

School Shootings and the Delinquency Act

LEGISLATIVE EDUCATION STUDY COMMITTEE

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What Crimes Currently Exist to Prosecute a School Shooting Threat?

No specific enumerated criminal act of threatening to conduct a shooting on school premises.

A review of recent news articles shows individuals who threaten to conduct shootings on school premises are often charged with other criminal acts, such as **assault** (§30-30-1 NMSA 1978), **assault with the intent to commit a violent felony** (§30-3-3 NMSA 1978), and **interference with members of staff, public officials or the general public (interference with the educational process)** (§30-20-13 NMSA 1978).

It appears individuals who make threats to conduct shootings on school premises are most often charged with **interfering with the educational process**.

Interfering with the Educational Process

It is unlawful for any person to willfully interfere with the educational process of any public or private school by committing, threatening to commit, or inciting others to commit any act which would disrupt, impair, interfere with, or obstruct the lawful mission, processes, procedures, or functions of a public or private school.

A violation of §30-20-13 NMSA 1978 is a petty misdemeanor and carries a maximum sentence of imprisonment in the county jail of up to six months, payment of a fine of up to \$500, or both.

Bomb Threats

It is a fourth degree felony to “falsely and maliciously state to another person that a bomb or other explosive has been placed in such a position that property or persons are likely to be injured or destroyed.” (§30-20-16 NMSA 1978).

The basic penalty for a conviction of making a bomb threat includes up to 18 months imprisonment, a fine of up to \$5,000, or both pursuant to §31-18-15 NMSA 1978.

A court may require a convicted individual to reimburse the victim of the offense for economic harm caused by that offense. Additionally, if there are aggravating circumstances, the defendant has prior felony convictions, or a firearm is used in commission of the crime, a judge is able to alter the basic sentence pursuant to Article 18 of Section 31 NMSA 1978.

Delinquency Act

Criminal acts committed by individuals under the age of 18 are handled pursuant to the Delinquency Act of the Children's Code (Chapter 2 of Article 32A NMSA 1978).

Purpose of Delinquency Act: to deter juvenile delinquency, and includes an emphasis on community-based alternatives to detention, strengthening families, and successfully reintegrate children into homes and communities.

The Delinquency Act removes the adult consequences of most criminal behavior committed by children, but still holds children accountable for their actions to the extent of the child's age, education, mental and physical condition, background, and other relevant factors. The Delinquency Act aims to provide a program of supervision, care, and rehabilitation for delinquent juveniles.

Delinquent Children

“Delinquent child” is defined as a child that has committed a “delinquent act.”

“Delinquent act” is defined as an act committed by a child that would be designated as a crime under the law if committed by an adult.

- The statutory list of crimes that are considered delinquent acts if committed by a child includes most criminal conduct.
- Most delinquent children are generally subject to penalties pursuant to the Delinquency Act and not the Criminal Code.
- There are a number of criminal acts that may subject a child to adult penalties (youthful offenders and serious youthful offenders).

Youthful Offenders and Serious Youthful Offenders

Some adjudicated delinquent children between 14- and 18-years-old are considered **“youthful offenders”** and may be subject a child to adult sanctions.

- There are 14 violent delinquent acts that are specifically enumerated in statute that designate a child as a “youthful offender” and also include any 14- to 18-year-old who is adjudicated for a felony offense who has three prior felony adjudications within a three-year period.
- The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender.
 - Children are entitled to an amenability hearing to determine whether they are amenable to treatment or rehabilitation as a child AND the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

“Serious youthful offender” means an individual 15- to 18-years-old who is charged with and indicted or bound over for trial for first degree murder.

A "serious youthful offender" is not a delinquent child as defined in the Delinquency Act and is subject to adult penalties.

Disposition of an Adjudicated Delinquent Act

Time waiver – an agreement between the child and the children’s court attorney whereby the child waives their right to a speedy trial (180-day rule), deferring adjudication of the charges proceedings are stayed for a specified period of time, typically for first offenses and non-violent delinquent acts, in exchange for a dismissal at the end of the specified time period if no additional petitions are filed and child completes any conditions.

Consent decree – probation of six months or less overseen by the Juvenile Probation Office. May be extended by 6 months.

A short-term commitment of 1 year in a juvenile facility (generally no more than nine months will be served at the facility and no less than 90 days will be served on supervised release)

A long-term commitment of no more than 2 years in a juvenile facility (no more than 21 months will be served at the facility and no less than 90 days will be served on supervised release)

Potential adult sentence for adjudication of youthful offenders who are sentenced as an adult, or potential commitment in a juvenile facility up to age 21 if sentenced as a juvenile

Statute also enumerates other penalties for certain crimes, including fines consistent with those that would be imposed on convicted adults, treatment centers placements and revoked driving privileges for substance abuse related adjudications, and community service for graffiti adjudications.

Juvenile Records - Sealing §32A-2-26

Records are sealed when:

- The child turns 18-years-old or at the expiration of the disposition, whichever occurs later.
- Upon request if: 1) two years have elapsed since the final release of the child from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision; 2) the child has not, within the two years immediately prior to asking for records to be sealed, been convicted of a felony or of a misdemeanor involving moral turpitude or been found delinquent by a court and no proceeding is pending seeking such a conviction or finding; **and** 3) the person is 18-years-old or the court finds that good cause exists to seal the records prior to the child's 18 birthday.

Records of a child who is determined by the court not to be a delinquent offender are automatically sealed by the court upon motion by the children's court attorney at the conclusion of the proceedings.

Juvenile Records Cont. -

If the court enters an order to seal records, generally the case will be treated as if it never occurred and all index references shall be deleted. Records may be unsealed as follows:

- If permitted by a court: 1) upon a motion made by the person who is the subject of the records; or 2) on an individual case by case basis to any clinic, hospital, or agency that has the person under care or treatment or to other persons engaged in fact finding or research (statute allows CYFD to use records for research).
- If there are new findings of delinquency, findings of a need for services, or a new criminal conviction.
- For the purpose of considering bail or other release conditions for new felony charges (whether adult or juvenile), youthful offender records that have been sealed may be unsealed.

Noncriminal Nature of Juvenile Judgment

A delinquent act that result in a juvenile disposition is not considered a conviction of a crime and does not impose any civil disabilities that ordinarily resulting from conviction of a crime, i.e. loss of voting rights.

The juvenile disposition of a child and any evidence given in a hearing in court is only admissible in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report.

Records of proceedings resulting from a youthful offender or serious youthful offender proceeding which results in an adult sentence are admissible in other proceedings.

If a judgment on a proceeding under the Delinquency Act results in an adult sentence, the determination of guilt at trial becomes a conviction for purposes of the Criminal Code.