

HOUSE BILL 125

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

Andrea Reeb

AN ACT

RELATING TO DELINQUENCY; AMENDING THE DEFINITIONS OF "SERIOUS YOUTHFUL OFFENDER" AND "YOUTHFUL OFFENDER" IN THE CRIMINAL SENTENCING ACT; EXPANDING THE DEFINITIONS OF "DELINQUENT ACT", "SERIOUS YOUTHFUL OFFENDER" AND "YOUTHFUL OFFENDER" IN THE DELINQUENCY ACT; PROVIDING FOR THE DISPOSITION OF A SERIOUS YOUTHFUL OFFENDER.

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

SECTION 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993, Chapter 77, Section 1, as amended) is amended to read:

"31-18-15.2. DEFINITIONS.--As used in the Criminal Sentencing Act:

A. "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

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1 serious youthful offender as provided in Section 32A-2-3 NMSA
2 1978; and

3 B. "youthful offender" means a ~~delinquent child~~
4 ~~subject to adult or juvenile sanctions who is:~~

5 (1) ~~fourteen to eighteen years of age at the~~
6 ~~time of the offense and who is adjudicated for at least one of~~
7 ~~the following offenses:~~

8 (a) ~~second degree murder, as provided in~~
9 ~~Section 30-2-1 NMSA 1978;~~

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

12 (c) ~~kidnapping, as provided in Section~~
13 ~~30-4-1 NMSA 1978;~~

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

16 (e) ~~aggravated battery upon a peace~~
17 ~~officer, as provided in Subsection C of Section 30-22-25 NMSA~~
18 ~~1978;~~

19 (f) ~~shooting at a dwelling or occupied~~
20 ~~building or shooting at or from a motor vehicle, as provided in~~
21 ~~Section 30-3-8 NMSA 1978;~~

22 (g) ~~dangerous use of explosives, as~~
23 ~~provided in Section 30-7-5 NMSA 1978;~~

24 (h) ~~criminal sexual penetration, as~~
25 ~~provided in Section 30-9-11 NMSA 1978;~~

~~(i) robbery, as provided in Section 30-16-2 NMSA 1978;~~

~~(j) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;~~

~~(k) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or~~

~~(l) 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 and 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 adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978] youthful offender as provided in Section 32A-2-3 NMSA 1978."~~

SECTION 2. 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

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1 child that is:

2 (1) an offense that would be designated as a
3 crime under the law if committed by an adult, not including a
4 violation of Section 30-9-2 NMSA 1978, including: [the
5 following offenses

6 (1) (a) any of the following offenses
7 pursuant to municipal traffic codes or the Motor Vehicle Code:
8 [(a)] 1) driving while under the influence of intoxicating
9 liquor or drugs; [(b)] 2) failure to stop in the event of an
10 accident causing [death] personal injury or damage to property;
11 [(c)] 3) unlawful taking of a vehicle or motor vehicle; [(d)]
12 4) receiving or transferring of a stolen vehicle or motor
13 vehicle; [(e) ~~homicide by vehicle~~; (f)] 5) injuring or
14 tampering with a vehicle; [(g)] 6) altering or changing of an
15 engine number or other vehicle identification numbers; [(h)] 7)
16 altering or forging of a driver's license or permit or any
17 making of a fictitious license or permit; [(i)] 8) reckless
18 driving; [(j)] 9) driving with a suspended or revoked license;
19 or [(k)] 10) an offense punishable as a felony;

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

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

[44] (c) 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)] (d) 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; or~~

(8)] (e) trafficking cannabis as provided in Section 26-2C-28 NMSA 1978; or

(2) any of the following offenses:

(a) 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 subparagraph, "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 New Mexico state police division of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;

(b) buying, attempting to buy,

receiving, possessing or being served cannabis or a cannabis product or being present in a cannabis establishment, except in the presence of the child's parent, guardian, custodian or adult spouse; provided that the provisions of this subparagraph shall not apply to a child participating in the medical cannabis program pursuant to the provisions of the Lynn and Erin Compassionate Use Act. As used in this subparagraph, "cannabis", "cannabis product" and "cannabis establishment" have the same definitions as in the Cannabis Regulation Act;

(c) 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; and

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

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 a 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. "firearm" means a weapon that will, is designed to or may rapidly be converted to expel a projectile by the action of an explosion or the frame or receiver of such weapon;

[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

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1 court and is limited to easily ascertainable damages for injury
2 to or loss of property, actual expenses incurred for medical,
3 psychiatric and psychological treatment for injury to a person
4 and lost wages resulting from physical injury, which are a
5 direct and proximate result of a delinquent act. "Restitution"
6 does not include reimbursement for damages for mental anguish,
7 pain and suffering or other intangible losses. As used in this
8 subsection, "victim" means a person who is injured or suffers
9 damage of any kind by an act that is the subject of a complaint
10 or referral to law enforcement officers or juvenile probation
11 authorities. Nothing contained in this definition limits or
12 replaces the provisions of Subsections A and B of Section
13 32A-2-27 NMSA 1978;

