

State of New Mexico
Senate

FIFTY-FIFTH LEGISLATURE
SECOND SESSION

February 7, 2022

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 43

Amendment sponsored by Senator Gregory A. Baca

1. On page 1, line 12, after the semicolon, insert "ALLOWING FOR THE IMPOSITION OF A STAYED ADULT CRIMINAL SENTENCE UPON ADJUDICATION OF A YOUTHFUL OFFENDER;".

2. On page 10, between lines 15 and 16, insert the following new sections:

"SECTION 4. 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. "amenable to treatment" means the ability of a child to be rehabilitated or treated sufficiently by the time the child reaches twenty-one years of age to protect the public's safety;

~~[A.]~~ B. "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:

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

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

(c) unlawful taking of a vehicle or motor

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vehicle;

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

(e) homicide by vehicle;

(f) injuring or tampering with a vehicle;

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

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

(i) reckless driving;

(j) driving with a suspended or revoked license;

or

(k) an offense punishable as a felony;

(2) 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 special
investigations unit of the department of public safety, that serves
only hamburgers, sandwiches, salads and other fast foods;

(3) a violation of Section 30-29-2 NMSA 1978,

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regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(4) a violation of the Controlled Substances Act;

(5) 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;

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

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

[B-] C. "delinquent child" means a child who has committed a delinquent act;

[G-] D. "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;

[B-] E. "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-] F. "felony" means an act that would be a felony if committed by an adult;

[F-] G. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

[G-] H. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is

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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-] I. "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;

[H-] J. "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

[H-] K. "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

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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

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(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 is 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 5. Section 32A-2-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 35) is amended to read:

"32A-2-6. TRANSFER OF JURISDICTION OVER CHILD FROM OTHER TRIBUNALS TO COURT.--

A. If it appears to a tribunal in a criminal matter that the defendant was under the age of eighteen years at the time the offense charged was alleged to have been committed and the offense charged is a delinquent act pursuant to the provisions of the Delinquency Act, the tribunal shall promptly transfer jurisdiction of the matter and the defendant to the court, together with a copy of the accusatory pleading and other papers, documents and transcripts of testimony relating to the case. The tribunal shall not transfer a serious youthful offender.

B. Upon transfer, the court shall have exclusive jurisdiction over the proceedings and the defendant. The transferring tribunal shall order that the defendant promptly be taken to the court or taken to a place of detention designated by

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the court or released to the custody of a parent, guardian, custodian or other person legally responsible for the defendant to be brought before the court at a time designated by the court. Upon transfer to the court, a petition shall be prepared and filed in the court in accordance with the provisions of the Delinquency Act. If the defendant is not a child at the time of transfer, the court retains jurisdiction over the matter only until disposition is made by the court, unless disposition is made pursuant to Paragraph (2) of Subsection A of Section 32A-2-20.1 NMSA 1978."

SECTION 6. Section 32A-2-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 46, as amended) is amended to read:

"32A-2-17. PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the court may direct that a predisposition study and report to the court be made in writing by the department or an appropriate agency designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case. The following predisposition reports shall be provided to the parties and the court five days before actual disposition or sentencing:

(1) the adult probation and parole division of the corrections department shall prepare a predisposition report for a serious youthful offender;

(2) the department shall prepare a predisposition report for a serious youthful offender who is convicted of an offense other than first degree murder;

(3) the department shall prepare a predisposition

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report for a youthful offender concerning the youthful offender's amenability to treatment, and if:

(a) the court determines that a juvenile disposition is appropriate, the department shall prepare a subsequent predisposition report; or

(b) the court makes the findings necessary to impose an adult sentence pursuant to Section 32A-2-20 NMSA 1978, the adult probation and parole division of the corrections department shall prepare a subsequent predisposition report; this subparagraph shall not apply, however, to any adult sentence sought pursuant to Section 32A-2-20.1 NMSA 1978; and

(4) the department shall prepare a predisposition report for a delinquent offender upon the court's request.

