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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIME; AMENDING THE DELINQUENCY ACT TO SPECIFICALLY EXCLUDE PROSTITUTION AS A DELINQUENT ACT; AMENDING THE FAMILY IN NEED OF COURT-ORDERED SERVICES ACT TO CONNECT HUMAN TRAFFICKING VICTIMS TO SERVICES.

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

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

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

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

(1) any of the following offenses pursuant to municipal traffic codes or the Motor Vehicle Code:

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

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

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

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

9 (e) homicide by vehicle;

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

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

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

17 (i) reckless driving;

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

20 (k) an offense punishable as a felony;

21 (2) buying, attempting to buy, receiving,
22 possessing or being served any alcoholic liquor or being
23 present in a licensed liquor establishment, other than a
24 restaurant or a licensed retail liquor establishment, except in
25 the presence of the child's parent, guardian, custodian or

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

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

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

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

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

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

25 B. "delinquent child" means a child who has

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1 committed a delinquent act;

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

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

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

11 F. "misdemeanor" means an act that would be a
12 misdemeanor or petty misdemeanor if committed by an adult;

13 G. "restitution" means financial reimbursement by
14 the child to the victim or community service imposed by the
15 court and is limited to easily ascertainable damages for injury
16 to or loss of property, actual expenses incurred for medical,
17 psychiatric and psychological treatment for injury to a person
18 and lost wages resulting from physical injury, which are a
19 direct and proximate result of a delinquent act. "Restitution"
20 does not include reimbursement for damages for mental anguish,
21 pain and suffering or other intangible losses. As used in this
22 subsection, "victim" means a person who is injured or suffers
23 damage of any kind by an act that is the subject of a complaint
24 or referral to law enforcement officers or juvenile probation
25 authorities. Nothing contained in this definition limits or

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1 replaces the provisions of Subsections A and B of Section
2 32A-2-27 NMSA 1978;

3 H. "serious youthful offender" means an individual
4 fifteen to eighteen years of age who is charged with and
5 indicted or bound over for trial for first degree murder. A
6 "serious youthful offender" is not a delinquent child as
7 defined pursuant to the provisions of this section;

8 I. "supervised release" means the release of a
9 juvenile, whose term of commitment has not expired, from a
10 facility for the care and rehabilitation of adjudicated
11 delinquent children, with specified conditions to protect
12 public safety and promote successful transition and
13 reintegration into the community. A juvenile on supervised
14 release is subject to monitoring by the department until the
15 term of commitment has expired and may be returned to custody
16 for violating conditions of release; and

17 J. "youthful offender" means a delinquent child
18 subject to adult or juvenile sanctions who is:

19 (1) fourteen to eighteen years of age at the
20 time of the offense and who is adjudicated for at least one of
21 the following offenses:

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

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

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1 (c) kidnapping, as provided in Section
2 30-4-1 NMSA 1978;

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

5 (e) aggravated battery against a
6 household member, as provided in Subsection C of Section
7 30-3-16 NMSA 1978;

8 (f) aggravated battery upon a peace
9 officer, as provided in Subsection C of Section 30-22-25 NMSA
10 1978;

11 (g) shooting at a dwelling or occupied
12 building or shooting at or from a motor vehicle, as provided in
13 Section 30-3-8 NMSA 1978;

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

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

18 (j) robbery, as provided in Section
19 30-16-2 NMSA 1978;

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

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

24 (m) abuse of a child that results in
25 great bodily harm or death to the child, as provided in Section

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1 30-6-1 NMSA 1978;

2 (2) fourteen to eighteen years of age at the
3 time of the offense, who is adjudicated for any felony offense
4 and who has had three prior, separate felony adjudications
5 within a three-year time period immediately preceding the
6 instant offense. The felony adjudications relied upon as prior
7 adjudications shall not have arisen out of the same transaction
8 or occurrence or series of events related in time and location.
9 Successful completion of consent decrees ~~[are]~~ is not
10 considered a prior adjudication for the purposes of this
11 paragraph; or

12 (3) fourteen years of age and who is
13 adjudicated for first degree murder, as provided in Section
14 30-2-1 NMSA 1978."

