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HOUSE BILL 371

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

HENRY KIKI SAAVEDRA

AN ACT

RELATING TO JUVENILE CRIMES; LOWERING THE AGE FOR ADJUDICATION OF A CHILD AS A SERIOUS YOUTHFUL OFFENDER OR AS A YOUTHFUL OFFENDER; AUTHORIZING CERTAIN CHILDREN'S COURT ADJUDICATIONS TO BE CONSIDERED PRIOR FELONY CONVICTIONS FOR SENTENCING PURPOSES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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 ~~[sixteen or seventeen]~~ fourteen to eighteen years of age who is charged with and indicted or bound over for trial for first

Underscored material = new
[bracketed material] = delete

1 degree murder; and

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

4 (1) [~~fifteen~~] thirteen to eighteen years of age
5 at the time of the offense and who is adjudicated for at least
6 one of the following offenses:

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

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

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

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

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

18 (f) shooting at a dwelling or occupied
19 building or shooting at or from a motor vehicle, which results
20 in great bodily harm to another person, as provided in Section
21 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;

- 1 (i) robbery, as provided in Section
2 30-16-2 NMSA 1978;
- 3 (j) aggravated burglary, as provided in
4 Section 30-16-4 NMSA 1978; or
- 5 (k) aggravated arson, as provided in
6 Section 30-17-6 NMSA 1978;
- 7 (2) [~~fifteen~~] thirteen to eighteen years of age
8 at the time of the offense and adjudicated for any felony
9 offense and who has had three prior, separate felony
10 adjudications within a two-year time period immediately
11 preceding the instant offense. The felony adjudications relied
12 upon as prior adjudications shall not have arisen out of the
13 same transaction or occurrence or series of events related in
14 time and location. Successful completion of consent decrees is
15 not considered a prior adjudication for the purposes of this
16 paragraph; or
- 17 (3) [~~fifteen~~] thirteen years of age and
18 adjudicated for first degree murder, as provided in Section
19 30-2-1 NMSA 1978. "

20 Section 2. Section 31-18-17 NMSA 1978 (being Laws 1977,
21 Chapter 216, Section 6, as amended by Laws 1993, Chapter 77,
22 Section 9 and also by Laws 1993, Chapter 283, Section 1) is
23 amended to read:

24 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC
25 SENTENCE. --

Underscored material = new
[bracketed material] = delete

1 A. For the purposes of this section, "prior felony
2 conviction" means:

3 (1) a conviction for a prior felony committed
4 within New Mexico whether within the Criminal Code or not; ~~[or]~~

5 (2) any prior felony for which the person was
6 convicted other than an offense triable by court martial if:

7 (a) the conviction was rendered by a
8 court of another state, the United States, a territory of the
9 United States or the commonwealth of Puerto Rico;

10 (b) the offense was punishable, at the
11 time of conviction, by death or a maximum term of imprisonment
12 of more than one year; or

13 (c) the offense would have been
14 classified as a felony in this state at the time of conviction;
15 or

16 (3) an adjudication by a children's court that
17 a person has committed, attempted to commit or conspired to
18 commit a crime enumerated in Subsection H or I of Section
19 32A-2-3 NMSA 1978 regardless of the disposition or the sentence
20 imposed for that offense.

21 B. Any person convicted of a noncapital felony in
22 this state whether within the Criminal Code or the Controlled
23 Substances Act or not who has incurred one prior felony
24 conviction which was part of a separate transaction or
25 occurrence or conditional discharge under Section ~~[31-20-7]~~

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Underscored material = new
[bracketed material] = delete

1 ~~31-20-13~~ NMSA 1978 is a habitual offender and his basic sentence
2 shall be increased by one year, and the sentence imposed by this
3 subsection shall not be suspended or deferred.

4 C. Any person convicted of a noncapital felony in
5 this state whether within the Criminal Code or the Controlled
6 Substances Act or not who has incurred two prior felony
7 convictions which were parts of separate transactions or
8 occurrences or conditional discharge under Section [~~31-20-7~~]

9 ~~31-20-13~~ NMSA 1978 is a habitual offender, and his basic
10 sentence shall be increased by four years, and the sentence
11 imposed by this subsection shall not be suspended or deferred.

