



OFFICE OF THE DISTRICT ATTORNEY  
SECOND JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
SAM BREGMAN  
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## JUVENILE CRIME: THE CHALLENGES WE FACE AND THE CHANGES WE NEED

Juvenile Crime in Bernalillo County 01/01/2023 - 10/07/2024	
Cases Referred	1,419
Murder	24
Cases Involving a Handgun	374
Armed Robbery	48
Criminal Sexual Penetration	42
Shooting at/from a Motor Vehicle or at a Dwelling	65

*\*The maximum penalty for a youthful offense is commitment up to age 21, subject to amenability. In the last 10 years, only 1 juvenile has been found not amenable to treatment.*

Since 2019, there have been over 890 cases referred to our office involving kids with guns. The majority of those occurred from 2022 to 2023, where we experienced a 57% increase in these cases. Now, in 2024, our office has been referred 119 felony juvenile cases involving a firearm, indicating a continued increase in juvenile cases involving firearms.

Currently, people under the age of 19 are permitted by statute to have possession of firearms not considered a handgun. Thus, the above numbers do not include juveniles who are in possession of firearms with barrels over 12 inches in length, because it is not legally considered a handgun.

Below are proposed amendments to the Children's Code "Delinquency Act." **These amendments are aimed towards reducing juvenile crime, upholding accountability, and prioritizing overall public safety.**





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**Children’s Code “Delinquency Act” Amendments**

**Top 6 priorities and impacts on public safety:**

	<b>Statute</b>	<b>The Change. <i>Proposal.</i></b>	<b>The Challenge. <i>Why?</i></b>
1.	<b>32A-2-3(H)</b>  <b>Definition of “Serious Youthful Offender”</b>	Remove “indicted or bound over”.  Expand definition to include: second degree murder, voluntary manslaughter, criminal sexual penetration, armed robbery with a firearm, shooting at or from a motor vehicle resulting in great bodily harm or death, and shooting at a dwelling or occupied building resulting in great bodily harm or death.  Include language reverting case back to Children’s Court for sentencing if the child is not adjudicated as a serious youthful offender.	Efficiency: If a child between 14 and 18 is charged with a serious youthful offense, then they should automatically be treated as a “serious youthful offender,” rather than waiting for the case to be indicted or bound over.  Provide more jurisdiction and accountability for serious violent crimes.  Ensures that a child will not be sentenced as an adult if they are not adjudicated on any of the enumerated crimes as a serious youthful offender.
2.	<b>32A-2-19(B)</b>  <b>Disposition of an Adjudicated Delinquent Offender</b>	Extend jurisdiction for amenability and supervision for youthful offenders until age 25.	Currently, jurisdiction exists for youthful offenders until they reach the age of 21. This amendment will provide more time for treatment and supervision under the juvenile justice system.
3.	<b>32A-2-26(L)</b>  <b>Sealing of Records</b>	New section: to enable the State to use juvenile delinquency records during any conditions of release hearing without having to attain a Court Order to unseal said records.	Provides consistency and clarification that juvenile delinquency records can be used in certain hearings without additional process of unsealing.
4.	<b>32A-2-11(A)</b>  <b>Criteria for detention of children.</b>	Remove “detention risk assessment instrument is completed.”	Determination for detention would be made if detention is ordered by the Court or if the three statutory criteria are met, based on the allegations of the offense and the facts and circumstances of the case.



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			Removing the risk assessment instrument eliminates an arbitrary inquiry from the decision and creates efficient practices.
5.	<b>32A-2-8</b>  <b>Petition; authorization to file.</b>	Remove “after consulting with probation services.”	Efficiency: Removing this additional preliminary inquiry will allow prosecutors to file petitions without further delay to create more efficiency and swift prosecution.
6.	<b>30-7-2.2</b>  <b>Unlawful possession of a handgun by a person; exceptions; penalty.</b>	Update language from “handgun” to “firearm,” as defined in NMSA 30-7-16(E)(4).  Increase penalty of unlawful possession from a misdemeanor to a fourth-degree felony.	Possession of firearms with a barrel length of over 12” per se, including rifles and shots, is not prohibited for people under the age of 19.  Increasing the penalty will ensure the case is referred to the DA's office for review.

**Children’s Code “Delinquency Act” Amendments Continued**

	<b>Statute</b>	<b>The Change. <i>Proposal.</i></b>	<b>The Challenge. <i>Why?</i></b>
7.	<b>32A-2-2(B)</b>  <b>Modify “purpose” of the Act</b>	Include language: “where appropriate”.  Will read: “to provide effective deterrents to acts of juvenile delinquency, <u>where appropriate</u> , including an emphasis on community-based alternatives;”	This language allows the facts and circumstances to guide the best outcome for each case, in order to determine when community-based alternatives to detention are warranted.
8.	<b>32A-2-2(H)</b>  <b>Modify “purpose” of the Act</b>	Include language: “where appropriate”.  Will read: “to develop community-based alternatives to detention <u>when appropriate</u> ;”	This language allows the facts and circumstances to guide the best outcome for each case, in order to determine when community-based alternatives to detention are warranted.



