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SENATE BILL 390

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO JUVENILE JUSTICE; PROVIDING THE STATE WITH THE
RIGHT TO APPEAL AN ORDER OF THE CHILDREN'S COURT THAT
SUPPRESSES EVIDENCE; EXPANDING THE TIME PERIOD FOR DIAGNOSTIC
EVALUATIONS OF DELINQUENT OFFENDERS; INCREASING THE PERIOD OF
COMMITMENT FOR A CHILD WHO COMMITS A DELINQUENT OFFENSE THAT
INCLUDES THE USE OF A FIREARM; REMOVING A FINDING THAT MUST BE
MADE BY THE CHILDREN'S COURT PRIOR TO SENTENCING A YOUTHFUL
OFFENDER TO AN ADULT SENTENCE; AMENDING SECTIONS OF THE
CHILDREN'S CODE.

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

Section 1. Section 32A-1-17 NMSA 1978 (being Laws 1993,
Chapter 77, Section 26, as amended by Laws 1995, Chapter 22,
Section 1 and also by Laws 1995, Chapter 206, Section 8) is
amended to read:

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1 "32A-1-17. APPEALS. - -

2 A. Any party may appeal from a judgment of the
3 court to the court of appeals in the manner provided by law.
4 The appeal shall be heard by the court of appeals upon the
5 files, records and transcript of the evidence of the court.
6 The name of the child shall not appear in the record on
7 appeal.

8 B. The appeal to the court of appeals does not
9 stay the judgment appealed from, but the court of appeals may
10 order a stay upon application and hearing consistent with the
11 provisions of the Children's Code if suitable provision is
12 made for the care and custody of the child. If the order
13 appealed from grants the legal custody of the child to or
14 withholds it from one or more of the parties to the appeal,
15 the appeal shall be heard at the earliest practicable time.

16 C. If the court of appeals does not dismiss the
17 petition and order the child released, it shall affirm the
18 court's judgment or it shall modify the court's judgment and
19 remand the child to the jurisdiction of the court for
20 disposition consistent with the appellate court's decision on
21 the appeal. Any party may appeal to the supreme court in the
22 manner provided by law.

23 D. A child who has filed notice of appeal shall be
24 furnished a transcript of the proceedings, or as much of it as
25 is requested, without cost upon the filing of an affidavit

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1 that the child or the person who is legally responsible for
2 the care and support of the child is financially unable to
3 purchase the transcript.

4 E. The state may appeal from an order of the
5 children's court to the court of appeals within ten days of
6 the issuance of an order by the children's court that
7 suppresses evidence. The district attorney shall certify to
8 the children's court that the appeal is not taken for the
9 purpose of delay and that the evidence is a substantial proof
10 of a material fact in the proceeding.

11 [~~E-~~] F. Appeals from the court to the court of
12 appeals shall proceed in accordance with time limits to be
13 established by the supreme court.

14 [~~F-~~] G. Appeals from a tribal court order shall
15 proceed pursuant to tribal law to an appropriate tribal
16 court. "

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

19 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
20 EXAMINATIONS. --

21 A. After a petition has been filed and either a
22 finding with respect to the allegations of the petition has
23 been made or a notice of intent to admit the allegations of
24 the petition has been filed, the court may direct that a
25 predisposition study and report to the court be made in

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1 writing by the department or an appropriate agency designated
2 by the court concerning the child, the family of the child,
3 the environment of the child and any other matters relevant to
4 the need for treatment or to appropriate disposition of the
5 case. The following predisposition reports shall be provided
6 to the parties and the court five days before actual
7 disposition or sentencing:

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

11 (2) the department shall prepare a
12 predisposition report for serious youthful offenders who are
13 convicted of an offense other than first degree murder;

14 (3) the department shall prepare a
15 predisposition report for youthful offenders concerning the
16 youthful offender's amenability to treatment and if:

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

20 (b) the court makes the findings
21 necessary to impose an adult sentence pursuant to Section
22 32A-2-20 NMSA 1978, the adult probation and parole division of
23 the corrections department shall prepare a subsequent
24 predisposition report; and

25 (4) the department shall prepare a

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1 predisposition report for delinquent offenders, upon the
2 court's request.

