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SENATE BILL 14

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

INTRODUCED BY

GARY DON REAGAN

AN ACT

RELATING TO JUVENILE JUSTICE; CHANGING THE PREDICATE OFFENSES FOR DELINQUENT OFFENDERS, YOUTHFUL OFFENDERS AND SERIOUS 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 years of age who is charged with ~~[and indicted or bound over for trial for]~~ first degree murder or who is charged with a felony, subsequent to a previous felony conviction pursuant to serious youthful offender or youthful offender proceedings; 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 to eighteen years of age at the  
4 time of the offense and who is adjudicated for at least one of  
5 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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[bracketed material] = delete

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

9 (m) trafficking controlled substances, as  
10 provided in Subsection C of Section 30-31-20 NMSA 1978;

11 (n) homicide by vehicle or great bodily  
12 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;

13 (o) attempt to commit any of the felony  
14 offenses set forth in Subparagraphs (a) through (m) of this  
15 paragraph, as provided in Section 30-28-1 NMSA 1978;

16 (p) conspiracy to commit any of the  
17 felony offenses set forth in Subparagraphs (a) through (m) of  
18 this paragraph, as provided in Section 30-28-2 NMSA 1978;

19 (q) attempt to commit first degree  
20 murder, as provided in Section 30-28-1 NMSA 1978; or

21 (r) conspiracy to commit first degree  
22 murder, as provided in Section 30-28-2 NMSA 1978;

23 (2) fifteen to eighteen years of age at the  
24 time of the offense and adjudicated for any felony offense and  
25 who has had [~~three~~] two prior, separate felony adjudications

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1 within a two-year time period or three prior, separate felony  
2 adjudications within a five-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 is  
7 not considered a prior adjudication for the purposes of this  
8 paragraph; or

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

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

15 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

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

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

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

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

1 property;

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

4 (d) any receiving or transferring of a  
5 stolen vehicle or motor vehicle;

6 [~~(e)~~ any homicide by vehicle;  
7 ~~(f)~~] (e) any injuring or tampering with  
8 a vehicle;

9 [~~(g)~~] (f) any altering or changing of an  
10 engine number or other vehicle identification numbers;

11 [~~(h)~~] (g) any altering or forging of a  
12 driver's license or permit or any making of a fictitious license  
13 or permit;

14 [~~(i)~~] (h) reckless driving;

15 [~~(j)~~] (i) driving with a suspended or  
16 revoked license; or

17 [~~(k)~~] (j) any offense punishable as a  
18 felony;

19 (2) buying, attempting to buy, receiving,  
20 possessing or being served any alcoholic liquor or being present  
21 in a licensed liquor establishment, other than a restaurant or a  
22 licensed retail liquor establishment, except in the presence of  
23 the child's parent, guardian, custodian or adult spouse. As  
24 used in this paragraph, "restaurant" means any establishment  
25 where meals are prepared and served primarily for on-premises

Underscored material = new  
[bracketed material] = delete

1 consumption and that has a dining room, a kitchen and the  
2 employees necessary for preparing, cooking and serving meals.  
3 "Restaurant" does not include establishments, as defined in  
4 regulations promulgated by the director of the special  
5 investigations division of the department of public safety, that  
6 serve only hamburgers, sandwiches, salads and other fast foods;

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

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

17 (5) any violation of the Controlled Substances  
18 Act except a violation of Subsection C of Section 30-31-20 NMSA  
19 1978; [øø]

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

24 (7) any violation of Section 30-15-1.1 NMSA  
25 1978 regarding unauthorized graffiti on personal or real

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1 property;

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

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

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

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

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

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

Underscored material = new  
[bracketed material] = delete

1 or referral to law enforcement officers or juvenile probation  
2 authorities. Nothing contained in this definition limits or  
3 replaces the provisions of Subsections A and B of Section  
4 32A-2-27 NMSA 1978;

