

HOUSE BILL 105

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

## INTRODUCED BY

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## AN ACT

RELATING TO DELINQUENCY; ALLOWING A COURT DISCRETION TO EXTEND A JUDGMENT; PROVIDING FOR PROBATION OR COMMITMENT OF A CHILD UP TO THE DATE THE CHILD REACHES TWENTY-FIVE YEARS OF AGE.

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

SECTION 1. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended) is amended to read:

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

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

(1) the interaction and interrelationship of the child with the child's parents and siblings and any other person who may significantly affect the child's best interests;

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- (2) the child's adjustment to the child's home, school and community;
- (3) the mental and physical health of all individuals involved, including consideration of such factors as the child's brain development, maturity, trauma history and disability;
- (4) the wishes of the child as to the child's custodian;
- (5) the wishes of the child's parents as to the child's custody;
- (6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;
- (7) the availability of services recommended in the predisposition report; and
- (8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) transfer legal custody to the department or an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter

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1 determine the appropriate placement, supervision and  
2 rehabilitation program for the child. The judge may include  
3 recommendations for placement of the child. The court has  
4 discretion to consider the child's unique circumstances and  
5 history when transferring custody of the child pursuant to this  
6 paragraph, whether for commitment or a period of probation, and  
7 may impose commitment or probation for any period up to the  
8 date the child reaches twenty-five years of age. Commitments  
9 are subject to limitations and modifications set forth in  
10 Section 32A-2-23 NMSA 1978; ~~[The types of commitments include:~~

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

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

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1978; or 2) the commitment is extended pursuant to Section  
32A-2-23 NMSA 1978;

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

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

(2) place the child on probation under those conditions and limitations as the court may prescribe;

(3)] (2) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period; or if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or both; or

[+4] (3) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the

1       court; provided that this transfer shall not be made unless the  
2       court first determines that the department is able to provide  
3       or contract for adequate and appropriate treatment for the  
4       child and that the treatment is likely to be beneficial.

5           C. [When] If the child is an Indian child, the  
6       Indian child's cultural needs shall be considered in the  
7       dispositional judgment and reasonable access to cultural  
8       practices and traditional treatment shall be provided.

9           D. A child found to be delinquent shall not be  
10       committed or transferred to a penal institution or other  
11       facility used for the execution of sentences of persons  
12       convicted of crimes.

13           E. Whenever the court vests legal custody in an  
14       agency, institution or department, it shall transmit with the  
15       dispositional judgment copies of the clinical reports,  
16       predisposition study and report and other information it has  
17       pertinent to the care and treatment of the child.

18           F. Prior to any child being placed in the custody  
19       of the department, the department shall be provided with  
20       reasonable oral or written notification and an opportunity to  
21       be heard.

22           G. In addition to any other disposition pursuant to  
23       Subsection B of this section, the court may make an abuse or  
24       neglect report for investigation and proceedings as provided  
25       for in the Abuse and Neglect Act. The report may be made to a

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1 local law enforcement agency, the department or a tribal law  
2 enforcement or social service agency for an Indian child  
3 residing in Indian country.

4 H. In addition to any other disposition pursuant to  
5 this section or any other penalty provided by law, if a child  
6 who is fifteen years of age or older is adjudicated delinquent  
7 on the basis of Paragraph (2), (3) or (4) of Subsection A of  
8 Section 32A-2-3 NMSA 1978, the child's driving privileges may  
9 be denied or the child's driver's license may be revoked for a  
10 period of ninety days. For a second or a subsequent  
11 adjudication, the child's driving privileges may be denied or  
12 the child's driver's license revoked for a period of one year.  
13 Within twenty-four hours of the dispositional judgment, the  
14 court may send to the motor vehicle division of the taxation  
15 and revenue department the order adjudicating delinquency.  
16 Upon receipt of an order from the court adjudicating  
17 delinquency, the director of the motor vehicle division of the  
18 taxation and revenue department may revoke or deny the  
19 delinquent's driver's license or driving privileges. Nothing  
20 in this section may prohibit the delinquent from applying for a  
21 limited driving privilege pursuant to Section 66-5-35 NMSA 1978  
22 or an ignition interlock license pursuant to the Ignition  
23 Interlock Licensing Act, and nothing in this section precludes  
24 the delinquent's participation in an appropriate educational,  
25 counseling or rehabilitation program.

