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SENATE BILL 599

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

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO CHILDREN; PROVIDING SENTENCING ALTERNATIVES FOR  
CERTAIN JUVENILE OFFENDERS; ALLOWING THE CHILDREN'S COURT TO  
CERTIFY A PROCEEDING TO DISTRICT COURT UNDER CERTAIN  
CIRCUMSTANCES; PROVIDING FOR THE DESIGNATION OF AN OFFENSE AS AN  
EXTENDED JURISDICTION JUVENILE PROSECUTION; PROVIDING FOR THE  
IMPOSITION OF ADULT SENTENCES; CREATING NEW CRIMINAL OFFENSES;  
ENACTING THE EXTENDED JURISDICTION JUVENILE PROSECUTION ACT;  
ENACTING NEW SECTIONS OF THE CHILDREN'S CODE AND THE CRIMINAL  
CODE.

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

Section 1. A new section of the Children's Code is enacted  
to read:

"[NEW MATERIAL] SHORT TITLE. -- Sections 1 through 17 of  
this act may be cited as the "Extended Jurisdiction Juvenile

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1 Prosecution Act". "

2 Section 2. A new section of the Children's Code is enacted  
3 to read:

4 "[NEW MATERIAL] PURPOSE. --It is the purpose of the  
5 Extended Jurisdiction Juvenile Prosecution Act to provide a  
6 children's court judge with a sentencing mechanism in addition  
7 to prosecution of a child as a youthful offender or a delinquent  
8 child to allow a greater choice in sentencing on a case-by-case  
9 basis by including the options of prosecuting a child as an  
10 adult in district court or sentencing a child to both a juvenile  
11 sentence, which shall be immediately imposed, and an adult  
12 sentence, which shall be imposed only if the child violates the  
13 juvenile sentence or commits a new crime. "

14 Section 3. A new section of the Children's Code is enacted  
15 to read:

16 "[NEW MATERIAL] DEFINITIONS. --As used in the Extended  
17 Jurisdiction Juvenile Prosecution Act:

18 A. "court" means the children's court division of  
19 the district court; and

20 B. "handgun" means a loaded or unloaded pistol,  
21 revolver or firearm that will or is designed to or may readily  
22 be converted to expel a projectile by the action of an explosion  
23 and the barrel length of which, not including a revolving,  
24 detachable or magazine breech, does not exceed twelve inches.

25 Section 4. A new section of the Children's Code is enacted

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1 to read:

2 " [NEW MATERIAL] EXTENDED JURISDICTION JUVENILE  
3 PROSECUTION-- DESIGNATION. --A proceeding involving a child is an  
4 extended jurisdiction juvenile prosecution if:

5 A. the child was fourteen to seventeen years of age  
6 at the time that the child was alleged to have committed either  
7 a crime of violence, as provided in Section 15 of the Extended  
8 Jurisdiction Juvenile Prosecution Act, or first degree murder,  
9 as provided in Section 30-2-1 NMSA 1978, a certification hearing  
10 was held and the court designated the proceeding an extended  
11 jurisdiction juvenile prosecution;

12 B. the child was sixteen or seventeen years of age  
13 at the time of the alleged felony offense, a handgun was used in  
14 the commission of the offense and the prosecutor designated in  
15 the delinquency petition that the proceeding shall be an  
16 extended jurisdiction juvenile prosecution; or

17 C. the child was fourteen to seventeen years of age  
18 at the time of an alleged felony offense, the prosecutor  
19 requested that the court designate the proceeding as an extended  
20 jurisdiction juvenile prosecution, a certification hearing was  
21 held on the issue of designation and the court designated the  
22 proceeding an extended jurisdiction juvenile prosecution. "

23 Section 5. A new section of the Children's Code is enacted  
24 to read:

25 " [NEW MATERIAL] HEARING ON PROSECUTOR'S REQUEST. --When a

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1 prosecutor requests that a proceeding be designated an extended  
2 jurisdiction juvenile prosecution, the court shall hold a  
3 hearing pursuant to Section 13 of the Extended Jurisdiction  
4 Juvenile Prosecution Act to consider the request. The hearing  
5 shall be held within thirty days of the filing of the request  
6 for designation, unless good cause is shown by the prosecution  
7 or the child as to why the hearing should not be held within  
8 this period in which case the hearing shall be held within  
9 ninety days of the filing of the request. If the prosecutor  
10 shows by clear and convincing evidence that designating the  
11 proceeding an extended jurisdiction juvenile prosecution serves  
12 public safety, the court shall grant the request for  
13 designation. In determining whether public safety is served,  
14 the court shall consider the factors specified in Section 10 of  
15 the Extended Jurisdiction Juvenile Prosecution Act. The court  
16 shall decide whether to designate the proceeding an extended  
17 jurisdiction juvenile prosecution within fifteen days after the  
18 designation hearing is completed, unless additional time is  
19 needed, in which case the court may extend the period up to an  
20 additional fifteen days."