5 H. "serious youthful offender" means an individual  
6 sixteen or seventeen years of age who is charged with [~~and~~  
7 ~~indicted or bound over for trial for~~] first degree murder or who  
8 is charged with a felony, subsequent to a previous felony  
9 conviction pursuant to serious youthful offender or youthful  
10 offender proceedings. A "serious youthful offender" is not a  
11 delinquent child as defined pursuant to the provisions of this  
12 section; and

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

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

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

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

22 (c) kidnapping, as provided in Section  
23 30-4-1 NMSA 1978;

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



Underscored material = new  
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1                                    (e) aggravated battery upon a peace  
2 officer, as provided in Subsection C of Section 30-22-25 NMSA  
3 1978;

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

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

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

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

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

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

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

21                                   (m) trafficking controlled substances, as  
22 provided in Subsection C of Section 30-31-20 NMSA 1978;

23                                   (n) homicide by vehicle or great bodily  
24 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;

25                                   (o) attempt to commit any of the felony

Underscored material = new  
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1 offenses set forth in Subparagraphs (a) through (m) of this  
2 paragraph, as provided in section 30-28-1 NMSA 1978;

3 (p) conspiracy to commit any of the  
4 felony offenses set forth in Subparagraphs (a) through (m) of  
5 this paragraph, as provided in Section 30-28-2 NMSA 1978;

6 (q) attempt to commit first degree  
7 murder, as provided in Section 30-28-1 NMSA 1978; or

8 (r) conspiracy to commit first degree  
9 murder, as provided in Section 30-28-2 NMSA 1978;

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

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

23 Section 3. EFFECTIVE DATE. -- The effective date of the  
24 provisions of this act is July 1, 1996.

FORTY- SECOND LEGI SLATURE  
SECOND SESSI ON, 1996

JANUARY 18, 1996

Mr. Presi dent:

Your COMMI TTEES' COMMI TTEE, to whom has been referred

SENATE BILL 14

has had it under consideration and finds same to be NOT GERMANE.

Respectfully submi tted,

\_\_\_\_\_  
SENATOR MANNY M. ARAGON, Chai rman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chi ef Clerk)

(Chi ef Clerk)

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The roll call vote was \_\_ For \_\_ Against

Yes:

No:

Excused:

Absent:

S0014CC1

Underscored material = new  
~~[bracketed material] = delete~~

1 FORTY- SECOND LEGI SLATURE  
2 SECOND SESSI ON, 1996  
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5 February 10, 1996  
6

7 Mr. President:  
8

9 Your JUDI CIARY COMMI TTEE, to whom has been referred  
10

11 SENATE BILLS 14 AND 56  
12

13 has had them under consideration and reports same with recommendation  
14 that they DO NOT PASS, but that  
15

16 SENATE JUDI CIARY COMMI TTEE SUBSTITUTE FOR  
17 SENATE BILLS 14 AND 56  
18

19 DO PASS, and thence referred to the FINANCE COMMI TTEE.  
20

21 Respectfully submit ted,  
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Janice D. Paster, Chair man

Underscored material = new  
~~[bracketed material] = delete~~

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 2 Against

Yes: 5

No: Sanchez, Tsosie

Excused: Carraro, Stefani cs

Absent: None

S0014JU1

S0056JU1

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILLS 14 & 56

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; REQUIRING THE  
CORRECTIONS DEPARTMENT TO IMPLEMENT A PROGRAM 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  
[~~sixteen or seventeen~~] fifteen to eighteen years of age who is

1 charged with and indicted or bound over for trial for first  
2 degree murder; and

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

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

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

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

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

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

16 (e) aggravated battery upon a peace officer,  
17 as provided in Subsection C of Section 30-22-25 NMSA 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 provided  
23 in Section 30-7-5 NMSA 1978;

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



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

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

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

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

10 (2) ~~[fifteen]~~ fourteen to eighteen years of age at  
11 the time of the offense and adjudicated for any felony offense and  
12 who has had three prior, separate felony adjudications within a  
13 ~~[two-year]~~ 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 or  
16 occurrence or series of events related in time and location.  
17 Successful completion of consent decrees is not considered a prior  
18 adjudication for the purposes of this paragraph; or

