

HOUSE BILL 499

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO CHILDREN; CLARIFYING PROVISIONS RELATED TO A COURT'S CONSIDERATIONS WITH RESPECT TO THE DISPOSITION OF A YOUTHFUL OFFENDER.

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

SECTION 1. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49, as amended) is amended to read:

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

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition; provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A

.200338.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 preliminary hearing by the court or a hearing before a grand
2 jury shall be held, within ten days after the filing of the
3 intent to invoke an adult sentence, to determine whether
4 probable cause exists to support the allegations contained in
5 the petition.

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

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

12 (2) the child is not eligible for commitment
13 to an institution for children with developmental disabilities
14 or mental disorders.

15 C. In making the findings set forth in Subsection B
16 of this section, the judge shall consider the following
17 factors:

18 (1) the seriousness of the [~~alleged~~] offense;

19 (2) whether the [~~alleged~~] offense was
20 committed in an aggressive, violent, premeditated or willful
21 manner;

22 (3) whether a firearm was used to commit the
23 [~~alleged~~] offense;

24 (4) whether the [~~alleged~~] offense was against
25 persons or against property, greater weight being given to

.200338.1

underscoring material = new
~~[bracketed material] = delete~~

1 offenses against persons, especially if personal injury
2 resulted;

3 (5) the maturity of the child as determined by
4 consideration of the child's home, environmental situation,
5 social and emotional health, pattern of living, brain
6 development, trauma history and disability;

7 (6) the record and previous history of the
8 child;

9 (7) the prospects for adequate protection of
10 the public and the likelihood of reasonable rehabilitation of
11 the child by the use of procedures, services and facilities
12 currently available; and

13 (8) any other relevant factor, provided that
14 factor is stated on the record.

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

19 E. If the court invokes an adult sentence, the
20 court may sentence the child to less than, but shall not
21 exceed, the mandatory adult sentence. A youthful offender
22 given an adult sentence shall be treated as an adult offender
23 and shall be transferred to the legal custody of an agency
24 responsible for incarceration of persons sentenced to adult
25 sentences. This transfer terminates the jurisdiction of the

.200338.1

underscored material = new
[bracketed material] = delete

1 court over the child with respect to the delinquent acts
2 [~~alleged in the petition~~] for which the child is adjudicated as
3 a youthful offender.

4 F. If a juvenile disposition is appropriate, the
5 court shall follow the provisions set forth in Section 32A-2-19
6 NMSA 1978. A youthful offender may be subject to extended
7 commitment in the care of the department until the age of
8 twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA
9 1978.

10 G. A child fourteen years of age or older, charged
11 with first degree murder, but not convicted of first degree
12 murder and found to have committed a youthful offender offense
13 as set forth in Subsection [†] J of Section 32A-2-3 NMSA 1978,
14 is subject to the dispositions set forth in this section.

15 H. A child fourteen years of age or older charged
16 with first degree murder, but found to have committed a
17 delinquent act that is neither first degree murder nor a
18 youthful offender offense as set forth in Subsection [†] J of
19 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
20 subject to the dispositions set forth in Section 32A-2-19 NMSA
21 1978."

22 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
23 provisions of this act is July 1, 2015.