12 D. Any person convicted of a noncapital felony in
13 this state whether within the Criminal Code or the Controlled
14 Substances Act or not who has incurred three or more prior
15 felony convictions which were parts of separate transactions or
16 occurrences or conditional discharge under Section [~~31-20-7~~]

17 ~~31-20-13~~ NMSA 1978 is a habitual offender, and his basic
18 sentence shall be increased by eight years, and the sentence
19 imposed by this subsection shall not be suspended or deferred."

20 Section 3. Section 31-18-23 NMSA 1978 (being Laws 1994,
21 Chapter 24, Section 2) is amended to read:

22 "31-18-23. THREE VIOLENT FELONY CONVICTIONS-- MANDATORY
23 LIFE IMPRISONMENT-- EXCEPTION. --

24 A. When a defendant is convicted of a third violent
25 felony, and each violent felony conviction is part of a separate

Underscored material = new
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1 transaction or occurrence, and at least the third violent felony
2 conviction is in New Mexico, the defendant shall, in addition to
3 the punishment imposed for the third violent conviction, and
4 that sentence does not result in death, be punished by a
5 sentence of life imprisonment. The life imprisonment sentence
6 shall be subject to parole pursuant to the provisions of Section
7 31-21-10 NMSA 1978.

8 B. The sentence of life imprisonment shall be
9 imposed after a sentencing hearing, separate from the trial or
10 guilty plea proceeding resulting in the third violent felony
11 conviction, pursuant to the provisions of Section 31-18-24 NMSA
12 1978.

13 C. For the purpose of this section, a violent felony
14 conviction [~~incurred by a defendant before he reaches the age of~~
15 ~~eighteen shall not count as a violent felony conviction~~]
16 includes any adjudication by a children's court that a person
17 has committed one of the offenses enumerated in this section
18 regardless of the disposition or the sentence imposed for that
19 offense.

20 D. When a defendant has a felony conviction from
21 another state, the felony conviction shall be considered a
22 violent felony for the purposes of the Criminal Sentencing Act
23 if that crime would be considered a violent felony in New
24 Mexico.

25 E. As used in the Criminal Sentencing Act:

Underscored material = new
[bracketed material] = delete

1 (1) "great bodily harm" means an injury to the
2 person that creates a high probability of death or that causes
3 serious disfigurement or that results in permanent loss or
4 impairment of the function of any member or organ of the body;
5 and

6 (2) "violent felony" means:

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

9 (b) shooting at or from a motor vehicle
10 resulting in great bodily harm, as provided in Subsection B of
11 Section 30-3-8 NMSA 1978;

12 (c) [~~kidnaping~~] kidnapping resulting in
13 great bodily harm inflicted upon the victim by his captor, as
14 provided in Subsection B of Section 30-4-1 NMSA 1978; and

15 (d) criminal sexual penetration, as
16 provided in Subsection C or Paragraph [~~(4) or~~] (5) or (6) of
17 Subsection D of Section 30-9-11 NMSA 1978; and

18 (e) robbery while armed with a deadly
19 weapon resulting in great bodily harm as provided in Section
20 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 [~~(A)~~] NMSA
21 1978. "

22 Section 4. Section 32A-2-3 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 32, as amended by Laws 1995, Chapter 204,
24 Section 2 and by Laws 1995, Chapter 205, Section 2 and also by
25 Laws 1995, Chapter 206, Section 10) is amended to read:

. 109714. 2

Underscored material = new
[bracketed material] = delete

1 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

2 A. "delinquent act" means an act committed by a
3 child that would be designated as a crime under the law if
4 committed by an adult, including [~~but not limited to~~] the
5 following offenses:

6 (1) pursuant to municipal traffic codes or the
7 Motor Vehicle Code:

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

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

13 (c) any unlawful taking of a vehicle or
14 motor vehicle;

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

17 (e) any homicide by vehicle;

18 (f) any injuring or tampering with a
19 vehicle;

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

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

25 (i) reckless driving;

Underscored material = new
[bracketed material] = delete

1 (j) driving with a suspended or revoked
2 license; or

3 (k) any offense punishable as a felony;
4 (2) buying, attempting to buy, receiving,
5 possessing or being served any alcoholic liquor or being present
6 in a licensed liquor establishment, other than a restaurant or a
7 licensed retail liquor establishment, except in the presence of
8 the child's parent, guardian, custodian or adult spouse. As

