

1 SENATE BILL 261

2 56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

3 INTRODUCED BY

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10 AN ACT

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

19 A. "amenable to treatment" means the ability of a
20 child to be rehabilitated or treated sufficiently by the time
21 the child reaches twenty-one years of age to protect the
22 public's safety;

23 [~~A.~~] B. "delinquent act" means an act committed by
24 a child that would be designated as a crime under the law if
25 committed by an adult, not including a violation of Section

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1 30-9-2 NMSA 1978, including the following offenses:

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

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

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

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

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

12 (e) homicide by vehicle;

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

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

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

20 (i) reckless driving;

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

23 (k) an offense punishable as a felony;

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

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

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

16 (4) a violation of the Controlled Substances
17 Act;

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

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

25 (7) a violation of an order of protection

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1 issued pursuant to the provisions of the Family Violence
2 Protection Act;

3 ~~[B.]~~ C. "delinquent child" means a child who has
4 committed a delinquent act;

5 ~~[G.]~~ D. "delinquent offender" means a delinquent
6 child who is subject to juvenile sanctions only and who is not
7 a youthful offender or a serious youthful offender;

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

12 ~~[E.]~~ F. "felony" means an act that would be a
13 felony if committed by an adult;

14 ~~[F.]~~ G. "misdemeanor" means an act that would be a
15 misdemeanor or petty misdemeanor if committed by an adult;

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

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

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

11 ~~[I.]~~ J. "supervised release" means the release of a
12 juvenile, whose term of commitment has not expired, from a
13 facility for the care and rehabilitation of adjudicated
14 delinquent children, with specified conditions to protect
15 public safety and promote successful transition and
16 reintegration into the community. A juvenile on supervised
17 release is subject to monitoring by the department until the
18 term of commitment has expired and may be returned to custody
19 for violating conditions of release; and

20 ~~[J.]~~ K. "youthful offender" means a delinquent
21 child subject to adult or juvenile sanctions who is:

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

25 (a) second degree murder, as provided in

1 Section 30-2-1 NMSA 1978;

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

4 (c) kidnapping, as provided in Section
5 30-4-1 NMSA 1978;

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

8 (e) aggravated battery against a
9 household member, as provided in Subsection C of Section
10 30-3-16 NMSA 1978;

11 (f) aggravated battery upon a peace
12 officer, as provided in Subsection C of Section 30-22-25 NMSA
13 1978;

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

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

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

21 (j) robbery, as provided in Section
22 30-16-2 NMSA 1978;

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

25 (l) aggravated arson, as provided in

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1 Section 30-17-6 NMSA 1978; or

2 (m) abuse of a child that results in
3 great bodily harm or death to the child, as provided in Section
4 30-6-1 NMSA 1978;

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

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

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

6 B. Upon transfer, the court shall have exclusive
7 jurisdiction over the proceedings and the defendant. The
8 transferring tribunal shall order that the defendant promptly
9 be taken to the court or taken to a place of detention
10 designated by the court or released to the custody of a parent,
11 guardian, custodian or other person legally responsible for the
12 defendant to be brought before the court at a time designated
13 by the court. Upon transfer to the court, a petition shall be
14 prepared and filed in the court in accordance with the
15 provisions of the Delinquency Act. If the defendant is not a
16 child at the time of transfer, the court retains jurisdiction
17 over the matter only until disposition is made by the court,
18 unless disposition is made pursuant to Paragraph (2) of
19 Subsection A of Section 32A-2-20.1 NMSA 1978."

20 SECTION 3. Section 32A-2-17 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 46, as amended) is amended to read:

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

24 A. After a petition has been filed and either a
25 finding with respect to the allegations of the petition has

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

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

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

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

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

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

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1 the corrections department shall prepare a subsequent
2 predisposition report; provided that this subparagraph shall
3 not apply to an adult sentence sought pursuant to Section
4 32A-2-20.1 NMSA 1978; and

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

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

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

25 D. The court may order that a child adjudicated as

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

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

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

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

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

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

8 B. If a judgment resulting from a youthful offender
9 or serious youthful offender proceeding under the Delinquency
10 Act results in an adult sentence, a record of the judgment
11 shall be admissible in any other case or proceeding in any
12 other court involving the youthful offender or serious youthful
13 offender, unless the sentence was imposed pursuant to Paragraph
14 (2) of Subsection F and Subsection H of Section 32A-2-20.2 NMSA
15 1978, and the offender 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 H of Section
20 32A-2-20.2 NMSA 1978."

21 SECTION 5. 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

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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

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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

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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. A child given an adult sentence shall
11 not be sentenced to life imprisonment without the possibility
12 of release or parole.