3 B. Where there are indications that the child may
4 be mentally disordered or developmentally disabled, the court,
5 on motion by the children's court attorney or that of counsel
6 for the child, may order the child to be examined at a
7 suitable place by a physician, a licensed psychologist or a
8 licensed, independent social worker prior to a hearing on the
9 merits of the petition. An examination made prior to the
10 hearing or as a part of the predisposition study and report
11 shall be conducted on an outpatient basis, unless the court
12 finds that placement in a hospital or other appropriate
13 facility is necessary.

14 C. The court, after a hearing, may order
15 examination by a physician, a licensed psychologist or a
16 licensed, independent social worker of a parent or custodian
17 whose ability to care for or supervise a child is an issue
18 before the court.

19 D. The court may order that a child adjudicated as
20 a delinquent child be transferred to the facility designated
21 by the secretary of the department for a period of not more
22 than [~~fifteen~~] sixty days within a three hundred sixty-five
23 day time period for purposes of diagnosis, with direction that
24 the court be given a report indicating what disposition
25 appears most suitable when the interests of the child and the

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1 public are considered.

2 E. Once the child is committed, the department
3 shall determine when the child is released. The release shall
4 be any time after commitment, but not more than [fifteen]
5 sixty days after commitment. Upon petition by the department
6 to the court, the judge may extend the commitment for an
7 additional fifteen days upon good cause shown. "

8 Section 3. Section 32A-2-19 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 48, as amended) is amended to read:

10 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
11 OFFENDER. --

12 A. At the conclusion of the dispositional hearing,
13 the court may make and include in the dispositional judgment
14 its findings on the following:

15 (1) the interaction and interrelationship of
16 the child with the child's parents, siblings and any other
17 person who may significantly affect the child's best
18 interests;

19 (2) the child's adjustment to his home,
20 school and community;

21 (3) the mental and physical health of all
22 individuals involved;

23 (4) the wishes of the child as to his
24 custodian;

25 (5) the wishes of the child's parents as to

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1 the child's custody;

2 (6) whether there exists a relative of the
3 child or other individual who, after study by the department,
4 is found to be qualified to receive and care for the child;

5 (7) the availability of services recommended
6 in the predisposition report; and

7 (8) the ability of the parents to care for
8 the child in the home.

9 B. If a child is found to be delinquent, the court
10 may impose a fine not to exceed the fine that could be imposed
11 if the child were an adult and may enter its judgment making
12 any of the following dispositions for the supervision, care
13 and rehabilitation of the child:

14 (1) any disposition that is authorized for
15 the disposition of a neglected or abused child, in accordance
16 with the Abuse and Neglect Act;

17 (2) transfer legal custody to the department,
18 an agency responsible for the care and rehabilitation of
19 delinquent children, which shall receive the child at a
20 facility designated by the secretary of the department as a
21 juvenile reception facility. The department shall thereafter
22 determine the appropriate placement, supervision and
23 rehabilitation program for the child. The judge may include
24 recommendations for placement of the child. Commitments are
25 subject to limitations and modifications set forth in Section

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1 32A-2-23 NMSA 1978. The types of commitments include:

2 (a) a short-term commitment of one
3 year;

4 (b) a long-term commitment for no more
5 than two years in a long-term facility for the care and
6 rehabilitation of adjudicated delinquent children;

7 (c) if the child is a delinquent
8 offender who committed one of the criminal offenses set forth
9 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to
10 age twenty-one, unless sooner discharged; or

11 (d) if the child is a youthful
12 offender, a commitment to age twenty-one, unless sooner
13 discharged;

14 (3) place the child on probation under those
15 conditions and limitations as the court may prescribe;

16 (4) place the child in a local detention
17 facility that has been certified in accordance with the
18 provisions of Section 32A-2-4 NMSA 1978 for a period not to
19 exceed fifteen days within a three hundred sixty-five day time
20 period; provided that if the child used a firearm while
21 committing a delinquent offense, the child may be placed in a
22 local detention facility that has been certified in accordance
23 with the provisions of Section 32A-2-4 NMSA 1978 for a period
24 not to exceed forty-five days within a three hundred sixty-
25 five day time period;

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1 (5) if a child is found to be delinquent
2 solely on the basis of Paragraph (3) of Subsection A of
3 Section 32A-2-3 NMSA 1978, the court shall only enter a
4 judgment placing the child on probation or ordering
5 restitution or imposing a fine not to exceed the fine that
6 could be imposed if the child were an adult or any combination
7 of these dispositions; or

8 (6) if a child is found to be delinquent
9 solely on the basis of Paragraph (2), (4) or (5) of Subsection
10 A of Section 32A-2-3 NMSA 1978, the court may make any
11 disposition provided by this section and may enter its
12 judgment placing the child on probation and, as a condition of
13 probation, transfer custody of the child to the department for
14 a period not to exceed six months without further order of the
15 court; provided that this transfer shall not be made unless
16 the court first determines that the department is able to
17 provide or contract for adequate and appropriate treatment for
18 the child and that the treatment is likely to be beneficial.

