

HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO SERIOUS YOUTHFUL OFFENDERS; REQUIRING A HEARING
 PRIOR TO THE ADJUDICATION OF AN ALLEGED SERIOUS YOUTHFUL
 OFFENDER TO DETERMINE THE CHILD'S AMENABILITY TO TREATMENT OR
 REHABILITATION AND ELIGIBILITY FOR COMMITMENT TO AN INSTITUTION
 IN THE EVENT THAT THE ALLEGED SERIOUS YOUTHFUL OFFENDER IS
 CONVICTED OF A LESSER OFFENSE THAN FIRST DEGREE MURDER; MAKING
 TECHNICAL CORRECTIONS TO THE DELINQUENCY ACT.

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

SECTION 1. Section 31-18-15.3 NMSA 1978 (being Laws 1993,
 Chapter 77, Section 3) is amended to read:

"31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

A. An alleged serious youthful offender may be
 detained in any of the following places, prior to arraignment
 in metropolitan, magistrate or district court:

[bracketed material] = delete

1 (1) a detention facility for delinquent
2 children, licensed by the children, youth and families
3 department;

4 (2) any other suitable place, other than a
5 facility for the care and rehabilitation of delinquent
6 children, that meets standards for detention facilities, as set
7 forth in the Children's Code and federal law; or

8 (3) a county jail, if a facility described in
9 Paragraph (1) or (2) of this subsection is not appropriate.

10 B. When an alleged serious youthful offender is
11 detained in a juvenile detention facility prior to trial, the
12 time spent in the juvenile detention facility shall count
13 [~~towards~~] toward completion of any sentence imposed.

14 C. At arraignment, when a metropolitan or district
15 court judge or a magistrate determines that an alleged serious
16 youthful offender should remain in custody, the alleged serious
17 youthful offender may be detained in an adult or juvenile
18 detention facility, subject to the facility's accreditation and
19 the provisions of applicable federal law.

20 D. Prior to the adjudication of an alleged serious
21 youthful offender, the court shall hold a preliminary hearing
22 to determine whether, in the event that the alleged serious
23 youthful offender is convicted of a lesser offense than first
24 degree murder, the child would be:

25 (1) amenable to treatment or rehabilitation as

1 a child in available facilities; or

2 (2) eligible for commitment to an institution
3 for children with developmental disabilities or mental
4 disorders.

5 ~~[D.]~~ E. Notwithstanding the court's findings
6 pursuant to Subsection D of this section, when an alleged
7 serious youthful offender is found guilty of first degree
8 murder, the court shall sentence the offender pursuant to the
9 provisions of the Criminal Sentencing Act. The court may
10 sentence the offender to less than, but not exceeding, the
11 mandatory term for an adult. The determination of guilt
12 becomes a conviction for purposes of the Criminal Sentencing
13 Act.

14 ~~[E.]~~ F. Prior to the sentencing of an alleged
15 serious youthful offender who is convicted of first degree
16 murder, adult probation services shall prepare a presentence
17 report and submit the report to the court and the parties five
18 days prior to the sentencing hearing.

19 ~~[F.]~~ G. When the alleged serious youthful offender
20 is convicted of a lesser offense than first degree murder, the
21 court shall provide for disposition of the offender pursuant to
22 the provisions of Section ~~[32-2-19 or 32-2-20]~~ 32A-2-19 or
23 32A-2-20 NMSA 1978. When an offender is adjudicated as a
24 delinquent child, the conviction shall not be used as a
25 conviction for purposes of the Criminal Sentencing Act."

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

3 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

4 A. The court has the discretion to invoke either an
5 adult sentence or juvenile sanctions on a youthful offender.
6 The children's court attorney shall file a notice of intent to
7 invoke an adult sentence within ten working days of the filing
8 of the petition, provided that the court may extend the time
9 for filing of the notice of intent to invoke an adult sentence,
10 for good cause shown, prior to the adjudicatory hearing. A
11 preliminary hearing by the court or a hearing before a grand
12 jury shall be held, within ten days after the filing of the
13 intent to invoke an adult sentence, to determine whether
14 probable cause exists to support the allegations contained in
15 the petition.

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

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

22 (2) the child is not eligible for commitment
23 to an institution for children with developmental disabilities
24 or mental disorders.

25 C. In making the findings set forth in Subsection B

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1 of this section, the judge shall consider the following
2 factors:

3 (1) the seriousness of the alleged offense;
4 (2) whether the alleged offense was committed
5 in an aggressive, violent, premeditated or willful manner;

6 (3) whether a firearm was used to commit the
7 alleged offense;

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

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

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

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

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

24 D. If a child has previously been sentenced as an
25 adult pursuant to the provisions of this section, there shall

1 be a rebuttable presumption that the child is not amenable to
2 treatment or rehabilitation as a child in available facilities.

3 E. If the court invokes an adult sentence, the
4 court may sentence the child to less than, but shall not
5 exceed, the mandatory adult sentence. A youthful offender
6 given an adult sentence shall be treated as an adult offender
7 and shall be transferred to the legal custody of an agency
8 responsible for incarceration of persons sentenced to adult
9 sentences. This transfer terminates the jurisdiction of the
10 court over the child with respect to the delinquent acts
11 alleged in the petition.

12 F. If a juvenile disposition is appropriate, the
13 court shall follow the provisions set forth in Section
14 32A-2-19 NMSA 1978. A youthful offender may be subject to
15 extended commitment in the care of the department until the age
16 of twenty-one, pursuant to the provisions of Section 32A-2-23
17 NMSA 1978.

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

23 H. A child fourteen years of age or older charged
24 with first degree murder, but found to have committed a
25 delinquent act that is neither first degree murder nor a

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1 youthful offender offense as set forth in Subsection [±] J of
2 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
3 subject to the dispositions set forth in Section 32A-2-19 NMSA
4 1978."

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