15 SECTION 2. Section 32A-3B-2 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 74, as amended) is amended to read:

17 "32A-3B-2. DEFINITIONS.--As used in Chapter 32A, Article
18 3B NMSA 1978, "family in need of court-ordered services" means
19 the child or the family has refused family services or the
20 department has exhausted appropriate and available family
21 services and court intervention is necessary to provide family
22 services to the child or family and ~~[the following~~
23 ~~circumstances exist]~~ it is a family:

24 A. ~~[it is a family]~~ whose child, subject to
25 compulsory school attendance, is absent from school without an

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1 authorized excuse more than ten days during a school year;

2 B. ~~[it is a family]~~ whose child is absent from the
3 child's place of residence for a time period of twelve hours or
4 more without consent of the child's parent, guardian or
5 custodian;

6 C. ~~[it is a family]~~ whose child refuses to return
7 home and there is good cause to believe that the child will run
8 away from home if forced to return to the parent, guardian or
9 custodian; ~~[or]~~

10 D. ~~[it is a family]~~ in which the child's parent,
11 guardian or custodian refuses to allow the child to return home
12 and a petition alleging neglect of the child is not in the
13 child's best interests; or

14 E. whose child is:

15 (1) alleged to be engaged in an act that would
16 be designated as prostitution if committed by an adult; or

17 (2) a victim of human trafficking as defined
18 in Section 30-52-1 NMSA 1978."

19 SECTION 3. Section 32A-3B-3 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 75) is amended to read:

21 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH
22 PROTECTIVE CUSTODY--PENALTY.--

23 A. A child may be taken into protective custody by
24 a law enforcement officer without a court order when the
25 officer has reasonable grounds to believe that the child:

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1 (1) [~~the child~~] has run away from the child's
2 parent, guardian or custodian;

3 (2) [~~the child~~] without parental supervision
4 is suffering from illness or injury;

5 (3) [~~the child~~] has been abandoned; [~~or~~]

6 (4) [~~the child~~] is endangered by [~~his~~] the
7 child's surroundings and removal from those surroundings is
8 necessary to ensure the child's safety;

9 (5) is engaged in an act that would be
10 designated as prostitution if committed by an adult; or

11 (6) is a victim of human trafficking as
12 defined in Section 30-52-1 NMSA 1978.

13 B. A child may be taken into protective custody
14 pursuant to a court order issued after an agency legally
15 charged with the supervision of the child has notified a law
16 enforcement agency that the child has run away from a
17 placement.

18 C. When a child is taken into protective custody,
19 the department shall make a reasonable effort to determine
20 whether the child is an Indian child.

21 D. Any person, other than the child taken into
22 protective custody, who interferes with placing the child in
23 protective custody is guilty of a petty misdemeanor and shall
24 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
25 1978."

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1 SECTION 4. Section 32A-3B-4 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 76, as amended) is amended to read:

3 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
4 LIMITATIONS.--

5 A. A law enforcement officer who takes a child into
6 protective custody shall, with all reasonable speed:

7 (1) inform the child of the reasons for the
8 protective custody; and

9 (2) contact the department.

10 B. When the department is contacted by a law
11 enforcement officer who has taken a child into protective
12 custody, the department shall refer the child to appropriate
13 treatment and services and may:

14 (1) accept custody of the child and designate
15 an appropriate [~~facility in which to place~~] placement for the
16 child; or

17 (2) return the child to the child's parent,
18 guardian or custodian if the child's safety is assured.

19 C. A child taken into protective custody shall not
20 be placed in or transported in a law enforcement vehicle or any
21 other vehicle that contains an adult placed under arrest,
22 unless circumstances exist in which any delay in transporting
23 the child to an appropriate facility would be likely to result
24 in substantial danger to the child's physical safety. When
25 such circumstances exist, the circumstances shall be described

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1 in writing by the driver of the vehicle and submitted to the
2 driver's supervisor within two days after the driver
3 transported the child.

4 D. A child taken into protective custody shall not
5 be held involuntarily for more than two days, unless a petition
6 to extend the custody is filed pursuant to the provisions of
7 the Family in Need of Court-Ordered Services Act or the Abuse
8 and Neglect Act.

9 E. When a petition is filed or any time thereafter,
10 the children's court or district court may issue an ex-parte
11 custody order based upon a sworn written statement of facts
12 showing that probable cause exists to believe that protective
13 custody of the child is necessary.

14 F. The protective custody order shall be served on
15 the respondent by a person authorized to serve arrest warrants
16 and shall direct the law enforcement officer to take custody of
17 the child and deliver the child to a place designated by the
18 court.

19 G. The Rules of Evidence do not apply to the
20 issuance of an ex-parte custody order."