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HOUSE BILL 431

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Sanchez

AN ACT

RELATING TO JUVENILE JUSTICE; CHANGING THE AGE DESIGNATIONS  
FOR SERIOUS YOUTHFUL OFFENDERS AND 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  
[fifteen] thirteen 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:

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1 (1) [~~fourteen~~] thirteen to eighteen years of  
2 age at the time of the offense and who is adjudicated for at  
3 least one of the following offenses:

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

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

8 (c) kidnapping, as provided in Section  
9 30-4-1 NMSA 1978;

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

12 (e) aggravated battery upon a peace  
13 officer, as provided in Subsection C of Section 30-22-25 NMSA  
14 1978;

15 (f) shooting at a dwelling or occupied  
16 building or shooting at or from a motor vehicle, as provided  
17 in Section 30-3-8 NMSA 1978;

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

20 (h) criminal sexual penetration, as  
21 provided in Section 30-9-11 NMSA 1978;

22 (i) robbery, as provided in Section  
23 30-16-2 NMSA 1978;

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

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

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

6 (2) [~~fourteen~~] thirteen to eighteen years of  
7 age at the time of the offense and adjudicated for any felony  
8 offense and who has had three prior, separate felony  
9 adjudications within a three-year time period immediately  
10 preceding the instant offense. The felony adjudications  
11 relied upon as prior adjudications shall not have arisen out  
12 of the same transaction or occurrence or series of events  
13 related in time and location. Successful completion of  
14 consent decrees is not considered a prior adjudication for the  
15 purposes of this paragraph [~~or~~

16 ~~(3) fourteen years of age and adjudicated for~~  
17 ~~first degree murder, as provided in Section 30-2-1 NMSA~~  
18 ~~1978]. "~~

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

21 "32A-2-3. DEFINITIONS. -- As used in the Delinquency Act:

22 A. "delinquent act" means an act committed by a  
23 child that would be designated as a crime under the law if  
24 committed by an adult, including the following offenses:

25 (1) pursuant to municipal traffic codes or

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1 the Motor Vehicle Code:

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

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

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

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

11 (e) any homicide by vehicle;

12 (f) any injuring or tampering with a  
13 vehicle;

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

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

19 (i) reckless driving;

20 (j) driving with a suspended or revoked  
21 license; or

22 (k) any offense punishable as a felony;

23 (2) buying, attempting to buy, receiving,  
24 possessing or being served any alcoholic liquor or being  
25 present in a licensed liquor establishment, other than a

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1 restaurant or a licensed retail liquor establishment, except  
2 in the presence of the child's parent, guardian, custodian or  
3 adult spouse. As used in this paragraph, "restaurant" means  
4 any establishment where meals are prepared and served  
5 primarily for on-premises consumption and that has a dining  
6 room, a kitchen and the employees necessary for preparing,  
7 cooking and serving meals. "Restaurant" does not include  
8 [~~establishments~~] an establishment, as defined in regulations  
9 promulgated by the director of the special investigations  
10 division of the department of public safety, that [~~serve~~]  
11 serves only hamburgers, sandwiches, salads and other fast  
12 foods;

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

20 (4) any violation of Section 30-29-2 NMSA  
21 1978, regarding the illegal use of a glue, aerosol spray  
22 product or other chemical substance;

23 (5) any violation of the Controlled  
24 Substances Act;

25 (6) escape from the custody of a law

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1 enforcement officer or a juvenile probation or parole officer  
2 or from any placement made by the department by a child who  
3 has been adjudicated a delinquent child; or

4 (7) any violation of Section 30-15-1.1 NMSA  
5 1978 regarding unauthorized graffiti on personal or real  
6 property;

7 B. "delinquent child" means a child who has  
8 committed a delinquent act;

9 C. "delinquent offender" means a delinquent child  
10 who is subject to juvenile sanctions only and who is not a  
11 youthful offender or a serious youthful offender;

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

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

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

20 G. "restitution" means financial reimbursement by  
21 the child to the victim or community service imposed by the  
22 court and is limited to easily ascertainable damages for  
23 injury to or loss of property, actual expenses incurred for  
24 medical, psychiatric and psychological treatment for injury to  
25 a person and lost wages resulting from physical injury, which

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1 are a direct and proximate result of a delinquent act.