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1                   I. In addition to any other disposition pursuant to  
2 this section or any other penalty provided by law, when a child  
3 is adjudicated delinquent on the basis of Paragraph (6) of  
4 Subsection A of Section 32A-2-3 NMSA 1978, the child shall  
5 perform the mandatory community service set forth in Section  
6 30-15-1.1 NMSA 1978. When a child fails to completely perform  
7 the mandatory community service, the name and address of the  
8 child's parent or legal guardian shall be published in a  
9 newspaper of general circulation, accompanied by a notice that  
10 the parent or legal guardian is the parent or legal guardian of  
11 a child adjudicated delinquent for committing graffiti."

12                  **SECTION 2.** Section 32A-2-20 NMSA 1978 (being Laws 1993,  
13 Chapter 77, Section 49, as amended) is amended to read:

14                  **"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--**

15                  A. The court has the discretion to invoke either an  
16 adult sentence or juvenile sanctions on a youthful offender.  
17 The children's court attorney shall file a notice of intent to  
18 invoke an adult sentence within ten working days of the filing  
19 of the petition; provided that the court may extend the time  
20 for filing of the notice of intent to invoke an adult sentence,  
21 for good cause shown, prior to the adjudicatory hearing. A  
22 preliminary hearing by the court or a hearing before a grand  
23 jury shall be held, within ten days after the filing of the  
24 intent to invoke an adult sentence, to determine whether  
25 probable cause exists to support the allegations contained in

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1 the petition.

2 B. If the children's court attorney has filed a  
3 notice of intent to invoke an adult sentence and the child is  
4 adjudicated as a youthful offender, the court shall make the  
5 following findings in order to invoke an adult sentence:

6 (1) the child is not amenable to treatment or  
7 rehabilitation as a child in available facilities; and

8 (2) the child is not eligible for commitment  
9 to an institution for children with developmental disabilities  
10 or mental disorders.

11 C. In making the findings set forth in Subsection B  
12 of this section, the judge shall consider the following  
13 factors:

14 (1) the seriousness of the alleged offense;

15 (2) whether the alleged offense was committed  
16 in an aggressive, violent, premeditated or willful manner;

17 (3) whether a firearm was used to commit the  
18 alleged offense;

19 (4) whether the alleged offense was against  
20 persons or against property, greater weight being given to  
21 offenses against persons, especially if personal injury  
22 resulted;

23 (5) the maturity of the child as determined by  
24 consideration of the child's home, environmental situation,  
25 social and emotional health, pattern of living, brain

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1 development, trauma history and disability;

2 (6) the record and previous history of the  
3 child;

4 (7) the prospects for adequate protection of  
5 the public and the likelihood of reasonable rehabilitation of  
6 the child by the use of procedures, services and facilities  
7 currently available; and

8 (8) any other relevant factor; provided that  
9 factor is stated on the record.

10 D. If a child has previously been sentenced as an  
11 adult pursuant to the provisions of this section, there shall  
12 be a rebuttable presumption that the child is not amenable to  
13 treatment or rehabilitation as a child in available facilities.

14 E. If the court invokes an adult sentence, the  
15 court may sentence the child to less than, but shall not  
16 exceed, the mandatory adult sentence. A youthful offender  
17 given an adult sentence shall be treated as an adult offender  
18 and shall be transferred to the legal custody of an agency  
19 responsible for incarceration of persons sentenced to adult  
20 sentences. This transfer terminates the jurisdiction of the  
21 court over the child with respect to the delinquent acts  
22 alleged in the petition. A child given an adult sentence shall  
23 not be sentenced to life imprisonment without the possibility  
24 of release or parole.

25 F. If a juvenile disposition is appropriate, the

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1       court shall follow the provisions set forth in Section 32A-2-19  
2       NMSA 1978. A youthful offender may be subject to extended  
3       commitment in the care of the department until the age of  
4       [twenty-one] twenty-five, pursuant to the provisions of Section  
5       32A-2-23 NMSA 1978.