21 Section 6. A new section of the Children's Code is enacted  
22 to read:

23 "[NEW MATERIAL] PROCEEDING.--A child who is the subject of  
24 an extended jurisdiction juvenile prosecution has the right to a  
25 trial by jury and to the effective assistance of counsel."

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1           Section 7. A new section of the Children's Code is enacted  
2 to read:

3           "[NEW MATERIAL] DISPOSITION. --

4           A. If an extended jurisdiction juvenile prosecution  
5 results in a guilty plea or finding of guilt, the court shall:

6                   (1) impose one or more juvenile dispositions  
7 pursuant to Section 32A-2-19 NMSA 1978; and

8                   (2) impose the appropriate adult felony  
9 sentence pursuant to Section 31-18-15 NMSA 1978, which shall be  
10 stayed.

11           B. The child shall be informed by the court that he  
12 has been convicted of an adult felony sentence, which shall be  
13 stayed provided that the child successfully completes the  
14 juvenile sentence and that the child does not commit another  
15 felony offense. "

16           Section 8. A new section of the Children's Code is enacted  
17 to read:

18           "[NEW MATERIAL] EXECUTION OF ADULT SENTENCE. --

19           A. When it appears that a child convicted as an  
20 extended jurisdiction juvenile has violated the conditions of  
21 the stayed adult sentence, or is alleged to have committed a new  
22 felony offense, the court may, without notice, revoke the stay  
23 and probation and direct that the offender be taken into  
24 immediate custody. The court shall notify the offender in  
25 writing of the reasons alleged to exist for revocation of the

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1 stay of execution of the adult sentence. If the offender  
2 challenges the reasons, the court shall hold a summary hearing  
3 on the issue at which the offender is entitled to be heard and  
4 represented by counsel.

5 B. After the hearing, if the court finds that  
6 reasons exist to revoke the stay of execution of sentence, the  
7 court shall treat the offender as an adult and order any of the  
8 adult sanctions authorized by the Criminal Sentencing Act,  
9 unless the court makes written findings regarding the mitigating  
10 factors that justify continuing the stay."

11 Section 9. A new section of the Children's Code is enacted  
12 to read:

13 "[NEW MATERIAL] INAPPLICABILITY TO CERTAIN OFFENDERS. -- The  
14 Extended Jurisdiction Juvenile Prosecution Act does not apply to  
15 an alleged serious youthful offender as defined in Subsection H  
16 of Section 32A-2-3 NMSA 1978 or to a youthful offender as  
17 defined in Paragraph (3) of Subsection I of Section 32A-2-3 NMSA  
18 1978. "

19 Section 10. A new section of the Children's Code is  
20 enacted to read:

21 "[NEW MATERIAL] PUBLIC SAFETY. --

22 A. In determining whether the public safety is  
23 served by certifying a child to district court, the court shall  
24 consider the following factors:

25 (1) the seriousness of the alleged offense in

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1 terms of community protection, including the existence of any  
2 aggravating factors recognized by applicable sentencing  
3 guidelines, the use of a handgun and the impact on any victim;

4 (2) the culpability of the child in committing  
5 the alleged offense, including the level of the child's  
6 participation in planning and carrying out the offense and the  
7 existence of any mitigating factors recognized by the sentencing  
8 guidelines;

9 (3) the child's prior record of delinquency;

10 (4) the adequacy of the punishment or referral  
11 to community programs or services available in the juvenile  
12 justice system; and

13 (5) any other dispositional options available  
14 for the child.

15 B. In considering the factors in Subsection A of  
16 this section, the court shall give greater weight to the  
17 seriousness of the alleged offense and to the child's prior  
18 record of delinquency than to the other factors listed in this  
19 section. "

20 Section 11. A new section of the Children's Code is  
21 enacted to read:

22 " [NEW MATERIAL] DELINQUENCY PETITION-- EXTENDED  
23 JURISDICTION JUVENILE. --When a prosecutor files a delinquency  
24 petition alleging that a child committed an offense pursuant to  
25 Subsection B of Section 4 of the Extended Jurisdiction Juvenile

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1 Prosecution Act, the prosecutor shall indicate in the petition  
2 whether or not the proceeding shall be designated as an extended  
3 jurisdiction juvenile prosecution. When a prosecutor files a  
4 delinquency petition alleging that a child fourteen to seventeen  
5 years of age committed an offense pursuant to Subsection A or C  
6 of Section 4 of the Extended Jurisdiction Juvenile Prosecution  
7 Act, the prosecutor may request the court to designate the  
8 proceeding as an extended jurisdiction juvenile prosecution. "

9 Section 12. A new section of the Children's Code is  
10 enacted to read:

11 " [NEW MATERIAL] JURISDICTION OF COURT OVER AN EXTENDED  
12 JURISDICTION JUVENILE. --

13 A. The jurisdiction of the court over a child  
14 convicted as an extended jurisdiction juvenile extends until the  
15 offender becomes twenty-one years of age, unless the court  
16 terminates jurisdiction before that date.

