

HOUSE BILL 183

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Tim D. Lewis

AN ACT

RELATING TO THE DELINQUENCY ACT; ALLOWING FOR THE IMPOSITION OF
A STAYED ADULT CRIMINAL SENTENCE UPON ADJUDICATION OF A
YOUTHFUL OFFENDER.

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

SECTION 1. Section 32A-2-6 NMSA 1978 (being Laws 1993,
Chapter 77, Section 35) is amended to read:

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

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

.202992.2

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

underscored material = new
[bracketed material] = delete

1 court, together with a copy of the accusatory pleading and
2 other papers, documents and transcripts of testimony relating
3 to the case. The tribunal shall not transfer a serious
4 youthful offender.

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 parent,
10 guardian, custodian or other person legally responsible for the
11 defendant to be brought before the court at a time designated
12 by the court. Upon transfer to the court, a petition shall be
13 prepared and filed in the court in accordance with the
14 provisions of the Delinquency Act. If the defendant is not a
15 child at the time of transfer, the court retains jurisdiction
16 over the matter only until disposition is made by the court,
17 unless disposition is made pursuant to Paragraph (3) of
18 Subsection A of Section 32A-2-20.1 NMSA 1978."

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

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

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

.202992.2

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

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

10 (1) the adult probation and parole division of
11 the corrections department shall prepare a predisposition
12 report for a serious youthful offender;

13 (2) the department shall prepare a
14 predisposition report for a serious youthful offender who is
15 convicted of an offense other than first degree murder;

16 (3) the department shall prepare a
17 predisposition report for a youthful offender concerning the
18 youthful offender's amenability to treatment and if:

19 (a) the court determines that a juvenile
20 disposition is appropriate, the department shall prepare a
21 subsequent predisposition report; or

22 (b) the court makes the findings
23 necessary to impose an adult sentence pursuant to Section
24 32A-2-20 NMSA 1978, the adult probation and parole division of
25 the corrections department shall prepare a subsequent

.202992.2

underscored material = new
[bracketed material] = delete

1 predisposition report; this subparagraph shall not apply,
2 however, to any adult sentence sought pursuant to Section
3 32A-2-20.1 NMSA 1978; and

4 (4) the department shall prepare a
5 predisposition report for a delinquent offender, upon the
6 court's request.

7 B. Where there are indications that the child may
8 have a mental disorder or developmental disability, the court,
9 on motion by the children's court attorney or that of counsel
10 for the child, may order the child to be examined at a suitable
11 place by a physician or psychiatrist, a licensed psychologist,
12 a licensed professional clinical counselor or a licensed
13 independent social worker prior to a hearing on the merits of
14 the petition. An examination made prior to the hearing or as a
15 part of the predisposition study and report shall be conducted
16 on an outpatient basis, unless the court finds that placement
17 in a hospital or other appropriate facility is necessary.

18 C. The court, after a hearing, may order
19 examination by a physician or psychiatrist, a licensed
20 psychologist or a licensed professional clinical counselor or a
21 licensed independent social worker of a parent or custodian
22 whose ability to care for or supervise a child is an issue
23 before the court.

24 D. The court may order that a child adjudicated as
25 a delinquent child be administered a predispositional

.202992.2

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

1 evaluation by a professional designated by the department for
2 purposes of diagnosis, with direction that the court be given a
3 report indicating what disposition appears most suitable when
4 the interests of the child and the public are considered. The
5 evaluation shall be completed within fifteen days of the
6 court's order and the preference shall be for performing the
7 evaluation in the child's community.

8 E. If a child is detained for purposes of
9 performing a predispositional evaluation, it shall be completed
10 within fifteen days and in no event shall a child be detained
11 for more than fifteen days within a three-hundred-sixty-five-
12 day period for a predispositional evaluation, unless for good
13 cause shown."

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

16 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--
17 NONADMISSIBILITY.--

18 A. The court shall enter a judgment setting forth
19 the court's findings and disposition in the proceeding. A
20 judgment in proceedings on a petition under the Delinquency Act
21 resulting in a juvenile disposition shall not be deemed a
22 conviction of crime nor shall it impose any civil disabilities
23 ordinarily resulting from conviction of a crime nor shall it
24 operate to disqualify the child in any civil service
25 application or appointment. The juvenile disposition of a

.202992.2

underscored material = new
[bracketed material] = delete

1 child and any evidence given in a hearing in court shall not be
2 admissible as evidence against the child in any case or
3 proceeding in any other tribunal whether before or after
4 reaching the age of majority, except in sentencing proceedings
5 after conviction of a felony and then only for the purpose of a
6 presentence study and report.