19 (3) ~~[fifteen]~~ fourteen years of age and adjudicated  
20 for 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 by Laws 1995, Chapter 204,  
23 Section 2 and by Laws 1995, Chapter 205, Section 2 and also by Laws  
24 1995, Chapter 206, Section 10) is amended to read:

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

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

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

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

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

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

12                          (d) any receiving or transferring of a stolen  
13 vehicle or motor vehicle;

14                           (e) any homicide by vehicle;

15                           (f) any injuring or tampering with a vehicle;

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

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

20                           (i) reckless driving;

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

23                           (k) any offense punishable as a felony;

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

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

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

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

21 (5) any violation of the Controlled Substances Act;  
 22 [~~or~~]

23 (6) escape from the custody of a law enforcement  
 24 officer or a juvenile probation or parole officer or from any  
 25 placement made by the department by a child who has been

1 adjudicated a delinquent child; or

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

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

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

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

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

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

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

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

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

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

14 (1) [~~fifteen~~] fourteen to eighteen years of age at  
 15 the 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 violent  
 20 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 upon a peace officer, as

1 provided in Subsection C of Section 30-22-25 NMSA 1978;

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

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

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

10 [~~(h)~~] (i) robbery, as provided in Section  
11 30-16-2 NMSA 1978;

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

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

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

19 (2) [~~fifteen~~] fourteen to eighteen years of age at  
20 the time of the offense and adjudicated for any felony offense and  
21 who has had three prior, separate felony adjudications within a  
22 three-year time period immediately preceding the instant offense.  
23 The felony adjudications relied upon as prior adjudications shall  
24 not have arisen out of the same transaction or occurrence or series  
25 of events related in time and location. Successful completion of

1 consent decrees are not considered a prior adjudication for the  
2 purposes of this paragraph; or

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

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

7 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE-- [~~NONADMISSIBILITY~~]  
8 NONADMISSIBILITY. --

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

22 B. If a judgment resulting from a youthful offender or  
23 serious youthful offender proceeding under the Delinquency Act  
24 results in an adult sentence, a record of the judgment shall be  
25 admissible in any other case or proceeding in any other court

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1 involving the youthful offender or serious youthful offender,  
2 except the record shall not be admissible in any proceeding for  
3 alteration of a basic sentence pursuant to the provisions of  
4 Section 31-18-17, 31-18-23 or 31-18-24 NMSA 1978.

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

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

12 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT  
13 OFFENDER. --

14 A. At the conclusion of the dispositional hearing, the  
15 court may make and include in the dispositional judgment its  
16 findings on the following:

- 17 (1) the interaction and interrelationship of the  
18 child with the child's ~~[parent]~~ parents, siblings and any other  
19 person who may significantly affect the child's best interests;  
20 (2) the child's adjustment to his home, school and  
21 community;  
22 (3) the mental and physical health of all  
23 individuals involved;  
24 (4) the wishes of the child as to his custodian;  
25 (5) the wishes of the child's ~~[parent]~~ parents as to



1 the child's custody;

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

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

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

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

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

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

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- 1 (a) a short-term commitment of one year;  
2 (b) a long-term commitment for no more than two  
3 years in a long-term facility for the care and rehabilitation of  
4 adjudicated delinquent children; ~~or~~

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

9 ~~(e)~~ (d) if the child is a youthful offender,  
10 a commitment to age twenty-one, unless sooner discharged;

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

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

17 (5) if a child is found to be delinquent solely on  
18 the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA  
19 1978, the court shall only enter a judgment placing the child on  
20 probation or ordering restitution or imposing a fine not to exceed  
21 the fine that could be imposed if the child were an adult or any  
22 combination of these dispositions; or

23 (6) if a child is found to be delinquent solely on  
24 the basis of Paragraph (2), (4) or (5) of Subsection A of Section  
25 32A-2-3 NMSA 1978, the court may make any disposition provided by

1 this section and may enter its judgment placing the child on  
2 probation and, as a condition of probation, transfer custody of the  
3 child to the department for a period not to exceed six months  
4 without further order of the court; provided that this transfer  
5 shall not be made unless the court first determines that the  
6 department is able to provide or contract for adequate and  
7 appropriate treatment for the child and that the treatment is  
8 likely to be beneficial.