B. Where there are indications that the child may have a mental disorder or developmental disability, the court, on motion by the children's court attorney or that of counsel for the child, may order the child to be examined at a suitable place by a physician or psychiatrist, a licensed psychologist, a licensed professional clinical counselor or a licensed independent social worker prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the court finds that placement in a hospital or other appropriate facility is necessary.

C. The court, after a hearing, may order examination by a physician or psychiatrist, a licensed psychologist or a licensed professional clinical counselor or a licensed independent social worker of a parent or custodian whose ability to care for or supervise a child is an issue before the court.

D. The court may order that a child adjudicated as a

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delinquent child be administered a predispositional evaluation by a professional designated by the department for purposes of diagnosis, with direction that the court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered. The evaluation shall be completed within fifteen days of the court's order, and the preference shall be for performing the evaluation in the child's community.

E. If a child is detained for purposes of performing a predispositional evaluation, it shall be completed within fifteen days, and in no event shall a child be detained for more than fifteen days within a three-hundred-sixty-five-day period for a predispositional evaluation, unless for good cause shown."

SECTION 7. Section 32A-2-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 47, as amended) is amended to read:

"32A-2-18. JUDGMENT--NONCRIMINAL NATURE-- NONADMISSIBILITY.--

A. The court shall enter a judgment setting forth the court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Delinquency Act resulting in a juvenile disposition shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime nor shall it operate to disqualify the child in any civil service application or appointment. The juvenile disposition of a child and any evidence given in a hearing in court shall not be admissible as evidence against the child in any case or proceeding in any other tribunal whether before or after reaching the age of majority, except in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report.

B. If a judgment resulting from a youthful offender or serious youthful offender proceeding under the Delinquency Act results in an adult sentence, a record of the judgment shall be

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admissible in any other case or proceeding in any other court involving the youthful offender or serious youthful offender, unless the sentence was imposed pursuant to Paragraph (2) of Subsection F and Subsection H of Section 32A-2-20.2 NMSA 1978, and the offender successfully completed adult probation.

C. 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, except as provided in Subsection H of Section 32A-2-20.2 NMSA 1978."

3. Renumber the succeeding sections accordingly.

4. On page 10, lines 20 and 21, strike the period and "The" and insert in lieu thereof "pursuant to this section, or the court may proceed pursuant to Section 32A-2-20.1 NMSA 1978. If seeking an adult sentence, the".

5. On page 11, line 9, after "sentence", insert "; except when imposing an adult sentence pursuant to Section 32A-2-20.1 NMSA 1978".

6. On page 13, lines 1 through 3, strike the underscored language.

7. On page 13, line 13, strike "J" and insert in lieu thereof "K".

8. On page 13, line 18, strike "J" and insert in lieu thereof "K".

9. On page 13, line 21, strike the closing quotation mark and insert in lieu thereof the following new subsection to read:

"I. An appeal of a court order entered in accordance with this section may be filed by either party to the case."

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10. On page 13, lines 22 through 24, strike Section 5 in its entirety and insert in lieu thereof the following new sections:

"SECTION 9. A new section of the Delinquency Act, Section 32A-2-20.1 NMSA 1978, is enacted to read:

"32A-2-20.1. [NEW MATERIAL] DUAL DISPOSITION OF A YOUTHFUL OFFENDER AMENABLE TO TREATMENT.--

A. If a youthful offender prosecution results in adjudication for an offense listed in Subsection K of Section 32A-2-3 NMSA 1978 and the offender is found by the court to be amenable to treatment, the court may impose:

(1) a juvenile disposition under Subparagraph (b) or (c) of Paragraph (1) of Subsection B of Section 32A-2-19 NMSA 1978; and

(2) an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense. Successful completion of the juvenile disposition ordered shall be a condition of suspension of the adult criminal sentence.