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

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

24 H. A child fourteen years of age or older charged
25 with first degree murder, but found to have committed a

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1 delinquent act that is neither first degree murder nor a
2 youthful offender offense as set forth in Subsection [J] K of
3 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
4 subject to the dispositions set forth in Section 32A-2-19 NMSA
5 1978.

6 I. An appeal of a court order entered in accordance
7 with this section may be filed by either party to the case."

8 SECTION 6. A new section of the Delinquency Act, Section
9 32A-2-20.1 NMSA 1978, is enacted to read:

10 "32A-2-20.1. [NEW MATERIAL] DUAL DISPOSITION OF A
11 YOUTHFUL OFFENDER AMENABLE TO TREATMENT.--

12 A. If a youthful offender prosecution results in
13 adjudication for an offense listed in Subsection K of Section
14 32A-2-3 NMSA 1978 and the offender is found by the court to be
15 amenable to treatment, the court may impose:

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

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

25 B. In determining a disposition to impose pursuant

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1 to Subsection A of this section, the judge shall make findings
2 on all of the following factors:

- 3 (1) the seriousness of the offense;
- 4 (2) whether the offense was committed in an
5 aggressive, violent, premeditated or willful manner;
- 6 (3) whether a firearm was used to commit the
7 offense;
- 8 (4) whether the offense was against persons or
9 against property, greater weight being given to offenses
10 against persons, especially if personal injury 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 SECTION 7. A new section of the Delinquency Act, Section
24 32A-2-20.2 NMSA 1978, is enacted to read:

25 "32A-2-20.2. [NEW MATERIAL] EXECUTION OF ADULT

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1 SENTENCE.--

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

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

22 C. If a person described in Subsection A of this
23 section is under the age of eighteen and is taken into custody,
24 the person may be detained only in accordance with Section
25 32A-2-4.1 NMSA 1978.

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1 D. If it is established after a hearing that a
2 youthful offender has violated the terms of the sentence stayed
3 pursuant to Paragraph (2) of Subsection A of Section 32A-2-20.1
4 NMSA 1978, the court shall order execution of the previously
5 imposed sentence unless the court makes written findings of
6 mitigating factors that justify continuing the stay. If the
7 court finds that no mitigating factors are present, the court
8 shall treat the youthful offender as an adult and order any of
9 the adult sanctions authorized by the original disposition and
10 sentence.

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

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

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

25 (2) order execution of the adult sentence and

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1 place the offender on probation; or

2 (3) order the release of the offender.

3 G. When ordering the execution of an adult sentence
4 pursuant to Paragraph (1) or (2) of Subsection F of this
5 section, the court shall:

6 (1) make the following findings:

7 (a) in the instant proceeding, during
8 the time the child was placed on probation or committed to a
9 facility for the care and rehabilitation of adjudicated
10 delinquent children, that the child was not amenable to
11 treatment or rehabilitation as a child in available facilities;
12 and

13 (b) that the child is not eligible for
14 commitment to an institution for children with developmental
15 disabilities or mental disorders; and

16 (2) make findings on the following factors:

17 (a) the seriousness of the alleged
18 offense;

19 (b) whether the alleged offense was
20 committed in an aggressive, violent, premeditated or willful
21 manner;

22 (c) whether a firearm was used to commit
23 the alleged offense;

24 (d) whether the alleged offense was
25 against a person or against property, greater weight being

1 given to an offense against a person, especially if personal
2 injury resulted;

3 (e) the maturity of the child as
4 determined by consideration of the child's home, environmental
5 situation, social and emotional health, pattern of living,
6 brain development, trauma history and disability;

7 (f) the record and previous history of
8 the child;

9 (g) the prospects for adequate
10 protection of the public and the likelihood of reasonable
11 rehabilitation of the child by the use of procedures, services
12 and facilities currently available;

13 (h) in the instant proceeding, the
14 child's behavior and conduct while placed on probation or
15 committed to a facility for the care and rehabilitation of
16 adjudicated delinquent children;

17 (i) the results of a report provided by
18 the department of a risk assessment performed on the child
19 using an accepted risk assessment tool that determines whether
20 the child: 1) poses a substantial risk of harm to self; 2)
21 poses a substantial risk of harm to others; or 3) may leave the
22 jurisdiction of the court; and

23 (j) any other relevant factor, provided
24 that the factor is stated on the record.

25 H. If an offender is ordered to serve probation

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1 pursuant to Paragraph (2) of Subsection F of this section and
2 successfully completes probation, the adjudication shall not
3 become a conviction for purposes of the Criminal Code and the
4 court shall enter a conditional discharge as provided for in
5 Section 31-20-13 NMSA 1978.

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