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

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

16 E. Whenever the court vests legal custody in an agency,  
17 institution or department, it shall transmit with the dispositional  
18 judgment copies of the clinical reports, predisposition study and  
19 report and other information it has pertinent to the care and  
20 treatment of the child.

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

24 G. In addition to any other disposition pursuant to this  
25 section or any other penalty provided by law, if a child fifteen

1 years of age or older is adjudicated delinquent on the basis of  
2 Paragraph (2), (4) or (5) of Subsection A of Section  
3 32A-2-3 NMSA 1978, the child's driving privileges may be denied or  
4 the child's driver's license may be revoked for a period of ninety  
5 days. For a second or a subsequent adjudication, the child's  
6 driving privileges may be denied or the child's driver's license  
7 revoked for a period of one year. Within twenty-four hours of the  
8 dispositional judgment, the court may send to the motor vehicle  
9 division of the taxation and revenue department the order  
10 adjudicating delinquency. Upon receipt of an order from the court  
11 adjudicating delinquency, the director of the motor vehicle  
12 division of the taxation and revenue department may revoke or deny  
13 the delinquent's driver's license or driving privileges. Nothing  
14 in this section may prohibit the delinquent from applying for a  
15 limited driving privilege pursuant to Section 66-5-35 NMSA 1978,  
16 and nothing in this section precludes the delinquent's  
17 participation in an appropriate educational, counseling or  
18 rehabilitation program.

19 H. In addition to any other disposition pursuant to this  
20 section or any other penalty provided by law, when a child is  
21 adjudicated delinquent on the basis of Paragraph (7) of Subsection  
22 A of Section 32A-2-3 NMSA 1978, the child shall perform the  
23 mandatory community service set forth in Section 30-15-1.1 NMSA  
24 1978. When a child fails to completely perform the mandatory  
25 community service, the name and address of the person with physical

1 custody of the child shall be published in a newspaper of general  
2 circulation, accompanied by a notice that he is the parent or legal  
3 guardian of a child adjudicated delinquent for committing  
4 graffiti. "

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

7 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

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

19 B. If the children's court attorney has filed a notice of  
20 intent to invoke an adult sentence and the child is adjudicated as  
21 a youthful offender, the court shall make the following findings in  
22 order to invoke an adult sentence:

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

25 (2) the child is not eligible for commitment to an

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1 institution for the developmentally disabled or mentally  
2 disordered.

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

5 (1) the seriousness of the alleged offense;

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

8 (3) whether a firearm was used to commit the alleged  
9 offense;

10 [~~(3)~~] (4) whether the alleged offense was against  
11 persons or against property, greater weight being given to offenses  
12 against persons, especially if personal injury resulted;

13 [~~(4)~~] (5) the sophistication and maturity of the  
14 child as determined by consideration of the child's home,  
15 environmental situation, emotional attitude and pattern of living;

16 [~~(5)~~] (6) the record and previous history of the  
17 child;

18 [~~(6)~~] (7) the prospects for adequate protection of  
19 the public and the likelihood of reasonable rehabilitation of the  
20 child by the use of procedures, services and facilities currently  
21 available; and

22 [~~(7)~~] (8) any other relevant factor, provided that  
23 factor is stated on the record.

24 D. If the court invokes an adult sentence, the court may  
25 sentence the child to less than, but shall not exceed, the

1 mandatory adult sentence. A youthful offender given an adult  
 2 sentence shall be treated as an adult offender and shall be  
 3 transferred to the legal custody of an agency responsible for  
 4 incarceration of persons sentenced to adult sentences. This  
 5 transfer terminates the jurisdiction of the court over the child  
 6 with respect to the delinquent acts alleged in the petition.

7 E. If a juvenile disposition is appropriate, the court  
 8 shall follow the provisions set forth in Section 32A-2-19 NMSA  
 9 1978. A youthful offender may be subject to extended commitment in  
 10 the care of the department until the age of twenty-one, pursuant to  
 11 the provisions of Section 32A-2-23 NMSA 1978.