9 used in this paragraph, "restaurant" means any establishment
10 where meals are prepared and served primarily for on-premises
11 consumption and that has a dining room, a kitchen and the
12 employees necessary for preparing, cooking and serving meals.
13 "Restaurant" does not include establishments, as defined in
14 regulations promulgated by the director of the special
15 investigations division of the department of public safety, that
16 serve only hamburgers, sandwiches, salads and other fast foods;

17 (3) any felony violation of the provisions of
18 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
19 adopted by the state game commission that relate to the time,
20 extent, means or manner that game animals, birds or fish may be
21 hunted, taken, captured, killed, possessed, sold, purchased or
22 shipped and for which a fine may be imposed or a civil damage
23 awarded;

24 (4) any violation of Section 30-29-2 NMSA 1978,
25 regarding the illegal use of a glue, aerosol spray product or

1 other chemical substance;

2 (5) any violation of the Controlled Substances
3 Act; ~~[or]~~

4 (6) escape from the custody of a law
5 enforcement officer or a juvenile probation or parole officer or
6 from any placement made by the department by a child who has
7 been adjudicated a delinquent child; or

8 (7) any violation of Section 30-15-1.1 NMSA
9 1978 regarding unauthorized graffiti on personal or real
10 property;

11 B. "delinquent child" means a child who has
12 committed a delinquent act;

13 C. "delinquent offender" means a delinquent child
14 who is subject to juvenile sanctions only and who is not a
15 youthful offender or a serious youthful offender;

16 D. "detention facility" means a place where a child
17 may be detained under the Children's Code pending court hearing
18 and does not include a facility for the care and rehabilitation
19 of an adjudicated delinquent child;

20 E. "felony" means an act that would be a felony if
21 committed by an adult;

22 F. "misdemeanor" means an act that would be a
23 misdemeanor or petty misdemeanor if committed by an adult;

24 G. "restitution" means financial reimbursement by
25 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 any 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. "serious youthful offender" means an individual
15 [~~sixteen or seventeen~~] fourteen to eighteen years of age who is
16 charged with and indicted or bound over for trial for first
17 degree murder. A "serious youthful offender" is not a
18 delinquent child as defined pursuant to the provisions of this
19 section; and

20 I. "youthful offender" means a delinquent child
21 subject to adult or juvenile sanctions who is:

22 (1) [~~fifteen~~] thirteen to eighteen years of age
23 at the time of the offense and who is adjudicated for at least
24 one of the following offenses:

25 (a) second degree murder, as provided in

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[bracketed material] = delete

1 Section 30-2-1 NMSA 1978;

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

4 (c) kidnapping, as provided in Section
5 30-4-1 NMSA 1978;

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

8 (e) aggravated battery upon a peace
9 officer, as provided in Subsection C of Section 30-22-25 NMSA
10 1978;

11 [~~(e)~~] (f) shooting at a dwelling or
12 occupied building or shooting at or from a motor vehicle, which
13 results in great bodily harm to another person, as provided in
14 Section 30-3-8 NMSA 1978;

15 [~~(f)~~] (g) dangerous use of explosives, as
16 provided in Section 30-7-5 NMSA 1978;

17 [~~(g)~~] (h) criminal sexual penetration, as
18 provided in Section 30-9-11 NMSA 1978;

19 [~~(h)~~] (i) robbery, as provided in Section
20 30-16-2 NMSA 1978;

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

23 [~~(j)~~] (k) aggravated arson, as provided
24 in Section 30-17-6 NMSA 1978;

25 (2) [~~fifteen~~] thirteen to eighteen years of age

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1 at the time of the offense and adjudicated for any felony
2 offense and who has had three prior, separate felony
3 adjudications within a three-year time period immediately
4 preceding the instant offense. The felony adjudications relied
5 upon as prior adjudications shall not have arisen out of the
6 same transaction or occurrence or series of events related in
7 time and location. Successful completion of consent decrees are
8 not considered a prior adjudication for the purposes of this
9 paragraph; or

10 (3) [~~fifteen~~] thirteen years of age and
11 adjudicated for first degree murder, as provided in Section
12 30-2-1 NMSA 1978. "

