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HOUSE BILL 330

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

INTRODUCED BY

TED HOBBS

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.

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  
degree murder; and

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

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

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

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

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

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

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

17                                  (f) shooting at a dwelling or occupied  
18 building or shooting at or from a motor vehicle, which results  
19 in great bodily harm to another person, as provided in Section  
20 30-3-8 NMSA 1978;

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

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

25                                  (i) robbery, as provided in Section

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1 30-16-2 NMSA 1978;

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

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

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

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

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

23 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC  
24 SENTENCE. --

25 A. For the purposes of this section, "prior felony

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1 conviction" means:

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

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

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

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

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

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

20 B. Any person convicted of a noncapital felony in  
21 this state whether within the Criminal Code or the Controlled  
22 Substances Act or not who has incurred one prior felony  
23 conviction which was part of a separate transaction or  
24 occurrence or conditional discharge under Section ~~[31-20-7]~~  
25 31-20-13 NMSA 1978 is a habitual offender and his basic sentence

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1 shall be increased by one year, and the sentence imposed by this  
2 subsection shall not be suspended or deferred.

3 C. Any person convicted of a noncapital felony in  
4 this state whether within the Criminal Code or the Controlled  
5 Substances Act or not who has incurred two prior felony  
6 convictions which were parts of separate transactions or  
7 occurrences or conditional discharge under Section [~~31-20-7~~]  
8 31-20-13 NMSA 1978 is a habitual offender, and his basic  
9 sentence shall be increased by four years, and the sentence  
10 imposed by this subsection shall not be suspended or deferred.

11 D. Any person convicted of a noncapital felony in  
12 this state whether within the Criminal Code or the Controlled  
13 Substances Act or not who has incurred three or more prior  
14 felony convictions which were parts of separate transactions or  
15 occurrences or conditional discharge under Section [~~31-20-7~~]  
16 31-20-13 NMSA 1978 is a habitual offender, and his basic  
17 sentence shall be increased by eight years, and the sentence  
18 imposed by this subsection shall not be suspended or deferred."

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

21 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY  
22 LIFE IMPRISONMENT--EXCEPTION.--

23 A. When a defendant is convicted of a third violent  
24 felony, and each violent felony conviction is part of a separate  
25 transaction or occurrence, and at least the third violent felony

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

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

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

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

24 E. As used in the Criminal Sentencing Act:

25 (1) "great bodily harm" means an injury to the

1 person that creates a high probability of death or that causes  
2 serious disfigurement or that results in permanent loss or  
3 impairment of the function of any member or organ of the body;  
4 and

5 (2) "violent felony" means:

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

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

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

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

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

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

25 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

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

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

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

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

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

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

16                           (e) any homicide by vehicle;

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

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

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

24                           (i) reckless driving;

25                           (j) driving with a suspended or revoked



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1 license; or

2 (k) any offense punishable as a felony;

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

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

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

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

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

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

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

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

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

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

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

23 G. "restitution" means financial reimbursement by  
24 the child to the victim or community service imposed by the  
25 court and is limited to easily ascertainable damages for injury

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) [~~fifteen~~] thirteen to eighteen years of age  
25 at the time of the offense and adjudicated for any felony

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

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