12 F. A ~~[sixteen or seventeen]~~ fourteen to eighteen year old  
 13 child charged with first degree murder, but convicted of an offense  
 14 less than first degree murder, is subject to the dispositions set  
 15 forth in this section. "

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

18 "33-1-4.1. ~~[VULNERABLE]~~ SERIOUS YOUTHFUL OFFENDERS AND  
 19 YOUTHFUL OFFENDERS PROGRAM - PREVENTION OF VICTIMIZATION - -  
 20 REGULATIONS. - -

21 A. The corrections department ~~[may]~~ shall develop and  
 22 implement a special program for ~~[certain male and female offenders~~  
 23 ~~who have been identified by the department as being vulnerable]~~  
 24 serious youthful offenders and youthful offenders who, if not  
 25 provided with a special program, would be vulnerable to

1 victimization by inmates and subject to unusual or extraordinary  
2 mental or physical harassment, intimidation, harm or injury.

3 B. [~~Vulnerability shall be determined by~~] Placement  
4 factors such as age, mental health or special education needs shall  
5 be considered by the department. If an offender is less than  
6 twenty-one years of age, there shall be a rebuttable presumption  
7 that the offender is [~~vulnerable~~] in need of the program. [~~A~~  
8 ~~vulnerable offenders~~] Implementation of the program shall not  
9 result in the diminution of civil rights for [~~vulnerable offenders~~]  
10 serious youthful offenders, youthful offenders or offenders less  
11 than twenty-one years of age.

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

16 Section 7. EFFECTIVE DATE. -- The effective date of the  
17 provisions of this act is July 1, 1996.



1 SENATE FLOOR SUBSTITUTE FOR  
2 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
3 42ND LEGISLATURE - **STATE OF NEW MEXICO** - SECOND SESSION,  
4 SENATE BILLS 14 & 56  
5  
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7  
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11

12 AN ACT

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

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

18 Section 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 1, as amended) is amended to read:

20 "31-18-15.2. DEFINITIONS. --As used in the Criminal  
21 Sentencing Act:

22 A. "serious youthful offender" means an individual  
23 [~~sixteen or seventeen~~] fifteen to eighteen years of age who is  
24 charged with and indicted or bound over for trial for first  
25 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~~] fourteen 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 violent  
9 felony, as provided in Section 30-3-3 NMSA 1978;

10                          (c) kidnapping, as provided in Section 30-4-1  
11 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 officer,  
15 as provided in Subsection C of Section 30-22-25 NMSA 1978;

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

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

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

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

1 (j) aggravated burglary, as provided in Section  
2 30-16-4 NMSA 1978; ~~[or]~~

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

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

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

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

19 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
20 Chapter 77, Section 32, as amended by Laws 1995, Chapter 204,  
21 Section 2 and by Laws 1995, Chapter 205, Section 2 and also by Laws  
22 1995, Chapter 206, Section 10) 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 child  
25 that would be designated as a crime under the law if committed by

Underscored material = new  
[bracketed material] = delete

1 an adult, including [~~but not limited to~~] the following offenses:

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

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

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

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

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

12 (e) any homicide by vehicle;

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

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

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

18 (i) reckless driving;

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

21 (k) any offense punishable as a felony;

22 (2) buying, attempting to buy, receiving, possessing  
23 or being served any alcoholic liquor or being present in a licensed  
24 liquor establishment, other than a restaurant or a licensed retail  
25 liquor establishment, except in the presence of the child's parent,

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

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

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

19 (5) any violation of the Controlled Substances Act;  
 20 [~~or~~]

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

25 (7) any violation of Section 30-15-1.1 NMSA 1978

1 regarding unauthorized graffiti on personal or real property;

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

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

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

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

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

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

1 enforcement officers or juvenile probation authorities. Nothing  
2 contained in this definition limits or replaces the provisions of  
3 Subsections A and B of Section  
4 32A-2-27 NMSA 1978;