13 Section 5. APPROPRIATION. -- Fifty thousand dollars
14 (\$50,000) is appropriated from the general fund to the office of
15 the attorney general for expenditure in fiscal year 1997 for the
16 purpose of producing and disseminating public service
17 announcements regarding changes in the Criminal Sentencing Act
18 and the Children's Code to lower the age for adjudication of a
19 child as a youthful offender or a serious youthful offender.
20 Any unexpended or unencumbered balance remaining at the end of
21 fiscal year 1997 shall revert to the general fund.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

January 29, 1996

Mr. Speaker:

Your RULES AND ORDER OF BUSINESS COMMITTEE, to
whom has been referred

HOUSE BILL 371

has had it under consideration and finds same to be
GERMANE in accordance with constitutional provisions.

Respectfully submitted,

Barbara A. Perea Casey,

Chairperson

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

1

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Date _____

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4 The roll call vote was 9 For 0 Against

5 Yes: 9

6 Excused: Lujan, Nicely, Olguin, Pederson, Wallach,

7 S. Williams

8 Absent: None

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**State of New Mexico
House of Representatives**

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 9, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILLS 371 AND 376

has had them under consideration and reports same with
recommendation that they DO NOT PASS, but that

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE
BILLS 371 AND 376

DO PASS, and thence referred to the APPROPRIATIONS
AND FINANCE COMMITTEE.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 371 & 376

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
1996

AN ACT

RELATING TO JUVENILE JUSTICE; CHANGING THE AGE DESIGNATIONS FOR
SERIOUS YOUTHFUL OFFENDERS AND YOUTHFUL OFFENDERS; EXPANDING THE
LIST OF PREDICATE OFFENSES FOR YOUTHFUL OFFENDERS; AMENDING
SECTIONS OF THE NMSA 1978.

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
~~[sixteen or seventeen]~~ fifteen to eighteen years of age who is
charged with and indicted or bound over for trial for first
degree murder; and

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

(1) ~~[fifteen]~~ fourteen to eighteen years of age

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[bracketed material] = delete

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 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 upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(f) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, [~~which results in great bodily harm to another person~~] as provided in Section 30-3-8 NMSA 1978;

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

(h) criminal sexual penetration, as 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; [or]

(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) [~~fifteen~~] fourteen to eighteen years of age

1 at the time of the offense and adjudicated for any felony offense
2 and who has had three prior, separate felony adjudications within a
3 [~~two-year~~] three-year time period immediately preceding the instant
4 offense. The felony adjudications relied upon as prior
5 adjudications shall not have arisen out of the same transaction or
6 occurrence or series of events related in time and location.
7 Successful completion of consent decrees is not considered a prior
8 adjudication for the purposes of this paragraph; or

9 (3) [~~fifteen~~] fourteen years of age and
10 adjudicated for first degree murder, as provided in Section 30-2-1
11 NMSA 1978. "

12 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 32, as amended by Laws 1995, Chapter 204,
14 Section 2 and by Laws 1995, Chapter 205, Section 2 and also by Laws
15 1995, Chapter 206, Section 10) is amended to read:

16 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

17 A. "delinquent act" means an act committed by a child
18 that would be designated as a crime under the law if committed by
19 an adult, including [~~but not limited to~~] the following offenses:

20 (1) pursuant to municipal traffic codes or the
21 Motor Vehicle Code:

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

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

(c) any unlawful taking of a vehicle or
motor vehicle;

(d) any receiving or transferring of a

1 stolen vehicle or motor vehicle;

2 (e) any homicide by vehicle;

3 (f) any injuring or tampering with a
4 vehicle;

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

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

9 (i) reckless driving;

10 (j) driving with a suspended or revoked
11 license; or

12 (k) any offense punishable as a felony;

13 (2) buying, attempting to buy, receiving,
14 possessing or being served any alcoholic liquor or being present in
15 a licensed liquor establishment, other than a restaurant or a
16 licensed retail liquor establishment, except in the presence of the
17 child's parent, guardian, custodian or adult spouse. As used in
18 this paragraph, "restaurant" means any establishment where meals
19 are prepared and served primarily for on-premises consumption and
20 that has a dining room, a kitchen and the employees necessary for
21 preparing, cooking and serving meals. "Restaurant" does not
22 include establishments, as defined in regulations promulgated by
23 the director of the special investigations division of the
24 department of public safety, that serve only hamburgers,
25 sandwiches, salads and other fast foods;

