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SENATE BILL 861

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

INTRODUCED BY

TOM R. BENAVIDES

AN ACT

RELATING TO JUVENILE JUSTICE; LOWERING THE AGE FOR ADJUDICATION  
OF A CHILD AS A YOUTHFUL OFFENDER TO THIRTEEN YEARS OF AGE;  
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; and

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

(1) [~~fifteen~~] thirteen to eighteen years of age

1 at the time of the offense and who is adjudicated for at least  
2 one of the following offenses:

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

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

7 (c) kidnapping, as provided in Section  
8 30-4-1 NMSA 1978;

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

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

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

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

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

22 (i) robbery, as provided in Section  
23 30-16-2 NMSA 1978;

24 (j) aggravated burglary, as provided in  
25 Section 30-16-4 NMSA 1978; or

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

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

13 (3) thirteen to fifteen years of age and  
14 adjudicated for first degree murder, as provided in Section  
15 30-2-1 NMSA 1978. "

16 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
17 Chapter 77, Section 32, as amended by Laws 1995, Chapter 204,  
18 Section 2 and by Laws 1995, Chapter 205, Section 2 and also by  
19 Laws 1995, Chapter 206, Section 10) is amended to read:

20 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

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

25 (1) pursuant to municipal traffic codes or the

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1 Motor Vehicle Code:

2 (a) any driving while under the influence  
3 of intoxicating liquor or drugs;

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

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

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

11 (e) any homicide by vehicle;

12 (f) any injuring or tampering with a  
13 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  
18 permit;

19 (i) reckless driving;

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

22 (k) any offense punishable as a felony;

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

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

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

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

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

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

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1 been adjudicated a delinquent child; or

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

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

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

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

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

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

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

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1 pain and suffering or other intangible losses. As used in this  
2 subsection, "victim" means any person who is injured or suffers  
3 damage of any kind by an act that is the subject of a complaint  
4 or referral to law enforcement officers or juvenile probation  
5 authorities. Nothing contained in this definition limits or  
6 replaces the provisions of Subsections A and B of Section  
7 32A-2-27 NMSA 1978;

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

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

15 (1) [~~fifteen~~] thirteen to eighteen years of age  
16 at the time of the offense and who is adjudicated for at least  
17 one of 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;

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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, as  
9 provided in Section 30-7-5 NMSA 1978;

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

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

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

3 (3) thirteen to fifteen years of age and  
4 adjudicated for first degree murder, as provided in Section  
5 30-2-1 NMSA 1978. "

1 FORTY- SECOND LEGI SLATURE  
2 SECOND SESSI ON, 1996

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5 FEBRUARY 1, 1996

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7 Mr. Presi dent:

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

10  
11 SENATE BILL 861

12  
13 has had it under consideration and finds same to be GERMANE, PURSUANT  
14 TO HOUSE EXECUTIVE MESSAGE SIXTEEN, and thence referred to the  
15 JUDI CIARY COMMI TTEE.

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17 Respectfully submi tted,

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23 SENATOR MANNY M. ARAGON, Chai rman  
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