

HOUSE BILL 265

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

James R.J. Strickler

AN ACT

RELATING TO YOUTHFUL OFFENDERS; PROVIDING THAT A CHILD FOURTEEN TO EIGHTEEN YEARS OF AGE WHO IS ADJUDICATED FOR VOLUNTARY MANSLAUGHTER IS A 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; and

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

(1) fourteen to eighteen years of age at the

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1 time of the offense and who is adjudicated for at least one of  
2 the following offenses:

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

5 (b) voluntary manslaughter, as provided  
6 in Section 30-2-3 NMSA 1978;

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

9 [~~(e)~~] (d) kidnapping, as provided in  
10 Section 30-4-1 NMSA 1978;

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

13 (f) aggravated battery against a  
14 household member, as provided in Subsection C of Section  
15 30-3-16 NMSA 1978;

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

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

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

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

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

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

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

7                                    [~~(l)~~] (n) abuse of a child that results  
8 in great bodily harm or death to the child, as provided in  
9 Section 30-6-1 NMSA 1978;

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

19                                    (3) fourteen years of age and adjudicated for  
20 first degree murder, as provided in Section 30-2-1 NMSA 1978."

21                    **SECTION 2.** Section 32A-2-3 NMSA 1978 (being Laws 1993,  
22 Chapter 77, Section 32, as amended) is amended to read:

23                    "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

24                    A. "delinquent act" means an act committed by a  
25 child that would be designated as a crime under the law if

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1 committed by an adult, including the following offenses:

2 (1) any of the following offenses pursuant to  
3 municipal traffic codes or the Motor Vehicle Code:

4 (a) driving while under the influence of  
5 intoxicating liquor or drugs;

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

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

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

12 (e) homicide by vehicle;

13 (f) injuring or tampering with a  
14 vehicle;

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

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

20 (i) reckless driving;

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

23 (k) an offense punishable as a felony;

24 (2) buying, attempting to buy, receiving,  
25 possessing or being served any alcoholic liquor or being

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

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

16 (4) a violation of the Controlled Substances  
17 Act;

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

22 (6) a violation of Section 30-15-1.1 NMSA 1978  
23 regarding unauthorized graffiti on personal or real property;  
24 or

25 (7) a violation of an order of protection

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1 issued pursuant to the provisions of the Family Violence  
2 Protection Act;

3 B. "delinquent child" means a child who has  
4 committed a delinquent act;

5 C. "delinquent offender" means a delinquent child  
6 who is subject to juvenile sanctions only and who is not a  
7 youthful offender or a serious youthful offender;

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

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

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

16 G. "restitution" means financial reimbursement by  
17 the child to the victim or community service imposed by the  
18 court and is limited to easily ascertainable damages for injury  
19 to or loss of property, actual expenses incurred for medical,  
20 psychiatric and psychological treatment for injury to a person  
21 and lost wages resulting from physical injury, which are a  
22 direct and proximate result of a delinquent act. "Restitution"  
23 does not include reimbursement for damages for mental anguish,  
24 pain and suffering or other intangible losses. As used in this  
25 subsection, "victim" means a person who is injured or suffers

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1 damage of any kind by an act that is the subject of a complaint  
2 or referral to law enforcement officers or juvenile probation  
3 authorities. Nothing contained in this definition limits or  
4 replaces the provisions of Subsections A and B of Section  
5 32A-2-27 NMSA 1978;

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

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

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

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

25 (a) second degree murder, as provided in

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1 Section 30-2-1 NMSA 1978;

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

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

6 [~~(c)~~] (d) kidnapping, as provided in  
7 Section 30-4-1 NMSA 1978;

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

10 [~~(e)~~] (f) aggravated battery against a  
11 household member, as provided in Subsection C of Section  
12 30-3-16 NMSA 1978;

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

16 [~~(g)~~] (h) shooting at a dwelling or  
17 occupied building or shooting at or from a motor vehicle, as  
18 provided in Section 30-3-8 NMSA 1978;

19 [~~(h)~~] (i) dangerous use of explosives,  
20 as provided in Section 30-7-5 NMSA 1978;

21 [~~(i)~~] (j) criminal sexual penetration,  
22 as provided in Section 30-9-11 NMSA 1978;

23 [~~(j)~~] (k) robbery, as provided in  
24 Section 30-16-2 NMSA 1978;

25 [~~(k)~~] (l) aggravated burglary, as

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1 provided in Section 30-16-4 NMSA 1978;

2 [~~(l)~~] (m) aggravated arson, as provided  
3 in Section 30-17-6 NMSA 1978; or

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

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

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

19 SECTION 3. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2013.

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