2 "Restitution" does not include reimbursement for damages for  
3 mental anguish, pain and suffering or other intangible losses.

4 As used in this subsection, "victim" means any person who is  
5 injured or suffers damage of any kind by an act that is the  
6 subject of a complaint or referral to law enforcement officers  
7 or juvenile probation authorities. Nothing contained in this  
8 definition limits or replaces the provisions of Subsections A  
9 and B of Section 32A-2-27 NMSA 1978;

10 H. "serious youthful offender" means an individual  
11 ~~fifteen~~ thirteen to eighteen years of age who is charged with  
12 and indicted or bound over for trial for first degree murder.  
13 A "serious youthful offender" is not a delinquent child as  
14 defined pursuant to the provisions of this section; and

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

17 (1) ~~fourteen~~ thirteen to eighteen years of  
18 age at the time of the offense and who is adjudicated for at  
19 least one of the following offenses:

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

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

24 (c) kidnapping, as provided in Section  
25 30-4-1 NMSA 1978;

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

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

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

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

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

13 (i) robbery, as provided in Section  
14 30-16-2 NMSA 1978;

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

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

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

22 (2) [~~fourteen~~] thirteen to eighteen years of  
23 age at the time of the offense and adjudicated for any felony  
24 offense and who has had three prior, separate felony  
25 adjudications within a three-year time period immediately

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1 preceding the instant offense. The felony adjudications  
2 relied upon as prior adjudications shall not have arisen out  
3 of the same transaction or occurrence or series of events  
4 related in time and location. Successful completion of  
5 consent decrees are not considered a prior adjudication for  
6 the purposes of this paragraph [~~or~~  
7 ~~(3) fourteen years of age and adjudicated for~~  
8 ~~first degree murder, as provided in Section 30-2-1 NMSA~~  
9 ~~1978]. "~~

10 Section 3. Section 32A-2-20 NMSA 1978 (being Laws 1993,  
11 Chapter 77, Section 49, as amended) is amended to read:

12 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

13 A. The court has the discretion to invoke either  
14 an adult sentence or juvenile sanctions on a youthful  
15 offender. The children's court attorney shall file a notice  
16 of intent to invoke an adult sentence within ten working days  
17 of the filing of the petition, provided that the court may  
18 extend the time for filing of the notice of intent to invoke  
19 an adult sentence, for good cause shown, prior to the  
20 adjudicatory hearing. A preliminary hearing by the court or a  
21 hearing before a grand jury shall be held, within ten days  
22 after the filing of the intent to invoke an adult sentence, to  
23 determine whether probable cause exists to support the  
24 allegations contained in the petition.

25 B. If the children's court attorney has filed a

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1 notice of intent to invoke an adult sentence and the child is  
2 adjudicated as a youthful offender, the court shall make the  
3 following findings in order to invoke an adult sentence:

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

6 (2) the child is not eligible for commitment  
7 to an institution for the developmentally disabled or mentally  
8 disordered.

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

12 (1) the seriousness of the alleged offense;

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

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

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

21 (5) the sophistication and maturity of the  
22 child as determined by consideration of the child's home,  
23 environmental situation, emotional attitude and pattern of  
24 living;

25 (6) the record and previous history of the

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1 child;

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

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

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

17 E. If a juvenile disposition is appropriate, the  
18 court shall follow the provisions set forth in Section  
19 32A-2-19 NMSA 1978. A youthful offender may be subject to  
20 extended commitment in the care of the department until the  
21 age of twenty-one, pursuant to the provisions of Section  
22 32A-2-23 NMSA 1978.

23 F. A [fourteen] thirteen to eighteen year old  
24 child charged with first degree murder, but convicted of an  
25 offense less than first degree murder, is subject to the

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1       dispositions set forth in this section."

2               Section 4.   EFFECTIVE DATE. -- The effective date of the  
3       provisions of this act is July 1, 2002.

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