19 C. When the child is an Indian child, the Indian
20 child's cultural needs shall be considered in the
21 dispositional judgment and reasonable access to cultural
22 practices and traditional treatment shall be provided.

23 D. No child found to be delinquent shall be
24 committed or transferred to a penal institution or other
25 facility used for the execution of sentences of persons

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1 convicted of crimes.

2 E. Whenever the court vests legal custody in an
3 agency, institution or department, it shall transmit with the
4 dispositional judgment copies of the clinical reports,
5 predisposition study and report and other information it has
6 pertinent to the care and treatment of the child.

7 F. Prior to any child being placed in the custody
8 of the department, the department shall be provided with
9 reasonable oral or written notification and an opportunity to
10 be heard.

11 G. In addition to any other disposition pursuant
12 to this section or any other penalty provided by law, if a
13 child fifteen years of age or older is adjudicated delinquent
14 on the basis of Paragraph (2), (4) or (5) of Subsection A of
15 Section 32A-2-3 NMSA 1978, the child's driving privileges may
16 be denied or the child's driver's license may be revoked for a
17 period of ninety days. For a second or a subsequent
18 adjudication, the child's driving privileges may be denied or
19 the child's driver's license revoked for a period of one year.
20 Within twenty-four hours of the dispositional judgment, the
21 court may send to the motor vehicle division of the taxation
22 and revenue department the order adjudicating delinquency.
23 Upon receipt of an order from the court adjudicating
24 delinquency, the director of the motor vehicle division of the
25 taxation and revenue department may revoke or deny the

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1 delinquent's driver's license or driving privileges. Nothing
2 in this section may prohibit the delinquent from applying for
3 a limited driving privilege pursuant to Section 66-5-35 NMSA
4 1978, and nothing in this section precludes the delinquent's
5 participation in an appropriate educational, counseling or
6 rehabilitation program.

7 H. In addition to any other disposition pursuant
8 to this section or any other penalty provided by law, when a
9 child is adjudicated delinquent on the basis of Paragraph (7)
10 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall
11 perform the mandatory community service set forth in Section
12 30-15-1.1 NMSA 1978. When a child fails to completely perform
13 the mandatory community service, the name and address of the
14 child's parent or legal guardian shall be published in a
15 newspaper of general circulation, accompanied by a notice that
16 he is the parent or legal guardian of a child adjudicated
17 delinquent for committing graffiti."

18 Section 4. Section 32A-2-20 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 49, as amended) is amended to read:

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

21 A. The court has the discretion to invoke either
22 an adult sentence or juvenile sanctions on a youthful
23 offender. The children's court attorney shall file a notice
24 of intent to invoke an adult sentence within ten working days
25 of the filing of the petition, provided that the court may

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1 extend the time for filing of the notice of intent to invoke
2 an adult sentence, for good cause shown, prior to the
3 adjudicatory hearing. A preliminary hearing by the court or a
4 hearing before a grand jury shall be held, within ten days
5 after the filing of the intent to invoke an adult sentence, to
6 determine whether probable cause exists to support the
7 allegations contained in the petition.

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

12 [~~(1)~~] the court shall find that the child is
13 not amenable to treatment or rehabilitation as a child in
14 available facilities [~~and~~

15 ~~(2) the child is not eligible for commitment~~
16 ~~to an institution for the developmentally disabled or mentally~~
17 ~~disordered~~].

18 C. In making the [~~findings~~] finding set forth in
19 Subsection B of this section, the judge shall consider the
20 following factors:

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

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

5 (5) the sophistication and maturity of the
6 child as determined by consideration of the child's home,
7 environmental situation, emotional attitude and pattern of
8 living;

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

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

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

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

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

F. A fourteen- to eighteen-year-old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this section. "

Section 5. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1999.