

NEW MEXICO CHILDREN'S CODE

OUTLINE

PRESENTED BY:

DPS - Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Understanding the New Mexico Children’s Code.
- Understand differences between the adult and juvenile justice system.

OBJECTIVES

- Define the purpose and philosophy of juvenile law.
- Identify the scope and authority of Children’s Court.
- Identify when Miranda warnings need to be given to juveniles who are detained or in custody.
- Identify how the Fourth Amendment differs for juveniles and adults.
- Identify circumstances when a child should be placed into protective custody.
- Define the similarities and differences between the juvenile and adult justice systems in New Mexico.
- Identify how different terms are used in the juvenile and adult justice system.
- Articulate the significance of In Re Gault.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME Two hours.

PREPARED BY

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INTRODUCTION:

Many officers are unsure what to do when coming in contact with juveniles. When do I need to read Miranda? Must a parent be present when an interrogation is done? Is there a different standard for search and seizure of juveniles?

Once in court, the uncertainty continues. Why do courts refer to an offender as a Child and not as a defendant? What happens to a fifteen year old who commits first degree murder?

The goal of this class is to make the juvenile justice system easy for officers to understand. If at the end of class an officer says, "I get it," or feels more comfortable about future encounters with juveniles and the juvenile justice system, this class has accomplished its goal.

Age and jurisdiction of the Children's code.

- We will be referring to people under the age of eighteen as children or juveniles. These terms are from the state legislature which has given us the following definitions: a "child" means a person who is less than eighteen years old. An "adult" is someone who is eighteen years of age or older. NMSA 1978, Section 32A-1-4.

PURPOSE OF THE CHILDREN'S CODE NMSA 1978, Section 32A-1-3

- The main focus of the Children's Code is the care and protection of the child. To accomplish this, the children's court is given the ability to assist and rehabilitate a child.

The Children's Code can be found in Chapter 32A of the state statutes. Within Chapter 32A we will be reviewing the three Articles that affect law enforcement:

- Article 2: Delinquency
- Article 3: Families in Need of Services, and
- Article 4: Child Abuse and Neglect

CHAPTER 32A, ARTICLE 2: DELINQUENCY

INTRODUCTION:

We will approach Article 2 (Delinquency) in three phases.

- The pre trial component
- The trial process
- Sentencing, including the sealing of records.

PRE-TRIAL PROCESS - THE ROLE OF LAW ENFORCEMENT

OFFICER'S RELATION WITH CHILDREN: BASIC RIGHTS

- A child subject to the provisions of the Children’s Code . . . is entitled to the same basic rights as an adult, except as otherwise provided in the Children’s Code. NMSA 1978, Section 32A-1-16.
- Generally, the procedure to arrest a juvenile for a delinquent act is similar to arresting an adult for a criminal act. But there are some differences and we’ll be discussing some of these differences now.

OFFICER’S RELATION WITH CHILDREN: INTERROGATION & MIRANDA

Courts use a two step analysis when it comes to an admission or confession.

- First, the court will decide if the statement was voluntary or not.
- Next, the court will determine if Miranda rights should have been given.
- In both instances, the state legislature and courts have given more protection to juveniles.

WAS THE STATEMENT VOLUNTARY?

For an adult, a simple analysis will do. But for juveniles the intent of the state legislature is to make sure the statement is voluntary. Does the child really understand what is going on? In NMSA 1978, Section 32A-2-14 (E), which applies to children only, the Court is required to consider the following in deciding whether a child voluntarily waived his or her rights:

- The age and education of the child;
- Whether the child was in custody;
- The manner in which the child was advised of his or her rights. Police officers need to explain rather than just read Miranda rights;
- Length, circumstances, and time of day of questioning;
- Conditions of environment where questioning was conducted;
- Mental and physical condition of the child at the time of being questioned;
- Presence of attorney, friends or relatives at the time of being questioned.

NOTE: There is no requirement that a parent must be present.

Although statements are an essential part of an investigation, the state legislature is concerned about potential abuse when juveniles give statements to police officers. For juveniles at a certain age, statements, even if voluntary, may be inadmissible.

UNDER AGE 13

- Confessions, statements or admissions may **not** be introduced against a child under the age of 13. NMSA 1978, Section 32A-2-14 (F).

FACTS:

A twelve year old Child in Albuquerque shot and killed her father. She told police the shooting was accidental. However, she made numerous statements to friends, neighbors, and family members which suggested the homicide was intentional.

- Supreme Court noted that the statute calls for complete protection for those under the age of thirteen. It held that all statements made by a person under the age of thirteen, regardless of the setting or to whom the statements were made, are inadmissible in a delinquency proceeding against Child. State v. Jade G (2007).