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

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

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

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

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

19 (c) kidnapping, as provided in Section  
20 30-4-1 NMSA 1978;

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

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

25 [~~(e)~~] (f) shooting at a dwelling or occupied

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

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

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

8 [~~(h)~~] (i) robbery, as provided in Section  
9 30-16-2 NMSA 1978;

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

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

14 (1) abuse of a child that results in great  
15 bodily harm or death to the child, as provided in Section 30-6-1  
16 NMSA 1978;

17 (2) [~~fifteen~~] fourteen to eighteen years of age at  
18 the time of the offense and adjudicated for any felony offense and  
19 who has had three prior, separate felony adjudications within a  
20 three-year time period immediately preceding the instant offense.  
21 The felony adjudications relied upon as prior adjudications shall  
22 not have arisen out of the same transaction or occurrence or series  
23 of events related in time and location. Successful completion of  
24 consent decrees are not considered a prior adjudication for the  
25 purposes of this paragraph; or



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

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

5 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--~~[NONADMISSIBILITY]~~  
6 NONADMISSIBILITY. --

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

20 B. If a judgment resulting from a youthful offender or  
21 serious youthful offender proceeding under the Delinquency Act  
22 results in an adult sentence, a record of the judgment shall be  
23 admissible in any other case or proceeding in any other court  
24 involving the youthful offender or serious youthful offender.

25 C. If a judgment on a proceeding under the Delinquency

Underscored material = new  
[bracketed material] = delete

1 Act results in an adult sentence, the determination of guilt at  
2 trial becomes a conviction for purposes of the Criminal Code."

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

7 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT  
8 OFFENDER. --

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

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

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

17 (3) the mental and physical health of all  
18 individuals involved;

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

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

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

25 (7) the availability of services recommended in the

1 predisposition report; and

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

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

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

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

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

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

25 (c) if the child is a delinquent offender who

Underscored material = new  
[bracketed material] = delete

1 committed one of the criminal offenses set forth in Subsection I of  
2 Section 32A-2-3 NMSA 1978, a commitment to age twenty-one, unless  
3 sooner discharged; or

4 [(e)] (d) if the child is a youthful offender,  
5 a commitment to age twenty-one, unless sooner discharged;

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

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

12 (5) if a child is found to be delinquent solely on  
13 the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA  
14 1978, the court shall only enter a judgment placing the child on  
15 probation or ordering restitution or imposing a fine not to exceed  
16 the fine that could be imposed if the child were an adult or any  
17 combination of these dispositions; or

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

1 department is able to provide or contract for adequate and  
2 appropriate treatment for the child and that the treatment is  
3 likely to be beneficial.

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

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

11 E. Whenever the court vests legal custody in an agency,  
12 institution or department, it shall transmit with the dispositional  
13 judgment copies of the clinical reports, predisposition study and  
14 report and other information it has pertinent to the care and  
15 treatment of the child.

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

19 G. In addition to any other disposition pursuant to this  
20 section or any other penalty provided by law, if a child fifteen  
21 years of age or older is adjudicated delinquent on the basis of  
22 Paragraph (2), (4) or (5) of Subsection A of Section  
23 32A-2-3 NMSA 1978, the child's driving privileges may be denied or  
24 the child's driver's license may be revoked for a period of ninety  
25 days. For a second or a subsequent adjudication, the child's

1 driving privileges may be denied or the child's driver's license  
2 revoked for a period of one year. Within twenty-four hours of the  
3 dispositional judgment, the court may send to the motor vehicle  
4 division of the taxation and revenue department the order  
5 adjudicating delinquency. Upon receipt of an order from the court  
6 adjudicating delinquency, the director of the motor vehicle  
7 division of the taxation and revenue department may revoke or deny  
8 the delinquent's driver's license or driving privileges. Nothing  
9 in this section may prohibit the delinquent from applying for a  
10 limited driving privilege pursuant to Section 66-5-35 NMSA 1978,  
11 and nothing in this section precludes the delinquent's  
12 participation in an appropriate educational, counseling or  
13 rehabilitation program.

