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AN ACT

RELATING TO JUVENILES; PROVIDING COURTS THE DISCRETION TO DETERMINE WHETHER AN ADULT SENTENCE OR JUVENILE SANCTIONS ARE APPROPRIATE FOR A SERIOUS YOUTHFUL OFFENDER.

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

Section 1. Section 31-18-15.3 NMSA 1978 (being Laws 1993, Chapter 77, Section 3) is amended to read:

"31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

A. An alleged serious youthful offender may be detained in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility for delinquent children, licensed by the children, youth and families department;

(2) any other suitable place, other than a facility for the care and rehabilitation of delinquent children, that meets standards for detention facilities, as set forth in the Children's Code and federal law; or

(3) a county jail, if a facility described in Paragraph (1) or (2) of this subsection is not appropriate.

B. When an alleged serious youthful offender is detained in a juvenile detention facility prior to trial, the time spent in the juvenile detention facility shall count

1 toward completion of any sentence imposed.

2 C. At arraignment, when a metropolitan or district  
3 court judge or a magistrate determines that an alleged  
4 serious youthful offender should remain in custody, the  
5 alleged serious youthful offender may be detained in an adult  
6 or juvenile detention facility, subject to the facility's  
7 accreditation and the provisions of applicable federal law.

8 D. When an alleged serious youthful offender is  
9 found guilty of first degree murder and found not amenable to  
10 treatment, the court shall sentence the offender pursuant to  
11 the provisions of the Criminal Sentencing Act. The court may  
12 sentence the offender to less than, but not exceeding, the  
13 mandatory term for an adult. The determination of guilt  
14 becomes a conviction for purposes of the Criminal Sentencing  
15 Act.

16 E. Prior to the sentencing of an alleged serious  
17 youthful offender who is convicted of first degree murder and  
18 found not amenable to treatment, adult probation services  
19 shall prepare a presentence report and submit the report to  
20 the court and the parties five days prior to the sentencing  
21 hearing.

22 F. When the alleged serious youthful offender is  
23 convicted of a lesser offense than first degree murder, the  
24 court shall provide for disposition of the offender pursuant  
25 to the provisions of Section 32A-2-19 or

1 32A-2-20 NMSA 1978. When an offender is adjudicated as a  
2 delinquent child, the conviction shall not be used as a  
3 conviction for purposes of the Criminal Sentencing Act."

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

6 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

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

10 (1) an offense pursuant to municipal traffic  
11 codes or the Motor Vehicle Code:

12 (a) driving while under the influence  
13 of intoxicating liquor or drugs;

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

17 (c) unlawful taking of a vehicle or  
18 motor vehicle;

19 (d) receiving or transferring of a  
20 stolen vehicle or motor vehicle;

21 (e) homicide by vehicle;

22 (f) injuring or tampering with a  
23 vehicle;

24 (g) altering or changing of an engine  
25 number or other vehicle identification numbers;

1 (h) altering or forging of a driver's  
2 license or permit or any making of a fictitious license or  
3 permit;

4 (i) reckless driving;

5 (j) driving with a suspended or revoked  
6 license; or

7 (k) an offense punishable as a felony;

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

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

25 (4) a violation of the Controlled Substances

1 Act;

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

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

9 (7) a violation of an order of protection  
10 issued pursuant to the provisions of the Family Violence  
11 Protection Act;

12 B. "delinquent child" means a child who has  
13 committed a delinquent act;

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

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

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

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

25 G. "restitution" means financial reimbursement by

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

16 H. "serious youthful offender" means an individual  
17 fifteen to eighteen years of age who is charged with and  
18 indicted or bound over for trial for first degree murder; and

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

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

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

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  
4 Section 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 against a  
8 household member, as provided in Subsection C of Section  
9 30-3-16 NMSA 1978;

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

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

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

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

20 (j) robbery, as provided in Section  
21 30-16-2 NMSA 1978;

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

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

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

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

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

17 Section 3. Section 32A-2-6 NMSA 1978 (being Laws 1993,  
18 Chapter 77, Section 35) is amended to read:

19 "32A-2-6. TRANSFER OF JURISDICTION OVER CHILD FROM  
20 OTHER TRIBUNALS TO COURT.--

21 A. If it appears to a tribunal in a criminal  
22 matter that the defendant was under the age of eighteen years  
23 at the time the offense charged was alleged to have been  
24 committed and the offense charged is a delinquent act  
25 pursuant to the provisions of the Delinquency Act, the



1 tribunal shall promptly transfer jurisdiction of the matter  
2 and the defendant to the court, together with a copy of the  
3 accusatory pleading and other papers, documents and  
4 transcripts of testimony relating to the case.