AGE 13 TO 14

- A confession, statement or admission by a child 13 to 14 to a person in a position of authority is presumed to be inadmissible. The State, however, may use the factors noted above to challenge this presumption.

WHEN DO MIRANDA RIGHTS NEED TO BE READ TO A JUVENILE?:

- If the statement is determined to be voluntary, the Court must decide if Miranda rights should have been given. Using a case from Hobbs, New Mexico, the Supreme Court held that there is a higher standard for juveniles as to when Miranda rights need to be given.

PARTY TIME IN HOBBS, NEW MEXICO

- Police officers were dispatched to an apartment at 2:00 a.m. in response to a loud music complaint. Police knocked, heard “scuffling” inside, but twenty minutes went by before someone opened the door. Officers could smell marijuana and alcohol. Ten to fifteen individuals were inside along with beer cans.
- The Child, age fifteen, had an odor of alcohol on his breath or clothing. Officer had the Child step outside onto the stairway of the apartment where he asked the Child whether he had consumed any alcohol. The Child said two beers.

IS THERE A CUSTODIAL INTERROGATION?

- For adults, there must be a custodial interrogation before Miranda warnings are required. This is a fairly high standard: one criteria of a custodial interrogation is that a person lacks the freedom to leave to an extent equal to a formal arrest.
- Had the offender been an adult, there would have been no need for Miranda warnings. This was an investigatory detention, not a custodial interrogation, and did not arise to the level of being equal to a formal arrest.

STATEMENT SUPPRESSED, HOWEVER BECAUSE OFFENDER IS A JUVENILE

- Supreme Court held that a child must be given Miranda rights earlier in the investigation, at the point when the child is being detained.
- When a juvenile is detained, only two Miranda warnings are required; (1) the right to remain silent and (2) anything said can be used against you. When the detention arises to the level of a custodial interrogation, additional Miranda rights (the right to a lawyer, etc.) must be read.
- Since this was an investigatory detention, and the offender was a juvenile, the two Miranda warnings should have been given. Statement about two beers suppressed.
- Some officers refer to the two warnings for juveniles being detained as a mini-Miranda or Miranda-lite. State v. Javier M. (2001).

Do Miranda rights have to be read if questioning a juvenile during a pat down?

- Upon receiving a citizen's complaint that individuals were selling drugs, a Santa Fe police officer approached an adult and juvenile (seventeen-years-old) who matched the description in the complaint. Both subjects were very nervous and wearing heavy clothing that could have concealed weapons. While doing a pat-down search of the adult, the Child kept turning his body sideways as if preparing to attack.
- Concerned for his safety, the Officer decided to do a pat-down search of the Child. He asked the Child if he had syringes with needles on him. The Child said no but volunteered he had marijuana, and handed the Officer a plastic baggie from his pocket.
- Will this evidence be admitted? Was the officer neglectful in not advising the Child of his Miranda rights?

ANSWER:

Court of Appeals said the evidence was admissible. The question was not about criminal activity; it was an integral part of the search itself. Also, the Child volunteered he had marijuana. Once the Officer asked a second question – do you have more marijuana? – Miranda warnings should have been read. State v. Gerald B. (2006).

OFFICER'S RELATION WITH CHILDREN: FINGERPRINT AND PHOTOGRAPH

- A child under age 13 alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order. NMSA 1978, Section 32A-2-14 (I).

OFFICER'S RELATION WITH CHILDREN: CONSENT

- Suppose an officer wants to search a juvenile's house or room. Some states have laws that a juvenile must be a certain age – sixteen, for example – before he or she can give consent. As of now, there is no case law in New Mexico. Recommend contacting local DA's office for situations like this.

OFFICER'S RELATION WITH CHILDREN: PUBLIC SCHOOLS

FIREARMS

- Public school administrators or employees, if they have reasonable cause (similar to reasonable suspicion) to believe a child is or has possessed a firearm on school premises shall immediately report this to a law enforcement agency and CYFD. NMSA 1978, Section 32A-2-33 (A).

SEARCH & SEIZURE: SCHOOL PREMISES

Introduction

There is much confusion about what an officer can or cannot do on a school campus. Is there a lower standard for search and seizure on the school campus? (yes) Are school officials bound by the same rules as officers? (no) The following cases will assist you regarding search and seizure on the school campus.

School official has a lower standard. What about school official who goes off campus?