14 H. In addition to any other disposition pursuant to this  
15 section or any other penalty provided by law, when a child is  
16 adjudicated delinquent on the basis of Paragraph (7) of Subsection  
17 A of Section 32A-2-3 NMSA 1978, the child shall perform the  
18 mandatory community service set forth in Section 30-15-1.1 NMSA  
19 1978. When a child fails to completely perform the mandatory  
20 community service, the name and address of the child's parent or  
21 legal guardian shall be published in a newspaper of general  
22 circulation, accompanied by a notice that he is the parent or legal  
23 guardian of a child adjudicated delinquent for committing  
24 graffiti. "

25 Section 5. Section 32A-2-20 NMSA 1978 (being Laws 1993,

1 Chapter 77, Section 49, as amended) is amended to read:

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

3 A. The court has the discretion to invoke either an adult  
4 sentence or juvenile sanctions on a youthful offender. The  
5 children's court attorney shall file a notice of intent to invoke  
6 an adult sentence within ten working days of the filing of the  
7 petition, provided that the court may extend the time for filing of  
8 the notice of intent to invoke an adult sentence, for good cause  
9 shown, prior to the adjudicatory hearing. A preliminary hearing by  
10 the court or a hearing before a grand jury shall be held, within  
11 ten days after the filing of the intent to invoke an adult  
12 sentence, to determine whether probable cause exists to support the  
13 allegations contained in the petition.

14 B. If the children's court attorney has filed a notice of  
15 intent to invoke an adult sentence and the child is adjudicated as  
16 a youthful offender, the court shall make the following findings in  
17 order to invoke an adult sentence:

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

20 (2) the child is not eligible for commitment to an  
21 institution for the developmentally disabled or mentally  
22 disordered.

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

25 (1) the seriousness of the alleged offense;

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

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

5 [~~(3)~~] (4) whether the alleged offense was against  
6 persons or against property, greater weight being given to offenses  
7 against persons, especially if personal injury resulted;

8 [~~(4)~~] (5) the sophistication and maturity of the  
9 child as determined by consideration of the child's home,  
10 environmental situation, emotional attitude and pattern of living;

11 [~~(5)~~] (6) the record and previous history of the  
12 child;

13 [~~(6)~~] (7) the prospects for adequate protection of  
14 the public and the likelihood of reasonable rehabilitation of the  
15 child by the use of procedures, services and facilities currently  
16 available; and

17 [~~(7)~~] (8) any other relevant factor, provided that  
18 factor is stated on the record.

19 D. If the court invokes an adult sentence, the court may  
20 sentence the child to less than, but shall not exceed, the  
21 mandatory adult sentence. A youthful offender given an adult  
22 sentence shall be treated as an adult offender and shall be  
23 transferred to the legal custody of an agency responsible for  
24 incarceration of persons sentenced to adult sentences. This  
25 transfer terminates the jurisdiction of the court over the child



1 with respect to the delinquent acts alleged in the petition.

2 E. If a juvenile disposition is appropriate, the court  
3 shall follow the provisions set forth in Section 32A-2-19 NMSA  
4 1978. A youthful offender may be subject to extended commitment in  
5 the care of the department until the age of twenty-one, pursuant to  
6 the provisions of Section 32A-2-23 NMSA 1978.

7 F. A [~~sixteen or seventeen~~] fourteen to eighteen year old  
8 child charged with first degree murder, but convicted of an offense  
9 less than first degree murder, is subject to the dispositions set  
10 forth in this section."

