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HOUSE BILL 312

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Terry T. Marquardt

AN ACT

RELATING TO CRIMES; MAKING RETALIATION AGAINST A WITNESS A
YOUTHFUL OFFENDER OFFENSE; AMENDING A SECTION OF THE
DELINQUENCY ACT.

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

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

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

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

(1) pursuant to municipal traffic codes or
the Motor Vehicle Code:

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

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1 (b) any failure to stop in the event of
2 an accident causing death, personal injury or damage to
3 property;

4 (c) any unlawful taking of a vehicle or
5 motor vehicle;

6 (d) any receiving or transferring of a
7 stolen vehicle or motor vehicle;

8 (e) any homicide by vehicle;

9 (f) any injuring or tampering with a
10 vehicle;

11 (g) any altering or changing of an
12 engine number or other vehicle identification numbers;

13 (h) any altering or forging of a
14 driver's license or permit or any making of a fictitious
15 license or permit;

16 (i) reckless driving;

17 (j) driving with a suspended or revoked
18 license; or

19 (k) any offense punishable as a felony;

20 (2) buying, attempting to buy, receiving,
21 possessing or being served any alcoholic liquor or being
22 present in a licensed liquor establishment, other than a
23 restaurant or a licensed retail liquor establishment, except
24 in the presence of the child's parent, guardian, custodian or
25 adult spouse. As used in this paragraph, "restaurant" means

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1 any establishment where meals are prepared and served
2 primarily for on-premises consumption and that has a dining
3 room, a kitchen and the employees necessary for preparing,
4 cooking and serving meals. "Restaurant" does not include
5 establishments, as defined in regulations promulgated by the
6 director of the special investigations division of the
7 department of public safety, that serve only hamburgers,
8 sandwiches, salads and other fast foods;

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

16 (4) any violation of Section 30-29-2 NMSA
17 1978, regarding the illegal use of a glue, aerosol spray
18 product or other chemical substance;

19 (5) any violation of the Controlled
20 Substances Act;

21 (6) escape from the custody of a law
22 enforcement officer or a juvenile probation or parole officer
23 or from any placement made by the department by a child who
24 has been adjudicated a delinquent child; or

25 (7) any violation of Section 30-15-1.1 NMSA

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1 1978 regarding unauthorized graffiti on personal or real
2 property;

3 B. "delinquent child" means a child who has
4 committed a delinquent act;

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

8 D. "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. "felony" means an act that would be a felony if
13 committed by an adult;

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

16 G. "restitution" means financial reimbursement by
17 the child to the victim or community service imposed by the
18 court and is limited to easily ascertainable damages for
19 injury to or loss of property, actual expenses incurred for
20 medical, psychiatric and psychological treatment for injury to
21 a person and lost wages resulting from physical injury, which
22 are a direct and proximate result of a delinquent act.

23 "Restitution" does not include reimbursement for damages for
24 mental anguish, pain and suffering or other intangible losses.

25 As used in this subsection, "victim" means any person who is

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

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

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

13 (1) fourteen to eighteen years of age at the
14 time of the offense and who is adjudicated for at least one of
15 the following offenses:

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

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

20 (c) kidnapping, as provided in Section
21 30-4-1 NMSA 1978;

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

24 (e) aggravated battery upon a peace
25 officer, as provided in Subsection C of Section 30-22-25 NMSA

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1 1978;

2 (f) shooting at a dwelling or occupied
3 building or shooting at or from a motor vehicle, as provided
4 in Section 30-3-8 NMSA 1978;

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

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

9 (i) robbery, as provided in Section
10 30-16-2 NMSA 1978;

11 (j) aggravated burglary, as provided in
12 Section 30-16-4 NMSA 1978;

13 (k) aggravated arson, as provided in
14 Section 30-17-6 NMSA 1978; [or]

15 (l) abuse of a child that results in
16 great bodily harm or death to the child, as provided in
17 Section 30-6-1 NMSA 1978; or

18 (m) retaliation against a witness, as
19 provided in Section 30-24-3 NMSA 1978;

20 (2) fourteen to eighteen years of age at the
21 time of the offense and adjudicated for any felony offense and
22 who has had three prior, separate felony adjudications within
23 a three-year time period immediately preceding the instant
24 offense. The felony adjudications relied upon as prior
25 adjudications shall not have arisen out of the same

1 transaction or occurrence or series of events related in time
2 and location. Successful completion of consent decrees are
3 not considered a prior adjudication for the purposes of this
4 paragraph; or

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

7 Section 2. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 15, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 312

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17 1. On page 6, line 19, after Section 30-24-3, insert "B"
18 and strike the semicolon and insert "to the extent that
19 retaliation against a witness consists of any person knowingly
20 engaging in conduct that causes bodily injury to another person
21 or damage to the tangible property of another person, or
22 threatening to do so, with the intent to retaliate against any
23 person for any information relating to the commission or
24 possible commission of a felony offense.

25 and thence referred to the APPROPRIATION AND FINANCE
COMMITTEE.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJ/HB 312, aa

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Godbey, Luna, Sanchez

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 February 22, 1999

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 312, as amended

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13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

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16 Respectfully submitted,

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21 Max Coll, Chair man
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 14 For 0 Against

Yes: 14

Excused: Coll, Picraux, Watchman

Absent: None

J: \99BillSWP\H0312

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