

HOUSE BILL 163

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; AMENDING THE DELINQUENCY ACT TO INCLUDE UNLAWFUL POSSESSION OF CANNABIS AND ALCOHOL IN THE DEFINITION OF "DELINQUENT ACT".

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

SECTION 1. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32, as amended) is amended to read:

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

A. "delinquent act" means:

(1) an act committed by a child that would be designated as a crime under the law if committed by an adult, not including a violation of Section 30-9-2 NMSA 1978, including the following offenses:

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

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1 ~~[(a)]~~ 1) driving while under the influence of intoxicating
2 liquor or drugs; ~~[(b)]~~ 2) failure to stop in the event of an
3 accident causing death, personal injury or damage to property;
4 ~~[(c)]~~ 3) unlawful taking of a vehicle or motor vehicle; ~~[(d)]~~
5 4) receiving or transferring of a stolen vehicle or motor
6 vehicle; ~~[(e)]~~ 5) homicide by vehicle; ~~[(f)]~~ 6) injuring or
7 tampering with a vehicle; ~~[(g)]~~ 7) altering or changing of an
8 engine number or other vehicle identification numbers; ~~[(h)]~~ 8)
9 altering or forging of a driver's license or permit or any
10 making of a fictitious license or permit; ~~[(i)]~~ 9) reckless
11 driving; ~~[(j)]~~ 10) driving with a suspended or revoked license;
12 or ~~[(k)]~~ 11) an offense punishable as a felony;

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

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1 adult spouse. As used in this subparagraph, "restaurant" means
2 an establishment where meals are prepared and served primarily
3 for on-premises consumption and that has a dining room, a
4 kitchen and the employees necessary for preparing, cooking and
5 serving meals. "Restaurant" does not include an establishment,
6 as defined in regulations promulgated by the director of the
7 special investigations unit of the department of public safety,
8 that serves only hamburgers, sandwiches, salads and other fast
9 foods; or

10 (b) buying, attempting to buy, receiving
11 or possessing cannabis pursuant to Section 26-2C-30 NMSA 1978.
12 Being present in a licensed retail cannabis establishment,
13 except in the presence of the child's parent, guardian,
14 custodian or adult spouse, buying, attempting to buy,
15 receiving, possessing or being served a cannabis product,
16 smoking a cannabis product in a public place or privately owned
17 property or producing cannabis; provided that a child who is in
18 possession of or is using cannabis pursuant to the Lynn and
19 Erin Compassionate Use Act is not a delinquent child;

20 B. "delinquent child" means a child who has
21 committed a delinquent act;

22 C. "delinquent offender" means a delinquent child
23 who is subject to juvenile sanctions only and who is not a
24 youthful offender or a serious youthful offender;

25 D. "detention facility" means a place where a child

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1 may be detained under the Children's Code pending a court
2 hearing and does not include a facility for the care and
3 rehabilitation of an adjudicated delinquent child;

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

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

8 G. "restitution" means financial reimbursement by
9 the child to the victim or community service imposed by the
10 court and is limited to easily ascertainable damages for injury
11 to or loss of property, actual expenses incurred for medical,
12 psychiatric and psychological treatment for injury to a person
13 and lost wages resulting from physical injury, which are a
14 direct and proximate result of a delinquent act. "Restitution"
15 does not include reimbursement for damages for mental anguish,
16 pain and suffering or other intangible losses. As used in this
17 subsection, "victim" means a person who is injured or suffers
18 damage of any kind by an act that is the subject of a complaint
19 or referral to law enforcement officers or juvenile probation
20 authorities. Nothing contained in this definition limits or
21 replaces the provisions of Subsections A and B of Section
22 32A-2-27 NMSA 1978;

23 H. "serious youthful offender" means an individual
24 fifteen to eighteen years of age who is charged with and
25 indicted or bound over for trial for first degree murder. A

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1 "serious youthful offender" is not a delinquent child as
2 defined pursuant to the provisions of this section;

3 I. "supervised release" means the release of a
4 juvenile, whose term of commitment has not expired, from a
5 facility for the care and rehabilitation of adjudicated
6 delinquent children, with specified conditions to protect
7 public safety and promote successful transition and
8 reintegration into the community. A juvenile on supervised
9 release is subject to monitoring by the department until the
10 term of commitment has expired and may be returned to custody
11 for violating conditions of release; and

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

14 (1) fourteen to eighteen years of age at the
15 time of the offense and who is adjudicated for at least one of
16 the following offenses:

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

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

21 (c) kidnapping, as provided in Section
22 30-4-1 NMSA 1978;

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

25 (e) aggravated battery against a

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1 household member, as provided in Subsection C of Section
2 30-3-16 NMSA 1978;

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

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

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

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

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

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

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

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

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

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1 instant offense. The felony adjudications relied upon as prior
2 adjudications shall not have arisen out of the same transaction
3 or occurrence or series of events related in time and location.
4 Successful completion of consent decrees is not considered a
5 prior adjudication for the purposes of this paragraph; or

6 (3) fourteen years of age and who is
7 adjudicated for first degree murder, as provided in Section
8 30-2-1 NMSA 1978."

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