(3) any felony violation of the provisions of
Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted
by the state game commission that relate to the time, extent, means

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Underscored material = new
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1 or manner that game animals, birds or fish may be hunted, taken,
2 captured, killed, possessed, sold, purchased or shipped and for
3 which a fine may be imposed or a civil damage awarded;

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

7 (5) any violation of the Controlled Substances
8 Act; ~~[or]~~

9 (6) escape from the custody of a law enforcement
10 officer or a juvenile probation or parole officer or from any
11 placement made by the department by a child who has been
12 adjudicated a delinquent child; or

13 (7) any violation of Section 30-15-1.1 NMSA 1978
14 regarding unauthorized graffiti on personal or real property;

15 B. "delinquent child" means a child who has committed a
16 delinquent act;

17 C. "delinquent offender" means a delinquent child who
18 is subject to juvenile sanctions only and who is not a youthful
19 offender or a serious youthful offender;

20 D. "detention facility" means a place where a child may
21 be detained under the Children's Code pending court hearing and
22 does not include a facility for the care and rehabilitation of an
23 adjudicated delinquent child;

24 E. "felony" means an act that would be a felony if
25 committed by an adult;

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

G. "restitution" means financial reimbursement by the

1 child to the victim or community service imposed by the court and
 2 is limited to easily ascertainable damages for injury to or loss of
 3 property, actual expenses incurred for medical, psychiatric and
 4 psychological treatment for injury to a person and lost wages
 5 resulting from physical injury, which are a direct and proximate
 6 result of a delinquent act. "Restitution" does not include
 7 reimbursement for damages for mental anguish, pain and suffering or
 8 other intangible losses. As used in this subsection, "victim"
 9 means any person who is injured or suffers damage of any kind by an
 10 act that is the subject of a complaint or referral to law
 11 enforcement officers or juvenile probation authorities. Nothing
 12 contained in this definition limits or replaces the provisions of
 13 Subsections A and B of Section
 14 32A-2-27 NMSA 1978;

15 H. "serious youthful offender" means an individual
 16 [~~sixteen or seventeen~~] fifteen to eighteen years of age who is
 17 charged with and indicted or bound over for trial for first degree
 18 murder. A "serious youthful offender" is not a delinquent child as
 19 defined pursuant to the provisions of this section; and

20 I. "youthful offender" means a delinquent child subject
 21 to adult or juvenile sanctions who is:

22 (1) [~~fifteen~~] fourteen to eighteen years of age
 23 at the time of the offense and who is adjudicated for at least one
 24 of the following offenses:

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

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

1 (c) kidnapping, as provided in Section
2 30-4-1 NMSA 1978;

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

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

7 [~~(e)~~] (f) shooting at a dwelling or occupied
8 building or shooting at or from a motor vehicle, [~~which results in~~
9 ~~great bodily harm to another person~~] as provided in Section 30-3-8
10 NMSA 1978;

11 [~~(f)~~] (g) dangerous use of explosives, as
12 provided in Section 30-7-5 NMSA 1978;

13 [~~(g)~~] (h) criminal sexual penetration, as
14 provided in Section 30-9-11 NMSA 1978;

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

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

19 [~~(j)~~] (k) aggravated arson, as provided in
20 Section 30-17-6 NMSA 1978; or

21 (l) abuse of a child that results in great
22 bodily harm or death to the child, as provided in Section 30-6-1
23 NMSA 1978;

24 (2) [~~fifteen~~] fourteen to eighteen years of age
25 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

1 not have arisen out of the same transaction or occurrence or series
2 of events related in time and location. Successful completion of
3 consent decrees are not considered a prior adjudication for the
4 purposes of this paragraph; or

5 (3) [~~fifteen~~] fourteen years of age and
6 adjudicated for first degree murder, as provided in Section
7 30-2-1 NMSA 1978. "

8 Section 3. Section 32A-2-18 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 47) is amended to read:

10 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE-- [~~NONADMISSIBILITY~~]
11 NONADMISSIBILITY. --

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

25 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
admissible in any other case or proceeding in any other court

Underscored material = new
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1 involving the youthful offender or serious youthful offender.