5 B. Upon transfer, the court shall have exclusive  
6 jurisdiction over the proceedings and the defendant. The  
7 transferring tribunal shall order that the defendant promptly  
8 be taken to the court or taken to a place of detention  
9 designated by the court or released to the custody of a  
10 parent, guardian, custodian or other person legally  
11 responsible for the defendant to be brought before the court  
12 at a time designated by the court. Upon transfer to the  
13 court, a petition shall be prepared and filed in the court in  
14 accordance with the provisions of the Delinquency Act. If  
15 the defendant is not a child at the time of transfer, the  
16 court retains jurisdiction over the matter only until  
17 disposition is made by the court."

18 Section 4. Section 32A-2-17 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 46, as amended) is amended to read:

20 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND  
21 EXAMINATIONS.--

22 A. After a petition has been filed and either a  
23 finding with respect to the allegations of the petition has  
24 been made or a notice of intent to admit the allegations of  
25 the petition has been filed, the court may direct that a

1 predisposition study and report to the court be made in  
2 writing by the department or an appropriate agency designated  
3 by the court concerning the child, the family of the child,  
4 the environment of the child and any other matters relevant  
5 to the need for treatment or to appropriate disposition of  
6 the case. The following predisposition reports shall be  
7 provided to the parties and the court five days before actual  
8 disposition or sentencing:

9 (1) the department shall prepare a  
10 predisposition report for a youthful offender or a serious  
11 youthful offender concerning the offender's amenability to  
12 treatment and if:

13 (a) the court determines that a  
14 juvenile disposition is appropriate, the department shall  
15 prepare a subsequent predisposition report; or

16 (b) the court makes the findings  
17 necessary to impose an adult sentence pursuant to Section  
18 32A-2-20 NMSA 1978, the adult probation and parole division  
19 of the corrections department shall prepare a subsequent  
20 predisposition report; and

21 (2) the department shall prepare a  
22 predisposition report for a delinquent offender, upon the  
23 court's request.

24 B. Where there are indications that the child may  
25 have a mental disorder or developmental disability, the

1 court, on motion by the children's court attorney or that of  
2 counsel for the child, may order the child to be examined at  
3 a suitable place by a physician, a licensed psychologist or a  
4 licensed independent social worker prior to a hearing on the  
5 merits of the petition. An examination made prior to the  
6 hearing or as a part of the predisposition study and report  
7 shall be conducted on an outpatient basis, unless the court  
8 finds that placement in a hospital or other appropriate  
9 facility is necessary.

10 C. The court, after a hearing, may order  
11 examination by a physician, a licensed psychologist or a  
12 licensed independent social worker of a parent or custodian  
13 whose ability to care for or supervise a child is an issue  
14 before the court.

15 D. The court may order that a child adjudicated as  
16 a delinquent child be transferred to the facility designated  
17 by the secretary of the department for a period of not more  
18 than fifteen days within a three-hundred-sixty-five-day time  
19 period for purposes of diagnosis, with direction that the  
20 court be given a report indicating what disposition appears  
21 most suitable when the interests of the child and the public  
22 are considered.

23 E. Once the child is committed, the department  
24 shall determine when the child is released. The release  
25 shall be any time after commitment, but not more than fifteen

1 days after commitment. Upon petition by the department to  
2 the court, the judge may extend the commitment for an  
3 additional fifteen days upon good cause shown."

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

6 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER AND  
7 SERIOUS YOUTHFUL OFFENDER.--

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

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

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

3 (2) the child is not eligible for commitment  
4 to an institution for children with developmental  
5 disabilities or mental disorders.

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

9 (1) the seriousness of the alleged offense;

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

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

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

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

23 (6) the record and previous history of the  
24 child;

25 (7) the prospects for adequate protection of

1 the public and the likelihood of reasonable rehabilitation of  
2 the child by the use of procedures, services and facilities  
3 currently available; and

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

6 D. If a child has previously been sentenced as an  
7 adult pursuant to the provisions of this section, there shall  
8 be a rebuttable presumption that the child is not amenable to  
9 treatment or rehabilitation as a child in available  
10 facilities.

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

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

1           G. A child fourteen years of age or older, charged  
2 with first degree murder, but not convicted of first degree  
3 murder and found to have committed a youthful offender  
4 offense as set forth in Subsection I of Section 32A-2-3 NMSA  
5 1978, is subject to the dispositions set forth in this  
6 section.

7           H. A child fourteen years of age or older charged  
8 with first degree murder, but found to have committed a  
9 delinquent act that is neither first degree murder nor a  
10 youthful offender offense as set forth in Subsection I of  
11 Section 32A-2-3 NMSA 1978, shall be adjudicated as a  
12 delinquent offender subject to the dispositions set forth in  
13 Section 32A-2-19 NMSA 1978."

14           Section 6. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2009. \_\_\_\_\_

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