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SENATE BILL 309

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO CRIMINAL LAW; PROHIBITING INTOXICATION BY PERSONS
UNDER TWENTY-ONE YEARS OF AGE; PROVIDING FOR DISMISSAL IN
CERTAIN CIRCUMSTANCES; INCREASING A PENALTY.

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, including the following offenses:

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

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

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

3 (c) unlawful taking of a vehicle or
4 motor vehicle;

5 (d) receiving or transferring of a
6 stolen vehicle or motor vehicle;

7 (e) homicide by vehicle;

8 (f) injuring or tampering with a
9 vehicle;

10 (g) altering or changing of an engine
11 number or other vehicle identification numbers;

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

15 (i) reckless driving;

16 (j) driving with a suspended or revoked
17 license; or

18 (k) an offense punishable as a felony;

19 (2) [~~buying, attempting to buy, receiving,~~
20 ~~possessing or being served any alcoholic liquor~~] a violation of
21 Subsection C of Section 60-7B-1 NMSA 1978 or being present in a
22 licensed liquor establishment, other than a restaurant or a
23 licensed retail liquor establishment, except in the presence of
24 the child's parent, guardian, custodian or adult spouse. As
25 used in this paragraph, "restaurant" means an establishment

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

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

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

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

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

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

24 B. "delinquent child" means a child who has
25 committed a delinquent act;

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

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

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

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

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

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1 32A-2-27 NMSA 1978;

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

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

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

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

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

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

25 (c) kidnapping, as provided in Section

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1 30-4-1 NMSA 1978;

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

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

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

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

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

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

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

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

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

23 (m) abuse of a child that results in
24 great bodily harm or death to the child, as provided in Section
25 30-6-1 NMSA 1978;

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

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

13 **SECTION 2.** Section 60-3A-1 NMSA 1978 (being Laws 1981,
14 Chapter 39, Section 1, as amended) is amended to read:

15 "60-3A-1. SHORT TITLE.--Chapter 60, Articles 3A, 4B, 4C,
16 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A [~~of Chapter 60~~] NMSA 1978 may
17 be cited as the "Liquor Control Act"."

18 **SECTION 3.** Section 60-7B-1 NMSA 1978 (being Laws 1993,
19 Chapter 68, Section 22, as amended) is amended to read:

20 "60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO
21 MINORS--POSSESSION OF ALCOHOLIC BEVERAGES BY MINORS.--

22 A. It is a violation of the Liquor Control Act for
23 a person, including a person licensed pursuant to the
24 provisions of the Liquor Control Act, or an employee, agent or
25 lessee of that person, if [~~he~~] the person knows or has reason

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1 to know that ~~[he]~~ the person is violating the provisions of
2 this section, to:

3 (1) sell, serve or give alcoholic beverages to
4 a minor or permit a minor to consume alcoholic beverages on the
5 licensed premises;

6 (2) buy alcoholic beverages for or procure the
7 sale or service of alcoholic beverages to a minor;

8 (3) deliver alcoholic beverages to a minor; or

9 (4) aid or assist a minor to buy, procure or
10 be served with alcoholic beverages.

11 B. It is not a violation of the Liquor Control Act,
12 as provided in Subsection A or C of this section, when:

13 (1) a parent, legal guardian or adult spouse
14 of a minor serves alcoholic beverages to that minor on real
15 property, other than licensed premises, under the control of
16 the parent, legal guardian or adult spouse; or

17 (2) alcoholic beverages are used in the
18 practice of religious beliefs.

19 C. It is a violation of the Liquor Control Act for
20 a minor to buy, attempt to buy, receive, possess or permit
21 ~~[himself to be]~~ being served with alcoholic beverages or to be
22 visibly in an intoxicated condition.

23 D. When a person other than a minor procures
24 another person to sell, serve or deliver alcoholic beverages to
25 a minor by actual or constructive misrepresentation of facts or

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1 concealment of facts calculated to cause the person selling,
2 serving or delivering the alcoholic beverages to the minor to
3 believe that the minor is legally entitled to be sold, served
4 or delivered alcoholic beverages, and actually deceives that
5 person by that misrepresentation or concealment, then the
6 procurer and not the person deceived shall have violated the
7 provisions of the Liquor Control Act.

8 ~~[E. As used in the Liquor Control Act, "minor"~~
9 ~~means a person under twenty-one years of age.~~

10 ~~F.]~~ E. In addition to the penalties provided in
11 Section 60-6C-1 NMSA 1978, a violation of the provisions of
12 Subsection A of this section is a fourth degree felony and the
13 offender shall be sentenced pursuant to the provisions of
14 Section 31-18-15 NMSA 1978.

15 ~~[G.]~~ F. A violation of the provisions of Subsection
16 C of this section is a misdemeanor and the offender shall be
17 punished as follows:

18 (1) for a first violation [~~the offender shall~~
19 ~~be~~]:

20 [~~(a) fined an amount not more than one~~
21 ~~thousand dollars (\$1,000); and~~

22 ~~(b)]~~ (a) the offender shall be ordered
23 by the sentencing court to perform thirty hours of community
24 service related to reducing the incidence of driving while
25 under the influence of intoxicating liquor;

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1 (b) the offender's driver's license
2 shall be suspended for a period of sixty days. If the minor is
3 too young to possess a driver's license at the time of the
4 violation, then sixty days shall be added to the date that the
5 minor would otherwise become eligible to obtain a driver's
6 license;

7 (c) the offender shall be ordered by the
8 sentencing court to attend an alcohol prevention or early
9 intervention program approved by the local DWI county program.
10 The program shall be a minimum of eight hours in length; and

11 (d) if the offender successfully
12 completes the requirements of this paragraph, an adjudication
13 of guilt shall not be entered and the offender shall be
14 discharged and the proceedings dismissed; provided that
15 discharge and dismissal pursuant to this subparagraph may only
16 occur once with respect to any person. Discharge and dismissal
17 pursuant to this subparagraph shall be without adjudication of
18 guilt and shall not be deemed a conviction for purposes of
19 disqualifications or disabilities imposed by law upon
20 conviction of a crime;

21 (2) for a second violation, the offender
22 shall:

23 (a) be fined an amount not more than one
24 thousand dollars (\$1,000);

25 (b) be ordered by the sentencing court

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1 to perform forty hours of community service related to reducing
2 the incidence of driving while under the influence of
3 intoxicating liquor; and

4 (c) have [~~his~~] the offender's driver's
5 license suspended for a period of ninety days. If the minor is
6 too young to possess a driver's license at the time of the
7 violation, then ninety days shall be added to the date [~~he~~] the
8 offender would otherwise become eligible to obtain a driver's
9 license; and

10 (3) for a third or subsequent violation, the
11 offender shall:

12 (a) be fined an amount not more than one
13 thousand dollars (\$1,000);

14 (b) be ordered by the sentencing court
15 to perform sixty hours of community service related to reducing
16 the incidence of driving while under the influence of
17 intoxicating liquor; and

18 (c) have [~~his~~] the offender's driver's
19 license suspended for a period of two years or until the
20 offender reaches twenty-one years of age, whichever period of
21 time is greater.

22 [~~H.~~] G. A violation of the provisions of Subsection
23 D of this section is a fourth degree felony, and the offender
24 shall be sentenced pursuant to the provisions of Section
25 31-18-15 NMSA 1978.

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H. As used in this section, "visibly in an intoxicated condition" means that the minor has consumed intoxicating liquor sufficient to impair the ability to care for oneself and guard against casualty."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.