

**AN ACT TO END THE PROSECUTION OF TRAFFICKED MINORS,
AND CONNECT THEM TO EXISTING SERVICES**

Goals:

1. To amend the delinquency code, Section 32A-2-3, to expressly exclude prostitution as a delinquent act.
2. To amend Family in Need of Court Ordered Services (FINCOS), Section 32A-3B-2 through Section 32A-3B-4 to connect human trafficking victims to services.

Section 32A-2-3—Definitions

As used in the Delinquency Act:

A. “delinquent act”:

(1) means an act committed by a child that would be designated as a crime under the law if committed by an adult, including the following offenses:

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

- ~~(a)~~ (i) driving while under the influence of intoxicating liquor or drugs;
- (ii) failure to stop in the event of an accident causing death, personal injury or damage to property;
- (iii) unlawful taking of a vehicle or motor vehicle;
- (iv) receiving or transferring of a stolen vehicle or motor vehicle;
- (v) homicide by vehicle;
- (vi) injuring or tampering with a vehicle;
- (vii) altering or changing of an engine number or other vehicle identification numbers;
- (viii) altering or forging of a driver's license or permit or any making of a fictitious license or permit;
- (ix) reckless driving;
- (x) driving with a suspended or revoked license; or
- (xi) an offense punishable as a felony;

~~(a)~~ (b) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, “restaurant” means an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. “Restaurant” does not include an establishment, as defined in regulations promulgated by the director of the New Mexico state police division² of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;

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

(d) a violation of the Controlled Substances Act;³

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

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

(g) a violation of an order of protection issued pursuant to the provisions of the Family Violence Protection Act;⁴

(2) does not include a violation of Section 30-9-2 NMSA 1978, regarding prostitution.

- B. “delinquent child” means a child who has committed a delinquent act;
- C. “delinquent offender” means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;
- D. “detention facility” means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;
- E. “felony” means an act that would be a felony if committed by an adult;
- F. “misdemeanor” means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;
- G. “restitution” means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. “Restitution” does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, “victim” means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;
- H. “serious youthful offender” means an individual fifteen to eighteen years of age 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 pursuant to the provisions of this section;
- I. “supervised release” means the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release; and
- J. “youthful offender” means a delinquent child subject to adult or juvenile sanctions who is:
- (1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:
 - (a) second degree murder, as provided in Section 30-2-1 NMSA 1978;
 - (b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
 - (c) kidnapping, as provided in Section 30-4-1 NMSA 1978;
 - (d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;
 - (e) aggravated battery against a household member, as provided in Subsection C of Section 30-3-16 NMSA 1978;
 - (f) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

- (g) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;
- (h) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;
- (i) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;
- (j) robbery, as provided in Section 30-16-2 NMSA 1978;
- (k) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;
- (l) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or
- (m) abuse of a child that results in great bodily harm or death to the child, as provided in Section 30-6-1 NMSA 1978;

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

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

Section 32A-3B-2—Definitions

As used in Chapter 32A, Article 3B NMSA 1978, “family in need of court-ordered services” means the child or the family has refused family services or the department has exhausted appropriate and available family services and court intervention is necessary to provide family services to the child or family and the following circumstances exist:

A. it is a family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school year;

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

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

D. it is a family in which the child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging neglect of the child is not in the child's best interests.

E. It is a family whose child is:

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

(2) is a victim of human trafficking.

Section 32A-3B-3—Protective Custody

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

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

(2) the child without parental supervision is suffering from illness or injury;

(3) the child has been abandoned; or

(4) the child is endangered by his surroundings and removal from those surroundings is necessary to ensure the child's safety.

(5) The child is engaged in an act:

(a) that would be designated as prostitution if committed by an adult, or
(b) is a human trafficking victim.

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

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

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

Section 32A-3B-4—Protective Custody Restrictions/Time Limitations

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

- (1) inform the child of the reasons for the protective custody; and
- (2) contact the department.

B. When the department is contacted by a law enforcement officer who has taken a child into protective custody, the department ~~may~~ shall:

- (1) accept custody of the child and designate an appropriate facility in which to place the child; ~~or~~
- (2) return the child to the child's parent, guardian or custodian if the child's safety is assured; or
- (3) refer the child to appropriate treatment and services.

C. A child taken into protective custody shall not be placed in or transported in a law enforcement vehicle or any other vehicle that contains an adult placed under arrest, unless circumstances exist in which any delay in transporting the child to an appropriate facility would be likely to result in substantial danger to the child's physical safety. When such circumstances exist, the circumstances shall be described in writing by the driver of the vehicle and submitted to the driver's supervisor within two days after the driver transported the child.

D. A child taken into protective custody shall not be held involuntarily for more than two days, unless a petition to extend the custody is filed pursuant to the provisions of the Family in Need of Court-Ordered Services Act or the Abuse and Neglect Act.¹

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

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

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