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9.	32A-2-3(A)(1)(b)  <b>Definition of “Delinquent Act”</b>	<p>Remove “death”.</p> <p>Will read: “failure to stop in the event of an accident causing personal injury or damage to property;”</p>	Children who leave the scene of an accident which results in death will be considered a youthful offender.
10.	32A-2-3(A)(1)(e)  <b>Definition of “Delinquent Act”</b>	Remove “homicide by vehicle”.	Children who commit this act will be considered a youthful offender.
11.	32A-2-3(J)(1)  <b>Definition of a “Youthful Offender”</b>	<p>Remove “adjudicated,” and “second-degree murder”</p> <p>Expand definition to include: unlawful carrying of a firearm as provided in NMSA 30-7-2.2 1978, vehicular homicide, involuntary manslaughter, and leaving the scene of an accident causing great bodily harm.</p>	<p>Efficiency: If a child between 14 and 18 is charged with one of the enumerated crimes then they should automatically be treated as a “youthful offender.”</p> <p>A child charged with second degree murder will be considered a serious youthful offender.</p> <p>Provide more jurisdiction and accountability for unlawful possession of a firearm and other serious crimes.</p>
12.	32A-2-3(J)(3)  <b>Definition of a “Youthful Offender”</b>	<p>Remove section.</p> <p>“fourteen years of age and who is adjudicated for first degree murder.”</p>	Duplicative language with the expanded definition of a Serious Youthful Offender.
13.	32A-2-4.1(C)  <b>Adult jails and lockups used as temporary holding facilities; reports</b>	Add section: “A serious youthful offender will be transported to adult district court for any trial setting. The serious youthful offender will be held in a cell separate from any adults, and to the best extent possible, out of sight and sound from any adults.”	<p>Serious youthful offenders are being prosecuted as adults, and to avoid prejudice related to children's courtrooms, the serious youthful offenders should be tried at the adult courthouse.</p> <p>This section only applies to trials.</p>
14.	32A-2-11(B)  <b>Criteria for detention of children.</b>	Remove “based upon review of the detention risk assessment instrument.”	Criteria for detention will not include review of a risk assessment instrument and will be based on and order of the Court or on the three statutory factors.



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15.	<b>32A-2-11(C)</b>  <b>Criteria for detention of children.</b>	Remove section.  “The department shall develop and implement a detention risk assessment instrument...”	Removing the development and implementation of a detention risk assessment instrument will allow the courts to make determinations of detention based on the statutory facts and the facts and circumstances of each case, rather than based on an arbitrary instrument.
16.	<b>32A-2-12(D)</b>  <b>Placement or Detention</b>	Amend language: “Any person who reaches the age of eighteen while in a juvenile detention facility shall be transferred to a county jail.”	Currently, based solely on attaining the age of 18, a juvenile in a detention facility is not to be transferred to a county jail.  In other words, adults are being housed in the same detention facilities as children.
17.	<b>32A-2-13(A)(3)</b>  <b>Detention hearing required on detained children; probable cause determination; court determination; disposition.</b>	Include language simplifying when detention hearings can be conducted electronically, “at the Court’s discretion.”  Remove language creating barriers for electronic communication for detention hearings.	As a result of normal practice after the COVID-19 pandemic, detention hearings are often being conducted at the court’s discretion and are recorded and preserved. The current language applies unnecessary obstacles for the option of remote hearings.
18.	<b>32A-2-13(B)</b>  <b>Detention hearing required on detained children; probable cause determination; court determination; disposition.</b>	Remove section allowing special masters to conduct detention hearings.  For consistency, remove “or special master” from sections <b>32A-2-13(D), (E), (F) and (H)</b> .	This amendment requires judges to preside over detention hearings. This does not remove special master roles for abuse and neglect cases or from presiding over juvenile plea hearings.
19.	<b>32A-2-14(M)</b>  <b>Basic Rights</b>	Amend “adult facility” to “facility.” Amend “bail” to “conditions of release.”  Amend citations to follow current rules.	Since bail reform, bail is no longer a consideration in practice; rather, a review of conditions of release as provided in current rules govern this section.
20.	<b>32A-2-14(O)</b>  <b>Basic Rights</b>	New section: “Any child fourteen (14) years of age or older has the right to waive amenability and accept an adult sentence.”	This amendment is an efficient and equitable measure to provide more discretion to juveniles as to whether they can or should have an amenability hearing.  <i>Note: The cost for a juvenile amenability expert is approximately \$12,500/case.</i>