17 B. The court has jurisdiction to designate the  
18 proceeding an extended jurisdiction juvenile prosecution or to  
19 conduct a trial, receive a plea or impose a disposition pursuant  
20 to Subsections A and C of Section 4 of the Extended Jurisdiction  
21 Juvenile Prosecution Act, if:

22 (1) a child is alleged to have committed an  
23 offense before the child's eighteenth birthday; and

24 (2) a petition is filed by the prosecutor in a  
25 timely manner.



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1           C. The court has jurisdiction over a child who has  
2 been adjudicated delinquent until the child's twenty-first  
3 birthday if the child intentionally fails to appear at any court  
4 hearing or fails to appear at or flees from any placement under  
5 a court order. The court has jurisdiction over a convicted  
6 extended jurisdiction juvenile who fails to appear at any court  
7 hearing or fails to appear at or flees from any placement under  
8 a court order."

9           Section 13. A new section of the Children's Code is  
10 enacted to read:

11           "[NEW MATERIAL] WRITTEN FINDINGS--OPTIONS.--

12           A. The court shall decide whether to order  
13 certification to district court within fifteen days after the  
14 certification hearing is completed, unless additional time is  
15 needed, in which case the court may extend the period up to  
16 another fifteen days. If the court orders certification to  
17 district court, the order shall contain, in writing, findings of  
18 fact and conclusions of law as to why public safety is not  
19 served by retaining the proceeding in the court. If the court  
20 decides after a hearing not to order certification to district  
21 court, the decision shall contain, in writing, findings of fact  
22 and conclusions of law as to why certification to district court  
23 is not ordered.

24           B. If the court judge decides not to order  
25 certification of a child to district court, the court shall

1 designate the proceeding as an extended jurisdiction juvenile  
2 prosecution and include in its decision written findings of fact  
3 and conclusions of law as to why the retention of the proceeding  
4 in the children's court serves public safety. "

5 Section 14. A new section of the Children's Code is  
6 enacted to read:

7 " [NEW MATERIAL] CERTIFICATION TO DISTRICT COURT FOR  
8 PROSECUTION AS AN ADULT. --

9 A. When a child who is at least fourteen years of  
10 age is alleged to have committed an offense pursuant to  
11 Subsection A or C of Section 4 of the Extended Jurisdiction  
12 Juvenile Prosecution Act, the court may enter an order  
13 certifying the proceeding to the district court for disposition.

14 B. It is presumed that a proceeding involving an  
15 offense committed by a child will be certified to district court  
16 if:

17 (1) the child was sixteen or seventeen years of  
18 age at the time of the offense; and

19 (2) the delinquency petition alleges that the  
20 child used a handgun in the commission of a felony offense.

21 C. If the court determines that probable cause  
22 exists to believe the child committed the alleged offense, the  
23 burden is on the child to rebut this presumption by  
24 demonstrating by clear and convincing evidence that retaining  
25 the proceeding in the court serves public safety. If the court

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1 finds that the child has not rebutted the presumption by clear  
2 and convincing evidence, the court shall certify the child to  
3 district court for prosecution as an adult. "

4 Section 15. A new section of the Children's Code is  
5 enacted to read:

6 "[NEW MATERIAL] CRIME OF VIOLENCE DEFINED.--As used in the  
7 Extended Jurisdiction Juvenile Prosecution Act, "crime of  
8 violence" means:

9 A. shooting at a dwelling or an occupied building or  
10 shooting at or from a motor vehicle, as provided in Section  
11 30-3-8 NMSA 1978;

12 B. unlawful carrying of a deadly weapon on school  
13 premises, as provided in Section 30-7-2.1 NMSA 1978;

14 C. unlawful possession of a handgun as provided in  
15 Section 30-7-2.2 NMSA 1978;

16 D. negligent use of a deadly weapon, as provided in  
17 Section 30-7-4 NMSA 1978;

18 E. unlawful possession of a switchblade, as provided  
19 in Section 30-7-8 NMSA 1978;

20 F. unlawful carrying of a replica firearm or BB gun  
21 on school premises, as provided in Section 30-7-2.4 NMSA 1978;  
22 and

23 G. unlawful transfer of a handgun, as provided in  
24 Section 30-7-2.5 NMSA 1978. "

25 Section 16. A new section of the Children's Code is

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1 enacted to read:

2 "[NEW MATERIAL] ADJUDICATION OR CONVICTION OF A CRIME OF  
3 VIOLENCE--PROHIBITION ON POSSESSION OF HANDGUNS. --A person who  
4 was adjudicated delinquent for, or convicted as an extended  
5 jurisdiction juvenile of, a crime of violence as provided in  
6 Section 15 of the Extended Jurisdiction Juvenile Prosecution Act  
7 is not entitled to ship, transport, possess or receive a handgun  
8 until ten years have passed since the person was discharged and  
9 during that time the person was not convicted of any other  
10 felony offense. A person who has received a relief of  
11 disability under United States Code, Title 18, Section 925, as  
12 amended, is not subject to the restrictions of this section."

