term care and rehabilitation of
13 delinquent children to which children adjudicated as delinquent
14 children may be confined pursuant to Section 32A-2-19 NMSA
15 1978, designated by the court that meets the standards for
16 detention facilities pursuant to the Children's Code and
17 federal law; or

18 (3) a county jail, if a facility in Paragraph
19 (1) or (2) of this subsection is not appropriate. In the event
20 that a child is detained in a jail, the director of the jail
21 shall presume that the child is vulnerable to victimization by
22 inmates within the adult population because of the child's age
23 and shall take measures to provide protection to the child.

24 However, provision of protective measures shall not result in
25 diminishing a child's civil rights to less than those existing

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1 for an incarcerated adult.

2 ~~[F-]~~ J. When a person who is eighteen years of age
3 or older is taken into custody and transported to an adult
4 facility on a juvenile warrant or an adult warrant or other
5 adult charges and an outstanding juvenile warrant exists,
6 notice shall be given to the children's court attorney and the
7 juvenile probation and parole office in the jurisdiction where
8 the juvenile warrant was issued within one day of the person
9 being taken into custody. The juvenile probation and parole
10 office shall give notice that the person has been taken into
11 custody to the children's court judge and the attorney who
12 represented the person in the juvenile proceeding.

13 ~~[G-]~~ K. In addition to the judicial review required
14 by Paragraph (3) of Subsection A of this section, a child
15 detained in an out-of-home placement pursuant to this section
16 may request judicial review of the appropriateness of the
17 placement."

18 SECTION 3. Section 32A-2-19 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 48, as amended) is amended to read:

20 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
21 OFFENDER.--

22 A. At the conclusion of the dispositional hearing,
23 the court may make and include in the dispositional judgment
24 its findings on the following:

25 (1) the interaction and interrelationship of

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1 the child with the child's parents and siblings and any other
2 person who may significantly affect the child's best interests;

3 (2) the child's adjustment to the child's
4 home, school and community;

5 (3) the mental and physical health of all
6 individuals involved, including consideration of such factors
7 as the child's brain development, maturity, trauma history and
8 disability;

9 (4) the wishes of the child as to the child's
10 custodian;

11 (5) the wishes of the child's parents as to
12 the child's custody;

13 (6) whether there exists a relative of the
14 child or other individual who, after study by the department,
15 is found to be qualified to receive and care for the child;

16 (7) the availability of services recommended
17 in the predisposition report; and

18 (8) the ability of the parents to care for the
19 child in the home.

20 B. If a child is found to be delinquent, the court
21 may impose a fine not to exceed the fine that could be imposed
22 if the child were an adult and may enter its judgment making
23 any of the following dispositions for the supervision, care and
24 rehabilitation of the child:

25 (1) transfer legal custody to the department,

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1 an agency responsible for the care and rehabilitation of
2 delinquent children, which shall receive the child at a
3 facility designated by the secretary of the department as a
4 juvenile reception facility. The department shall thereafter
5 determine the appropriate placement, supervision and
6 rehabilitation program for the child. The judge may include
7 recommendations for placement of the child. Commitments are
8 subject to limitations and modifications set forth in Section
9 32A-2-23 NMSA 1978. The types of commitments include:

10 (a) a short-term commitment of one year
11 in a facility for the care and rehabilitation of adjudicated
12 delinquent children. No more than nine months shall be served
13 at the facility and no less than ninety days shall be served on
14 supervised release, unless: 1) a petition to extend the
15 commitment has been filed prior to the commencement of
16 supervised release; 2) the commitment has been extended
17 pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised
18 release is revoked pursuant to Section 32A-2-25 NMSA 1978;

19 (b) a long-term commitment for no more
20 than two years in a facility for the care and rehabilitation of
21 adjudicated delinquent children. No more than twenty-one
22 months shall be served at the facility and no less than ninety
23 days shall be served on supervised release, unless: 1)
24 supervised release is revoked pursuant to Section 32A-2-25 NMSA
25 1978; or 2) the commitment is extended pursuant to Section

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1 32A-2-23 NMSA 1978;

2 (c) if the child is a delinquent
3 offender who committed one of the criminal offenses set forth
4 in Subsection [F] K of Section 32A-2-3 NMSA 1978, a commitment
5 to age twenty-one, unless sooner discharged; or

6 (d) if the child is a youthful offender,
7 a commitment to age twenty-one, unless sooner discharged;

8 (2) place the child on probation under those
9 conditions and limitations as the court may prescribe; provided
10 that when a child is placed on probation pursuant to this
11 paragraph, the court may:

12 (a) place the child in the custody of a
13 parent or guardian under conditions and limitations that are
14 appropriate for the welfare and rehabilitation of the child.
15 If the judge decides not to place the child in the custody of a
16 parent or guardian, the judge shall specify in writing that the
17 continuance of the child in the home of the parent or guardian
18 is contrary to the welfare of the child and that reasonable
19 efforts were made by the department to prevent the need for
20 removal of the child; and

21 (b) order that the responsibility for
22 temporary placement be with the juvenile probation services
23 office of the department in accordance with the provisions of
24 Section 32A-2-12 NMSA 1978;

25 (3) place the child in a local detention

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1 facility that has been certified in accordance with the
2 provisions of Section 32A-2-4 NMSA 1978 for a period not to
3 exceed fifteen days within a three hundred sixty-five day time
4 period; or if a child is found to be delinquent solely on the
5 basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA
6 1978, the court shall only enter a judgment placing the child
7 on probation or ordering restitution or imposing a fine not to
8 exceed the fine that could be imposed if the child were an
9 adult or any combination of these dispositions; or

10 (4) if a child is found to be delinquent
11 solely on the basis of Paragraph (2), (3) or (4) of Subsection
12 A of Section 32A-2-3 NMSA 1978, the court may make any
13 disposition provided by this section and may enter its judgment
14 placing the child on probation and, as a condition of
15 probation, transfer custody of the child to the department for
16 a period not to exceed six months without further order of the
17 court; provided that this transfer shall not be made unless the
18 court first determines that the department is able to provide
19 or contract for adequate and appropriate treatment for the
20 child and that the treatment is likely to be beneficial.

21 C. When the child is an Indian child, the Indian
22 child's cultural needs shall be considered in the dispositional
23 judgment and reasonable access to cultural practices and
24 traditional treatment shall be provided.

25 D. A child found to be delinquent shall not be

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1 committed or transferred to a penal institution or other
2 facility used for the execution of sentences of persons
3 convicted of crimes.

4 E. Whenever the court vests legal custody in an
5 agency, institution or department, it shall transmit with the
6 dispositional judgment copies of the clinical reports,
7 predisposition study and report and other information it has
8 pertinent to the care and treatment of the child.

9 F. Prior to any child being placed in the custody
10 of the department, the department shall be provided with
11 reasonable oral or written notification and an opportunity to
12 be heard.

13 G. In addition to any other disposition pursuant to
14 Subsection B of this section, the court may make an abuse or
15 neglect report for investigation and proceedings as provided
16 for in the Abuse and Neglect Act. The report may be made to a
17 local law enforcement agency, the department or a tribal law
18 enforcement or social service agency for an Indian child
19 residing in Indian country.

20 H. In addition to any other disposition pursuant to
21 this section or any other penalty provided by law, if a child
22 who is fifteen years of age or older is adjudicated delinquent
23 on the basis of Paragraph (2), (3) or (4) of Subsection A of
24 Section 32A-2-3 NMSA 1978, the child's driving privileges may
25 be denied or the child's driver's license may be revoked for a

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1 period of ninety days. For a second or a subsequent
2 adjudication, the child's driving privileges may be denied or
3 the child's driver's license revoked for a period of one year.
4 Within twenty-four hours of the dispositional judgment, the
5 court may send to the motor vehicle division of the taxation
6 and revenue department the order adjudicating delinquency.
7 Upon receipt of an order from the court adjudicating
8 delinquency, the director of the motor vehicle division of the
9 taxation and revenue department may revoke or deny the
10 delinquent's driver's license or driving privileges. Nothing
11 in this section may prohibit the delinquent from applying for a
12 limited driving privilege pursuant to Section 66-5-35 NMSA 1978
13 or an ignition interlock license pursuant to the Ignition
14 Interlock Licensing Act, and nothing in this section precludes
15 the delinquent's participation in an appropriate educational,
16 counseling or rehabilitation program.

17 I. In addition to any other disposition pursuant to
18 this section or any other penalty provided by law, when a child
19 is adjudicated delinquent on the basis of Paragraph (6) of
20 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
21 perform the mandatory community service set forth in Section
22 30-15-1.1 NMSA 1978. When a child fails to completely perform
23 the mandatory community service, the name and address of the
24 child's parent or legal guardian shall be published in a
25 newspaper of general circulation, accompanied by a notice that

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1 the parent or legal guardian is the parent or legal guardian of
2 a child adjudicated delinquent for committing graffiti."

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