6               G. A child fourteen years of age or older charged  
7       with first degree murder but not convicted of first degree  
8       murder and found to have committed a youthful offender offense  
9       as set forth in Subsection J of Section 32A-2-3 NMSA 1978 is  
10      subject to the dispositions set forth in this section.

11               H. A child fourteen years of age or older charged  
12       with first degree murder but found to have committed a  
13       delinquent act that is neither first degree murder nor a  
14       youthful offender offense as set forth in Subsection J of  
15       Section 32A-2-3 NMSA 1978 shall be adjudicated as a delinquent  
16       subject to the dispositions set forth in Section 32A-2-19 NMSA  
17       1978."

18               SECTION 3. Section 32A-2-23 NMSA 1978 (being Laws 1993,  
19       Chapter 77, Section 52, as amended) is amended to read:

20               "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--  
21       MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS--

22               A. A judgment transferring legal custody of an  
23       adjudicated delinquent child to an agency responsible for the  
24       care and rehabilitation of delinquent children divests the  
25       court of jurisdiction at the time of transfer of custody,

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1       unless the transfer of legal custody is for a commitment not  
2       exceeding fifteen days pursuant to the provisions of Section  
3       32A-2-19 NMSA 1978, in which case the court retains  
4       jurisdiction.

5               B. A judgment of probation or protective  
6       supervision shall remain in force for an indeterminate period  
7       not to exceed the term of commitment from the date entered.

8               C. A child shall be released by an agency and  
9       probation or supervision shall be terminated by juvenile  
10       probation and parole services or the agency providing  
11       supervision when it appears that the purpose of the order has  
12       been achieved before the expiration of the period of the  
13       judgment. A release or termination and the reasons therefor  
14       shall be reported promptly to the court in writing by the  
15       releasing authority.

16               [D. ~~Prior to the expiration of a short-term~~  
17       commitment of one year, as provided for in Section 32A-2-19  
18       NMSA 1978, the court may extend the judgment for up to one six-  
19       month period if the court finds that the extension is necessary  
20       to safeguard the welfare of the child or the public safety. If  
21       a short-term commitment is extended, the mandatory ninety-day  
22       supervised release, as required by Section 32A-2-19 NMSA 1978,  
23       shall be included in the extension. Notice and hearing are  
24       required for any extension of a juvenile's commitment.

25               E. ~~Prior to the expiration of a long-term~~

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1 commitment, as provided for in Section 32A-2-19 NMSA 1978, the  
2 court may extend the judgment for additional periods of one  
3 year until the child reaches the age of twenty-one if the court  
4 finds that the extension is necessary to safeguard the welfare  
5 of the child or the public safety. If a long-term commitment  
6 is extended, the mandatory ninety-day supervised release, as  
7 required by Section 32A-2-19 NMSA 1978, shall be included in  
8 the extension. Notice and hearing are required for any  
9 extension of a juvenile's commitment.

10 F.] D. Prior to the expiration of a judgment of  
11 probation or commitment, the court may exercise discretion and  
12 extend the judgment, based on the child's unique circumstances  
13 and history, for an additional period [of one year until] up to  
14 the date the child reaches [the age of twenty-one] twenty-five  
15 years of age if the court finds that the extension is necessary  
16 to protect the community or to safeguard the welfare of the  
17 child.

18 [G.] E. The court may dismiss a motion if it finds  
19 after preliminary investigation that the motion is without  
20 substance. If the court is of the opinion that the matter  
21 should be reviewed, it may, upon notice to all necessary  
22 parties, proceed to a hearing in the manner provided for  
23 hearings on petitions alleging delinquency. The court may  
24 terminate a judgment if it finds that the child is no longer in  
25 need of care, supervision or rehabilitation or it may enter a

1 judgment extending or modifying the original judgment if it  
2 finds that action necessary to safeguard the child or the  
3 public interest.

4 [H.] F. A child may make a motion to modify a  
5 children's court or adult disposition within thirty days of the  
6 judge's decision. If the court is of the opinion that the  
7 matter should be reviewed, it may, upon notice to all necessary  
8 parties, proceed to a hearing in the manner provided for  
9 hearings on petitions alleging delinquency.

10 [I.] G. The department may seek a bench warrant  
11 from the court when the child absconds from supervised  
12 release."

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