13 Section 17. A new section of the Children's Code is  
14 enacted to read:

15 "[NEW MATERIAL] JUVENILE OFFENDERS--FAILURE TO  
16 APPEAR. --

17 A. A person who intentionally fails to appear for a  
18 court disposition is guilty of a felony if:

19 (1) the person was prosecuted in court for an  
20 offense that would have been a felony if committed by an adult;

21 (2) the court made findings pursuant to an  
22 admission in court or after trial;

23 (3) the person was released from custody on the  
24 condition that the person appear in the court for a disposition  
25 in connection with the offense; and

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1 (4) the person was notified that failure to  
2 appear is a criminal offense.

3 B. Whoever intentionally fails to appear for a  
4 children's court disposition is guilty of a fourth degree felony  
5 and shall be sentenced pursuant to Section 31-18-15 NMSA 1978. "

6 Section 18. A new section of the Criminal Code, Section  
7 30-7-2.4 NMSA 1978, is enacted to read:

8 "30-7-2.4. [NEW MATERIAL] UNLAWFUL CARRYING OF A REPLICA  
9 HANDGUN OR BB GUN ON SCHOOL PREMISES. --

10 A. Unlawful carrying of a replica handgun or BB gun  
11 on school premises consists of knowingly carrying a replica  
12 handgun or BB gun on school premises.

13 B. As used in this section:

14 (1) "BB gun" means a device that fires or  
15 ejects a shot measuring eighteen hundredths of an inch or less  
16 in diameter;

17 (2) "replica handgun" means any object that  
18 closely resembles a rifle, pistol or any type of weapon  
19 manufactured to expel a projectile by the action of an  
20 explosion; and

21 (3) "school premises" means:

22 (a) the buildings and grounds, including  
23 playgrounds, playing fields and parking areas, and any school  
24 bus of any public elementary, secondary, junior high or high  
25 school in or on which school or school-related activities are

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1 being operated under the supervision of a local school board; or  
2 (b) any other public buildings or  
3 grounds, including playing fields and parking areas that are not  
4 school property, in or on which public school-related and  
5 sanctioned activities are being performed.

6 C. Whoever commits unlawful possession of a replica  
7 handgun or BB gun on school premises is guilty of a fourth  
8 degree felony and shall be sentenced pursuant to Section  
9 31-18-15 NMSA 1978. "

10 Section 19. A new section of the Criminal Code, Section  
11 30-7-2.5 NMSA 1978, is enacted to read:

12 "30-7-2.5. [NEW MATERIAL] UNLAWFUL TRANSFER OF A  
13 HANDGUN--PENALTY.--

14 A. Unlawful transfer of a handgun consists of:

15 (1) the transfer of a handgun to a person who  
16 is less than nineteen years of age; or

17 (2) the transfer of a handgun to a person less  
18 than nineteen years of age who has made a false statement in  
19 order to become a transferee, if the transferor knows or has  
20 reason to know the transferee has made the false statement.

21 B. Whoever commits unlawful transfer of a handgun to  
22 a person under the age of nineteen is guilty of a fourth degree  
23 felony and shall be sentenced pursuant to Section 31-18-15 NMSA  
24 1978. "

25 Section 20. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 1996.

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1 FORTY- SECOND LEGISLATURE

2 SECOND SESSION, 1996

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6 FEBRUARY 9, 1996

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8 Mr. President:

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10 Your COMMITTEES' COMMITTEE, to whom has been referred

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12 SENATE BILL 599

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15 has had it under consideration and finds same to be GERMANE, PURSUANT  
16 TO HOUSE EXECUTIVE MESSAGE NUMBER 34, and thence referred to the  
17 PUBLIC AFFAIRS COMMITTEE.

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19 Respectfully submitted,

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SENATOR MANNY M. ARAGON, Chairman



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

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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1 FORTY-SECOND LEGISLATURE  
2 SECOND SESSION, 1996  
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6 February 12, 1996  
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8 Mr. President:  
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10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred  
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12 SENATE BILL 599  
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14 has had it under consideration and reports same with recommendation that  
15 it DO PASS, and thence referred to the JUDICIARY COMMITTEE.  
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18 Respectfully submitted,  
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23 Shannon Robinson, Chairman  
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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: E. Jennings, Smith, Naranjo

Absent: None

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