B. In determining a disposition to impose pursuant to Subsection A of this section, the judge shall make findings on all of the following factors:

- (1) the seriousness of the alleged offense;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether a firearm was used to commit the alleged offense;

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(4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

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

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

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

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

SECTION 10. A new section of the Delinquency Act, Section 32A-2-20.2 NMSA 1978, is enacted to read:

"32A-2-20.2. [NEW MATERIAL] EXECUTION OF ADULT SENTENCE.--

A. When there is probable cause to believe that a youthful offender sentenced pursuant to Section 32A-2-20.1 NMSA 1978 has violated any condition of the stayed sentence or is alleged to have committed a new offense, the court may, if necessary, direct that the youthful offender be taken into immediate custody. The children's court attorney may petition for revocation of the stay of execution of the adult sentence and shall notify the youthful offender in writing of the reasons alleged to exist for revocation of the stay.

B. The youthful offender shall be entitled to a hearing on the state's petition to revoke the stay or may waive a hearing. If the youthful offender challenges the petition for revocation of the

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stay, the court shall hold a hearing at which the youthful offender is entitled to be heard and represented by counsel. The children's court attorney shall present proof of the violation beyond a reasonable doubt. Proof of a new offense in this hearing shall not establish guilt as to that new offense. If a violation is established, the court shall proceed pursuant to Subsection D of this section.

C. If a person described in Subsection A of this section is under the age of eighteen and is taken into custody, the person may be detained only in accordance with Section 32A-2-4.1 NMSA 1978.

D. If it is established after a hearing that a youthful offender has violated the terms of suspension of the sentence stayed pursuant to Paragraph (2) of Subsection A of Section 32A-2-20.1 NMSA 1978, the court shall order execution of the previously imposed sentence unless the court makes written findings of mitigating factors that justify continuing the stay. If the court finds that no mitigating factors are present, the court shall treat the youthful offender as an adult and order any of the adult sanctions authorized by the original disposition and sentence.

E. Upon revocation of the stay and execution of the adult sentence, the offender's youthful offender status is terminated and the court's jurisdiction over the child with respect to the delinquent acts alleged in the petition is terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the corrections department, is with the adult court.

F. Before an offender who has received a stayed adult sentence pursuant to Section 32A-2-20.1 NMSA 1978 reaches the age of twenty-one, the court shall hold a hearing. The court shall:

(1) revoke the suspension, order execution of the adult sentence and direct that the offender be taken into the immediate custody of the corrections department;

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(2) order execution of the adult sentence and place the offender on probation; or

(3) order the release of the offender.

G. When ordering the execution of an adult sentence pursuant to Paragraph (1) or (2) of Subsection F of this section, the court shall:

(1) make the following findings:

(a) in the instant proceeding, during the time the child was placed on probation or committed to a facility for the care and rehabilitation of adjudicated delinquent children, that the child was not amenable to treatment or rehabilitation as a child in available facilities; and

(b) that the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders; and

(2) make findings on the following factors:

(a) the seriousness of the alleged offense;

(b) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(c) whether a firearm was used to commit the alleged offense;

(d) whether the alleged offense was against a person or against property, greater weight being given to an offense against a person, especially if personal injury resulted;

(e) the maturity of the child as determined by

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consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history and disability;

(f) the record and previous history of the child;

(g) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available;

(h) in the instant proceeding, the child's behavior and conduct while placed on probation or committed to a facility for the care and rehabilitation of adjudicated delinquent children;

(i) the results of a report provided by the department of a risk assessment performed on the child using an accepted risk assessment tool; and

(j) any other relevant factor, provided that the factor is stated on the record.

H. If an offender is ordered to serve probation pursuant to Paragraph (2) of Subsection F of this section and successfully completes probation, the adjudication shall not become a conviction for purposes of the Criminal Code and the court shall enter a conditional discharge as provided for in Section 31-20-13 NMSA 1978.

I. If execution of the adult sentence is ordered and the offender is placed in the custody of the corrections department, all time served by the offender under the juvenile disposition shall be

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credited toward the adult criminal sentence imposed.".

Gregory A. Baca

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____