- A Child was walking to school with her friends. Before school had started, and before they got there, they stopped in an alley to talk with others who were smoking. An assistant principle heard of this and drove off campus to find the Child and friends. They were not smoking nor was there any indication they had been. Ordered into his car, they were taken to school where they were searched one by one. No cigarettes but a small marijuana roach was found in the Child's book bag. State v. Crystal B. (2003).
- Is there a lower standard to search juveniles on school premises? (yes)
- Was this a good search? (no)

ANSWER:

There is a lower standard to search on school property – reasonable suspicion. This is because school officials have an obligation to protect children in their care. But the lower standard applies only when the student is on school property or under the control of the school.

Court of Appeals held the seizure of the Child in the alley violated her Fourth Amendment rights and ordered evidence suppressed. The student was not on school property or under the control of the school. State v. Crystal B. (2003).

Can a school official pat a student down if the student is “acting nervous” even though the student is not suspected of criminal activity?

- A high school junior in Albuquerque was late for class. His teacher told him to get a late pass. While walking down the hallway, he was stopped by a campus service aide who noted he was acting nervous. He thought the juvenile might have a weapon or marijuana on him. Although he was not suspected of criminal activity, he was patted down and a marijuana pipe was found. In his jacket, which he had been ordered to take off, brass knuckles were found. State v. Pablo R. (2006).
- Is this a good stop? (no) Is this a good pat down? (no)

Answer:

Even though the standard may be lower, juveniles still have constitutional rights. Walking down the hallway without a pass is not reasonable suspicion for a stop.

What about the pat down? One needs reasonable suspicion a person is armed to do a pat down. The campus aide said he did the pat down for safety reasons because the juvenile was nervous. But being nervous is not enough. Court of Appeals ordered evidence suppressed.

What is the legal standard for an officer to do a search on a school campus?

- A school official needs reasonable suspicion to search. This allows a school official to search a locker or gym bag without a warrant. An officer on campus, however, needs probable cause to search and would need a warrant. State v. Tywayne H. (1997).

What if a police officer does a search while assisting a school official?

- A school official was talking with a student in a high school in Roswell, New Mexico. She could smell marijuana and he was acting evasive. She decided to take him to her office to search for marijuana. A school resource officer (SRO) went to assist her. The officer was from the Roswell Police Department but had a permanent office at the school, where he worked full time.
- Walking to the office, the school official noticed a large object in the front pocket of the student’s pants. The student refused to remove his hand from his pocket so she asked the officer to do it. At this time there was reasonable suspicion the student had marijuana on him. The officer reached in but instead of marijuana he found a .38 caliber handgun. In the Matter of Josue T. (1999)
- Will the evidence seized (the handgun) be admissible? (yes)

Answer:

An officer, to search for evidence, needs probable cause. In this situation, because the search was done at the request of the principal, only reasonable suspicion was needed. Court of Appeals held this was a good search.

TRIALS

INTRODUCTION:

One case in the 1960's dramatically changed the juvenile justice system: In re Gault. (In re = In the Matter of). We will be discussing this case and how the juvenile justice system has changed, including words and definitions. The role of the juvenile probation officer will also be discussed.

- For many years a child did not have the legal protections of an adult in children's court. In re Gault changed this.

IN RE GAULT (1967)

- Before this case, juvenile hearings were informal and non-adversarial. There are some positive things to be said for this but juveniles did not have the constitutional rights of adults.
- Gault was an Arizona juvenile accused of making harassing telephone calls. The court had an informal hearing, with no defense lawyer, no trial, and not even a record of the hearing. Gault, for a minor offense, was ordered to spend years at a juvenile detention facility.
- Gault appealed his case to the United States Supreme Court. The Supreme Court held that juveniles are entitled to constitutional rights similar to adults. Since then, the state legislature in New Mexico has rewritten the children's code to conform to the intent of the Gault decision.

PURPOSE OF THE DELINQUENCY ACT NMSA 1978, Section 32A-2-2

- The Act seeks to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions.

FOLLOWING AN OFFENDER IN THE JUVENILE JUSTICE SYSTEM

- The role of the probation officer is different. Each incident or referral is assigned to a Juvenile Probation Officer (JPO). The JPO conducts a Preliminary Inquiry (PI) with the juvenile and parent or guardian. The JPO has an important role in that he or she decides whether to keep the referral for informal disposition or to send it to the DA's office for the filing of a petition.

- Complaints alleging delinquency shall be referred to probation services, which shall conduct a preliminary inquiry with regard to any action to be taken. NMSA 1978, Section 32A-2-7.
- The juvenile probation officer can informally dispose of up to three misdemeanor charges brought against a child within two years. NMSA 1978, Section 32A-2-5.
- A children’s court attorney can file a petition but does so after consultation with probation services. NMSA 1978, Section 32A-2-8.