2 C. If a judgment on a proceeding under the Delinquency
3 Act results in an adult sentence, the determination of guilt at
4 trial becomes a conviction for purposes of the Criminal Code. "

5 Section 4. Section 32A-2-19 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 48, as amended by Laws 1995, Chapter 204,
7 Section 3 and also by Laws 1995, Chapter 206, Section 13) is
8 amended to read:

9 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
10 OFFENDER. --

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

14 (1) the interaction and interrelationship of the
15 child with the child's ~~[parent]~~ parents, siblings and any other
16 person who may significantly affect the child's best interests;

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

19 (3) the mental and physical health of all
20 individuals involved;

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

22 (5) the wishes of the child's ~~[parent]~~ parents as
23 to the child's custody;

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

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

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

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

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

10 (2) transfer legal custody to the department, an
11 agency responsible for the care and rehabilitation of delinquent
12 children, which shall receive the child at a facility designated by
13 the secretary of the department as a juvenile reception facility.
14 The department shall thereafter determine the appropriate
15 placement, supervision and rehabilitation program for the child.
16 The judge may include recommendations for placement of the child.
17 Commitments are subject to limitations and modifications set forth
in Section 32A-2-23 NMSA 1978. The types of commitments include:

18 (a) a short-term commitment of one year;

19 (b) a long-term commitment for no more than
20 two years in a long-term facility for the care and rehabilitation
of adjudicated delinquent children; [or]

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

25 [~~e~~] (d) if the child is a youthful

Underscored material = new
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1 offender, a commitment to age twenty-one, unless sooner discharged;

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

4 (4) place the child in a local detention facility
5 that has been certified in accordance with the provisions of
6 Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days
7 within a three hundred sixty-five day time period;

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

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

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

1 D. No child found to be delinquent shall be committed
2 or transferred to a penal institution or other facility used for
3 the execution of sentences of persons convicted of crimes.

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

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

12 G. In addition to any other disposition pursuant to
13 this section or any other penalty provided by law, if a child
14 fifteen years of age or older is adjudicated delinquent on the
15 basis of Paragraph (2), (4) or (5) of Subsection A of Section
16 32A-2-3 NMSA 1978, the child's driving privileges may be denied or
17 the child's driver's license may be revoked for a period of ninety
18 days. For a second or a subsequent adjudication, the child's
19 driving privileges may be denied or the child's driver's license
20 revoked for a period of one year. Within twenty-four hours of the
21 dispositional judgment, the court may send to the motor vehicle
22 division of the taxation and revenue department the order
23 adjudicating delinquency. Upon receipt of an order from the court
24 adjudicating delinquency, the director of the motor vehicle
25 division of the taxation and revenue department may revoke or deny
the delinquent's driver's license or driving privileges. Nothing
in this section may prohibit the delinquent from applying for a
limited driving privilege pursuant to Section 66-5-35 NMSA 1978,

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1 and nothing in this section precludes the delinquent's
2 participation in an appropriate educational, counseling or
3 rehabilitation program.

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

15 Section 5. Section 32A-2-20 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 49, as amended) is amended to read:

17 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

18 A. The court has the discretion to invoke either an
19 adult sentence or juvenile sanctions on a youthful offender. The
20 children's court attorney shall file a notice of intent to invoke
21 an adult sentence within ten working days of the filing of the
22 petition, provided that the court may extend the time for filing of
23 the notice of intent to invoke an adult sentence, for good cause
24 shown, prior to the adjudicatory hearing. A preliminary hearing by
25 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.

1 B. If the children's court attorney has filed a notice
2 of intent to invoke an adult sentence and the child is adjudicated
3 as a youthful offender, the court shall make the following findings
4 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 to
8 an institution for the developmentally disabled or mentally
9 disordered.

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

12 (1) the seriousness of the alleged offense;

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

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

17 [~~3~~] (4) whether the alleged offense was against
18 persons or against property, greater weight being given to offenses
19 against persons, especially if personal injury resulted;

20 [~~4~~] (5) the sophistication and maturity of the
21 child as determined by consideration of the child's home,
22 environmental situation, emotional attitude and pattern of living;

23 [~~5~~] (6) the record and previous history of the
24 child;

25 [~~6~~] (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

Underscored material = new
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February 12, 1996

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 371 & 376

has had it under consideration and reports same WITHOUT
RECOMMENDATION, amended as follows:

1. On page 1, line 13, after the semicolon insert "REQUIRING THE
CORRECTIONS DEPARTMENT TO IMPLEMENT A PROGRAM FOR SERIOUS YOUTHFUL
OFFENDERS AND YOUTHFUL OFFENDERS;".