7 B. If a judgment resulting from a youthful offender
8 or serious youthful offender proceeding under the Delinquency
9 Act results in an adult sentence, a record of the judgment
10 shall be admissible in any other case or proceeding in any
11 other court involving the youthful offender or serious youthful
12 offender, unless the sentence was imposed pursuant to Paragraph
13 (2) of Subsection F of Section 32A-2-20.2 NMSA 1978 and
14 Subsection G of Section 32A-2-20.2 NMSA 1978, and the offender
15 successfully completed adult probation.

16 C. If a judgment on a proceeding under the
17 Delinquency Act results in an adult sentence, the determination
18 of guilt at trial becomes a conviction for purposes of the
19 Criminal Code, except as provided in Subsection G of Section
20 32A-2-20.2 NMSA 1978."

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

23 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

24 A. The court has the discretion to invoke either an
25 adult sentence or juvenile sanctions on a youthful offender

.202992.2

underscored material = new
[bracketed material] = delete

1 pursuant to this section, or the court may proceed pursuant to
2 Section 32A-2-20.1 NMSA 1978. If seeking an adult sentence,
3 the children's court attorney shall file a notice of intent to
4 invoke an adult sentence within ten working days of the filing
5 of the petition, provided that the court may extend the time
6 for filing of the notice of intent to invoke an adult sentence,
7 for good cause shown, prior to the adjudicatory hearing. A
8 preliminary hearing by the court or a hearing before a grand
9 jury shall be held, within ten days after the filing of the
10 intent to invoke an adult sentence, to determine whether
11 probable cause exists to support the allegations contained in
12 the petition.

13 B. If the children's court attorney has filed a
14 notice of intent to invoke an adult sentence and the child is
15 adjudicated as a youthful offender, the court shall make the
16 following findings in order to invoke an adult sentence, except
17 when imposing an adult sentence pursuant to Section 32A-2-20.1
18 NMSA 1978:

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

21 (2) the child is not eligible for commitment
22 to an institution for children with developmental disabilities
23 or mental disorders.

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

.202992.2

1 factors:

2 (1) the seriousness of the alleged offense;

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

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

7 (4) whether the alleged offense was against
8 persons or against property, greater weight being given to
9 offenses against persons, especially if personal injury
10 resulted;

11 (5) the maturity of the child as determined by
12 consideration of the child's home, environmental situation,
13 social and emotional health, pattern of living, brain
14 development, trauma history and disability;

15 (6) the record and previous history of the
16 child;

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

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

23 D. If a child has previously been sentenced as an
24 adult pursuant to the provisions of this section, there shall
25 be a rebuttable presumption that the child is not amenable to

.202992.2

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

1 treatment or rehabilitation as a child in available facilities.

2 E. If the court invokes an adult sentence, the
3 court may sentence the child to less than, but shall not
4 exceed, the mandatory adult sentence. A youthful offender
5 given an adult sentence shall be treated as an adult offender
6 and shall be transferred to the legal custody of an agency
7 responsible for incarceration of persons sentenced to adult
8 sentences. This transfer terminates the jurisdiction of the
9 court over the child with respect to the delinquent acts
10 alleged in the petition.

11 F. If a juvenile disposition is appropriate, the
12 court shall follow the provisions set forth in Section
13 32A-2-19 NMSA 1978. A youthful offender may be subject to
14 extended commitment in the care of the department until the age
15 of twenty-one, pursuant to the provisions of Section 32A-2-23
16 NMSA 1978.

17 G. A child fourteen years of age or older, charged
18 with first degree murder, but not convicted of first degree
19 murder and found to have committed a youthful offender offense
20 as set forth in Subsection [H] J of Section 32A-2-3 NMSA 1978,
21 is subject to the dispositions set forth in this section.

22 H. A child fourteen years of age or older charged
23 with first degree murder, but found to have committed a
24 delinquent act that is neither first degree murder nor a
25 youthful offender offense as set forth in Subsection [H] J of

.202992.2

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

1 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
2 subject to the dispositions set forth in Section 32A-2-19 NMSA
3 1978."

4 SECTION 5. A new section of the Delinquency Act, Section
5 32A-2-20.1 NMSA 1978, is enacted to read:

6 "32A-2-20.1. [NEW MATERIAL] DUAL DISPOSITION OF A
7 YOUTHFUL OFFENDER AMENABLE TO TREATMENT.--

8 A. If a youthful offender prosecution results in
9 adjudication for an offense listed in Subsection J of Section
10 32A-2-3 NMSA 1978 and the offender is found by the court to be
11 amenable to treatment, the court may impose:

12 (1) a fine pursuant to Subsection B of Section
13 32A-2-19 NMSA 1978;

14 (2) a juvenile disposition under Subparagraph
15 (b) or (c) of Paragraph (1) of Subsection B of Section 32A-2-19
16 NMSA 1978; and

17 (3) an adult criminal sentence, the execution
18 of which shall be stayed on the condition that the offender not
19 violate the provisions of the disposition order and not commit
20 a new offense. Successful completion of the juvenile
21 disposition ordered shall be a condition of suspension of the
22 adult criminal sentence.