14 [H.] I. "serious youthful offender" is not a
15 delinquent child and means [~~an individual fifteen~~] a child
16 fourteen to eighteen years of age who is charged with and
17 indicted or bound over for trial for [~~first degree murder~~. A
18 "~~serious youthful offender~~" is not a ~~delinquent child as~~
19 ~~defined pursuant to the provisions of this section~~] at least
20 one of the following crimes:

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

23 (2) voluntary manslaughter, as provided in
24 Section 30-2-3 NMSA 1978;

25 (3) criminal sexual penetration in the first,

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1 second, third or fourth degree or aggravated criminal sexual
2 penetration, as provided in Section 30-9-11 NMSA 1978;

3 (4) robbery while armed with a deadly weapon,
4 as provided in Section 30-16-2 NMSA 1978; or

5 (5) shooting at a dwelling or occupied
6 building that results in great bodily harm to another person or
7 shooting at or from a motor vehicle that results in great
8 bodily harm to another person, as provided in Section 30-3-8
9 NMSA 1978;

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

19 [J.] K. "youthful offender" means a delinquent
20 child subject to adult or juvenile sanctions who is [is]
21 fourteen to eighteen years of age at the time of the offense
22 [and who is adjudicated for at least one of the following
23 offenses:

24 (a) second degree murder, as provided in
25 Section 30-2-1 NMSA 1978] and is:

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(1) charged with at least one of the following offenses:

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

[←e] (b) kidnapping, as provided in
Section 30-4-1 NMSA 1978;

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

[~~e~~] (d) aggravated battery against a household member, as provided in Subsection C of Section 30-3-16 NMSA 1978;

[~~(f)~~] (e) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

[~~(g)~~] (f) shooting at a dwelling or occupied building that does not result in great bodily harm to another person or shooting at or from a motor vehicle that does not result in great bodily harm to another person, as provided in Section 30-3-8 NMSA 1978;

[(h)] (g) 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)] (h) robbery, as provided in Section

[~~(k)~~] (i) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;

[+1] (j) aggravated arson, as provided in Section 30-17-6 NMSA 1978; [or

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

(1) homicide by vehicle, as provided in

(m) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978;

(n) failing to stop a vehicle when the vehicle is involved in an accident that results in death, as provided in Section 66-7-201 NMSA 1978; or

(o) an offense enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection N of Section 33-2-34 NMSA 1978 that is not a serious youthful offender offense as described in this section and that was committed with a firearm; or

(2) [fourteen to eighteen years of age at the time of the offense, who is] adjudicated for [any] a felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense; provided that:

(a) the felony adjudications relied upon

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as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location; and

(b) successful completion of a consent
~~[decrees is] decree shall not be~~ 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 3. 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 AND SERIOUS
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 preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

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

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

7 (2) the child is not eligible for commitment
8 to an institution for children with developmental disabilities
9 or mental disorders.

10 C. In making the findings set forth in Subsection B
11 of this section, the judge shall consider the following
12 factors:

13 (1) the seriousness of the alleged offense;

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

16 (3) whether a firearm was used to commit the
17 alleged offense;

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

22 (5) the maturity of the child as determined by
23 consideration of the child's home, environmental situation,
24 social and emotional health, pattern of living, brain
25 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.

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

E. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition. A child given an adult sentence shall not be sentenced to life imprisonment without the possibility of release or parole.

F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19

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1 NMSA 1978. A youthful offender may be subject to extended
2 commitment in the care of the department until the age of
3 twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA
4 1978.

5 G. A child fourteen years of age or older who was
6 charged ~~[with first degree murder]~~ as a serious youthful
7 offender but ~~[not convicted of first degree murder and]~~ was
8 found to have committed a youthful offender offense as set
9 forth in Subsection ~~[J]~~ K of Section 32A-2-3 NMSA 1978 is
10 subject to the dispositions set forth in this section.

11 H. A child fourteen years of age or older who was
12 charged ~~[with first degree murder]~~ as a serious youthful
13 offender but was found to have committed a delinquent act that
14 is neither ~~[first degree murder]~~ a serious youthful offender
15 offense as set forth in Subsection I of Section 32A-2-3 NMSA
16 1978 nor a youthful offender offense as set forth in Subsection
17 ~~[J]~~ K of Section 32A-2-3 NMSA 1978 shall be adjudicated as a
18 delinquent and is subject to the dispositions set forth in
19 Section 32A-2-19 NMSA 1978; provided that the case shall be
20 transferred to the children's court for disposition."

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