2. On page 14, line 22, after the period strike the remainder of
the line and lines 23 through 25 in their entirety.

3. On page 15, strike lines 1 and 2 in their entirety.

4. On page 17, between lines 13 and 14 insert the following new
section:

"Section 6. Section 33-1-4.1 NMSA 1978 (being Laws 1993, Chapter
77, Section 230, as amended) is amended to read:

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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"33-1-4.1. ~~[VULNERABLE]~~ SERIOUS YOUTHFUL OFFENDERS AND YOUTHFUL OFFENDERS PROGRAM - PREVENTION OF VICTIMIZATION - - REGULATIONS. - -

A. The corrections department ~~[may]~~ shall develop and implement a special program for ~~[certain male and female offenders who have been identified by the department as being vulnerable]~~ serious youthful offenders and youthful offenders who, if not provided with a special program, would be vulnerable to victimization by inmates and subject to unusual or extraordinary mental or physical harassment, intimidation, harm or injury.

B. ~~[Vulnerability shall be determined by]~~ Placement factors such as age, mental health or special education needs shall be considered by the department. If an offender is less than twenty-one years of age, there shall be a rebuttable presumption that the offender

is [vulnerable] in need of the program ~~[A vulnerable offenders]~~ Implementation of the program shall not result in the diminution of civil rights for [vulnerable offenders] serious youthful offenders, youthful offenders or offenders less than twenty-one years of age.

Underscored material = new
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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Page 35

C. The department shall adopt regulations regarding the operation of the program for serious youthful offenders and youthful offenders, including regulations concerning when an offender may be discharged from the program."

4. Renumber the following section accordingly,

and thence referred to the PUBLIC AFFAIRS COMMITTEE.

Respectfully submitted,

Janice D. Paster, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 4 For 2 Against

Yes: 4

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HJC/HB 371 & 376

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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No: Stefani cs, Tsosi e

Excused: None

Absent: Carraro, Ci sneros, Scott

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**FORTY-SECOND LEGISLATURE
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**FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996**

February 13, 1996

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 371 & 376, as amended

has had it under consideration and reports same with recommendation that
it DO PASS, and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Shannon Robinson, Chairman

HJC/HB 371 & 376

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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SJC/HJC/HB 371 AND HB 376

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: E. Jennings, Rhodes, Wiener

Absent: none

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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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**FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996**

February 14, 1996

Mr. President:

Your FINANCE COMMI TTEE, to whom has been referred

HOUSE JUDI CIARY COMMI TTEE SUBSTITU TE FOR
HOUSE BILL 371 AND 376, as amended

has had it under consideration and reports same with recommendation that
it DO PASS.

Respectfully submitted,

Ben D. Altami rano, Chair man

HJC/HB 371 & 376

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Donisthorpe, Duran, Ingle, Kidd, Kysar

Absent: None

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**FORTY-SECOND LEGISLATURE
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**FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996**

February 14, 1996

Mr. President:

Your FINANCE COMMI TTEE, to whom has been referred

HOUSE JUDI CIARY COMMI TTEE SUBSTITU TE FOR
HOUSE BILL 371 AND 376, as amended

has had it under consideration and reports same with recommendation that
it DO PASS.

Respectfully submitted,

Ben D. Altami rano, Chair man

HJC/HB 371 & 376

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: Donisthorpe, Duran, Ingle, Kidd, Kysar

Absent: None

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**FORTY-SECOND LEGISLATURE
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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

February 16, 1996

**SENATE FLOOR AMENDMENT number _____ to HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILLS
371 AND 376, as amended**

AMENDMENT sponsored by SENATOR L. SKIP VERNON

1. Delete the Senate Judiciary Committee amendments in their entirety.

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HJC/HB 371 & 376

**FORTY-SECOND LEGISLATURE
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Senator L. Skip Vernon

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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