23 B. In determining a disposition to impose pursuant
24 to Subsection A of this section, the judge shall consider the
25 following factors:

.202992.2

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

- 1 (1) the seriousness of the alleged offense;
- 2 (2) whether the alleged offense was committed
- 3 in an aggressive, violent, premeditated or willful manner;
- 4 (3) whether a firearm was used to commit the
- 5 alleged offense;
- 6 (4) whether the alleged offense was against
- 7 persons or against property, greater weight being given to
- 8 offenses against persons, especially if personal injury
- 9 resulted;
- 10 (5) the maturity of the child as determined by
- 11 consideration of the child's home, environmental situation,
- 12 social and emotional health, pattern of living, brain
- 13 development, trauma history and disability;
- 14 (6) the record and previous history of the
- 15 child;
- 16 (7) the prospects for adequate protection of
- 17 the public and the likelihood of reasonable rehabilitation of
- 18 the child by the use of procedures, services and facilities
- 19 currently available; and
- 20 (8) any other relevant factor, provided that
- 21 factor is stated on the record."

22 SECTION 6. A new section of the Delinquency Act, Section

23 32A-2-20.2 NMSA 1978, is enacted to read:

24 "32A-2-20.2. [NEW MATERIAL] EXECUTION OF ADULT

25 SENTENCE.--

.202992.2

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

1 A. When there is probable cause to believe that a
2 youthful offender sentenced pursuant to Section 32A-2-20.1 NMSA
3 1978 has violated any condition of the stayed sentence or is
4 alleged to have committed a new offense, the court may, if
5 necessary, direct that the youthful offender be taken into
6 immediate custody. The children's court attorney may petition
7 for revocation of the stay of execution of the adult sentence
8 and shall notify the youthful offender in writing of the
9 reasons alleged to exist for revocation of the stay.

10 B. The youthful offender shall be entitled to a
11 hearing on the state's petition to revoke the stay or may waive
12 a hearing. If the youthful offender challenges the petition for
13 revocation of the stay, the court shall hold a hearing at which
14 the youthful offender is entitled to be heard and represented
15 by counsel. The children's court attorney shall present proof
16 of the violation to a reasonable certainty. Proof of a new
17 offense in this hearing shall not establish guilt as to that
18 new offense. If a violation is established, the court shall
19 proceed pursuant to Subsection D of this section.

20 C. If a person described in Subsection A of this
21 section is under the age of eighteen and is taken into custody,
22 the person may be detained only in accordance with Section
23 32A-2-4.1 NMSA 1978.

24 D. If it is established after a hearing that a
25 youthful offender has violated the terms of suspension of the

.202992.2

1 sentence stayed pursuant to Subsection C of Section 32A-2-20.1
2 NMSA 1978, the court shall order execution of the previously
3 imposed sentence unless the court makes written findings of
4 mitigating factors that justify continuing the stay. If the
5 court finds that no mitigating factors are present, the court
6 shall treat the youthful offender as an adult and order any of
7 the adult sanctions authorized by the original disposition and
8 sentence.

9 E. Upon revocation of the stay and execution of the
10 adult sentence, the offender's youthful offender status is
11 terminated and the court's jurisdiction over the child with
12 respect to the delinquent acts alleged in the petition is
13 terminated. The ongoing jurisdiction for any adult sanction,
14 other than commitment to the corrections department, is with
15 the adult court.

16 F. Before an offender who has received a stayed
17 adult sentence pursuant to Section 32A-2-20.1 NMSA 1978 reaches
18 the age of twenty-one, the court shall hold a hearing. The
19 court shall:

20 (1) revoke the suspension, order execution of
21 the adult sentence and direct that the offender be taken into
22 the immediate custody of the corrections department;

23 (2) order execution of the adult sentence and
24 place the offender on probation; or

25 (3) order the release of the offender.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. If an offender is ordered to serve probation pursuant to Paragraph (2) of Subsection F of this section and successfully completes probation, the adjudication shall not become a conviction for purposes of the Criminal Code and the court shall enter a conditional discharge as provided for in Section 31-20-13 NMSA 1978.

H. If execution of the adult sentence is ordered and the offender is placed in the custody of the corrections department, all time served by the offender under the juvenile disposition shall be credited toward the adult criminal sentence imposed."