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21.	<b>32A-2-17(A)(1) and (2)</b>  <b>Predisposition studies; reports and examinations.</b>	Amend “shall” to “may”	Predisposition reports for serious youthful offenders are not actually considered for sentencing and are therefore unnecessary and inefficient.
22.	<b>32A-2-18(A)</b>  <b>Judgment; noncriminal nature; nonadmissibility.</b>	Remove: “during which the parties may reference any juvenile dispositions after conviction of a felony and then only for the purpose of a presentence study and report.”	Provides consistency as to the use of juvenile records for certain hearings set forth in 32A-2-26, as amended.
23.	<b>32A-2-19(B)(a) –(d)</b>  <b>Disposition of an Adjudicated Delinquent Offender</b>	Remove “types of commitment” sections.  New language: “The Court has the discretion to impose any amount of probation or commitment based on the child’s unique circumstances and history up to the age twenty-five.”	Provides flexibility between parties for negotiation purposes based on the severity and the facts and circumstances in each case.
24.	<b>32A-2-19(B)(1)(c)</b>  <b>Disposition of an Adjudicated Delinquent Offender</b>	Amend commitment age to 25.	Provides consistency throughout proposed amendments, which extends jurisdiction to age 25.
25.	<b>32A-2-19(B)(3)</b>  <b>Disposition of an Adjudicated Delinquent Offender</b>	Extend the option to place the child in a local detention facility from 15 days to 30 days if the child is found to be delinquent under 32A-2-3.	Provide more opportunity for accountability and jurisdiction on delinquent acts.
26.	<b>32A-2-19(D)</b>  <b>Disposition of an Adjudicated Delinquent Offender</b>	Add language: “unless the offender is over 18 years of age.”	Provides consistency throughout proposed amendments. 32A-2-12(D), proposing an offender is transferred upon turning 18 years old.



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27.	<b>32A-2-20(C)</b>  <b>Disposition of a youthful offender.</b>	Add language: “with no factor weighing more heavily than the other.”	Provides guidance to judges on considering factors when determining an adult sentence.
28.	<b>32A-2-20(F)</b>  <b>Disposition of a youthful offender.</b>	Amend commitment age to 25.	Provides consistency throughout proposed amendments, which extends jurisdiction to age 25.
29.	<b>32A-2-20(G) and (H)</b>  <b>Disposition of a youthful offender.</b>	Amend language from “first degree murder” to “a serious youthful offense”	Provides consistency throughout proposed amendments, which includes expanding the definition of a serious youthful offense.
30.	<b>32A-2-22(A)</b>  <b>Continuance under supervision without judgment; consent decree; disposition.</b>	Amend “agreed to by all the parties affected” to “agreed to by the State, defense counsel, and the judge.”	Often, the State has not been agreement with suspending proceedings and the negotiated conditions with probation services. This amendment provides clarification to which are interested parties and ensure continuity.
31.	<b>32A-2-22(C)</b>  <b>Continuance under supervision without judgment; consent decree; disposition.</b>	Include language: “Delinquent” child and “This section does not apply to youthful offender or serious youthful offender cases.”	Consent decrees will only be available in delinquent child cases, which will provide more accountability for more serious and violent crimes. These additions do not remove judicial discretion.
32.	<b>32A-2-23(D) and (E)</b>  <b>Limitations on dispositional judgments; modification; termination or extension of court orders.</b>	Remove language on short- v. long-term commitment.  New language providing discretion to the court to extend probation or commitment for an additional period of time based on the child’s unique circumstances and history.	Provides consistency for commitment and probation dispositions, set forth in 32A-2-19(B), as amended.



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33.	<b>32A-2-23.1(A)</b>  <b>Release eligibility.</b>	Remove section.  Does this section have to change with the proposed amendments to commitment?	<p>Currently, an adjudicated child may not have to serve the entire sentence, even when the court has determined a sentence. The department has the exclusive jurisdiction and authority decide the release of an adjudicated delinquent child.</p> <p>This amendment will statutorily provide that the adjudicated child serves their full sentence, unless otherwise determined by Court Order.</p> <p>Does not remove review from the juvenile public safety board.</p>
34.	<b>32A-2-23.1(C)</b>  <b>Release eligibility.</b>	Remove section.	<p>A child may be released from custody of CYFD after 60 days of commitment. Removing this section provides the child will ensure the department monitors the child for the entirety of the judgement.</p>
35.	<b>32-2-24(B)</b> <b>Probation revocation; disposition</b>	Amend standard of proof in probation revocation proceedings from “beyond a reasonable doubt” to “preponderance of the evidence.”	<p>Beyond a reasonable doubt is the highest standard of proof in criminal proceedings. Amending the standard of proof is consistent with adult proceedings.</p>
36.	<b>32A-2-32.1.</b>  <b>Information not to be disclosed on a public access web site.</b>	Remove section.	<p>Promote public trust and transparency by providing information as necessary.</p>