11 Section 6. EFFECTIVE DATE. --The effective date of the  
12 provisions of this act is July 1, 1996.

Underscored material = new  
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1 **SFI/SJC/SB 14 & 56**

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3 **FORTY-SECOND LEGISLATURE**  
4 **SECOND SESSION**  
5

6  
7 **February 12, 1996**  
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9  
10 **SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE FLOOR SUBSTITUTE FOR**  
11 **SENATE JUDICIARY COMMITTEE**  
12 **SUBSTITUTE FOR SENATE BILLS**  
13 **14 AND 56**  
14

15 **Amendment sponsored by Senator Janice D. Paster**  
16

17  
18 **1. On page 14, strike lines 22 through 25 and on page 15,**  
19 **strike lines 1 and 2 and insert in lieu thereof "1978."".**  
20

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25 112161.2

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FORTY-FIRST LEGISLATURE  
SECOND SESSION

SB 14/56

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\_\_\_\_\_  
Jancie D. Paster

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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1 SF1/SJC/SB 14 & 56

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3 FORTY-SECOND LEGISLATURE  
4 SECOND SESSION  
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7 February 11, 1996  
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10 SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE FLOOR SUBSTITUTE FOR  
11 SENATE JUDICIARY COMMITTEE  
12 SUBSTITUTE FOR SENATE BILLS  
13 14 AND 56  
14

15 Amendment sponsored by Senator Janice D. Paster  
16

17  
18 1. On page 1, line 13, after the semicolon insert "REQUIRING  
19 THE CORRECTIONS DEPARTMENT TO IMPLEMENT A PROGRAM FOR SERIOUS  
20 YOUTHFUL OFFENDERS AND YOUTHFUL OFFENDERS;".  
21

22 2. On page 17, between lines 13 and 14, insert the following  
23 section:  
24

25 112114.1

Underscored material = new  
[bracketed material] = delete

FORTY-FIRST LEGISLATURE  
SECOND SESSION

SFI/SFI/SJC/SB 14 & 56

Page 53

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

"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. A vulnerable offenders~~] in need of the program. Implementation of the program shall not result in the

112114.1

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FORTY-FIRST LEGISLATURE  
SECOND SESSION

SFI /SJC/SB 14 & 56

SFI/SFI/SJC/SB 14 & 56

~~diminution of civil rights for [vulnerable offenders] serious  
youthful offenders, youthful offenders or offenders less than twenty-  
one years of age.~~

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 "".

3. Renumber the succeeding section accordingly.

\_\_\_\_\_  
Janice D. Paster

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

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FORTY-FIRST LEGISLATURE  
SECOND SESSION

SFI/SFI/SJC/SB 14 & 56

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**SFI /SJC/SB 14 & 56**  
FORTY-FIRST LEGISLATURE  
SECOND SESSION

SFI/SFI/SJC/SB 14 & 56

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

February 19, 1996

**SENATE FLOOR AMENDMENT number \_\_\_\_\_ to SENATE FLOOR SUBSTITUTE FOR  
SENATE JUDICIARY COMMITTEE  
SUBSTITUTE FOR SENATE  
BILLS 14 AND 56, as amended**

**AMENDMENT sponsored by SENATOR L. SKIP VERNON**

1. On page 1, line 22, strike the word "fifteen" and insert in lieu thereof the word "fourteen".

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FORTY-FIRST LEGISLATURE  
SECOND SESSION

SFI/SFI/SJC/SB 14 & 56

Page 57

2. On page 7, line 8, strike the word "fifteen" and insert in lieu thereof the word "fourteen".

\_\_\_\_\_  
Senator L. Skip Vernon

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

S0014FS3

112114.1

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FORTY- SECOND LEGI SLATURE  
SECOND SESSI ON, 1996

February 15, 1996

Mr. Speaker:

Your JUDI CI ARY COMMI TTEE, to whom has been referred

SENATE FLOOR SUBSTI TUTE FOR  
SENATE JUDI CI ARY COMMI TTEE SUBSTI TUTE  
FOR SENATE BILLS 14 AND 56, as amended

has had it under consideration and reports same with recommendation  
that it DO PASS, amended as follows:

1. Strike Senate Floor Amendment Number 3. ,

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMI TTEE.

Respectfully submitted,

FORTY-FIRST LEGISLATURE  
SECOND SESSION

SFI/SFI/SJC/SB 14 & 56

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\_\_\_\_\_  
Janice D. Paster, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 1 Against

Yes: 8

No: McSorley

Excused: Sanchez, R. G.

Absent: Baca, Foy, Pederson

S0014JC1

Underscored material = new  
~~[bracketed material] = delete~~