LEARNING THE “LINGO” OF JUVENILE JUSTICE

More differences between juveniles and adults

One of the first things a person learns about juveniles is that people use different words to describe things. This different vocabulary exists to emphasize that juveniles are unique and are to be treated differently. We will now discuss some of these words and concepts.

JUVENILE

ADULT

CHARGING A JUVENILE

Delinquent act

Criminal offense

If an adult breaks a law, it’s a criminal offense. If a juvenile does the same thing, it’s a delinquent act. NMSA 1978, Section 32A-2-3.

Petition:

Indictment

The charging document for a juvenile, which is used to get an offender into the court system, is called a petition. For adult misdemeanors we use a criminal complaint. For an adult felony we use an indictment or information.

“In the Matter of . . . , a child”

State v. _____

For adults, at the top of the charging document, it will say “State v. _____” or something similar to it. Juveniles use a different language. In fact, one gets the impression there are no criminal charges at all. Example: “In the Matter of . . . , a child.”

Respondent

Defendant

A juvenile is referred to as a child or respondent, an adult as a defendant.

AT COURT AND ON THE WAY TO TRIAL

Children’s Court

District Court

Children’s Court is a division of District Court.

Children Court’s Attorney

District Attorney

Attorneys representing the state on the delinquency side of the children’s court system are referred to as Assistant District Attorneys. Attorneys on the abuse and neglect

side of the children’s court system who represent the state are known as Children’s Court Attorneys.

Initial Appearance

Arraignment

Admit or deny

Plead guilty or not guilty

A juvenile “admits or denies” that he did an offense. An adult pleads “guilty” or “not guilty” of the crimes he or she is charged with.

AT TRIAL

Adjudication

Trial

An adjudication, also known as an adjudicatory hearing, is the equivalent of an adult trial.

AFTER TRIAL

Committed

Found Guilty

A juvenile is found to “have committed” the acts he or she is charged with. An adult is “found guilty” of the crimes he or she is charged with.

Adjudicated Delinquent

Convicted Felon

A juvenile who is found to have committed a delinquent act is an adjudicated delinquent. An adult who has been convicted of a felony is a convicted felon.

Disposition

Sentence

The outcome of a juvenile case is referred to as a disposition. It includes the findings of the court or jury and the consequences.

D-Home (Detention Home)

Jail

TIME LIMITS FOR PROSECUTION DIFFER

If in custody, must go to trial within 30 days.
If not in custody, must go to trial within 120 days.

Six month rule for adults.

POST-TRIAL: SENTENCING

- When sentencing a juvenile, the emphasis is on rehabilitation and non-incarceration. NMSA 1978, Section 32A-2-2. Sometimes the children’s court wants something more structured than probation but even then the offender will probably be referred to a group home setting.

Reasons why the emphasis in juvenile law is on rehabilitation

- If a person is a victim of a burglary, or senseless vandalism has cost the local school thousands of dollars in damages, knowing that the offender is a juvenile doesn't lessen the damage or sense of loss. Why, then, is special consideration given to juveniles?
- One reason may be an awareness of why juveniles do what they do. Juveniles have more peer pressure than adults and tend to be influenced by hanging out with the wrong crowd.
- Another reason may be an awareness of the child who is raised in a hostile and abusive environment and becomes frustrated or angry. Or perhaps it is the young person who is not part of the school "in crowd" – not an athlete or cheerleader, not a scholar – and gets attention by joining a gang.
- Yet the most important reason for the Children's Code, and its emphasis on rehabilitation, may be optimism that there is still time to turn things around.

As to sentencing, there have been changes in the juvenile justice system

- Until the 1990's the most incarceration a juvenile could receive for any offense was two years. NMSA 1978, Section 32A-2-19(B)(1)(B). A dramatic increase in juvenile violent crimes, however, led the state legislature to create additional categories to provide the courts with more discretion in sentencing juvenile offenders.
- The three categories of juvenile offenders are:
 1. serious youthful offenders,
 2. youthful offenders, and
 3. delinquent offenders
- A child will be placed into a given category based upon his or her **age** and the **type of offense** committed. Which category a child is in will determine the options available to the Judge for sentencing.

1. **SERIOUS YOUTHFUL OFFENDER**

An individual, ages 15 to 18, who has been indicted or bound over for first degree murder. NMSA 1978, Section 32A-2-3 (H).

A serious youthful offender is treated as an adult and sentenced as an adult. NMSA 1978, Section 31-18-15.3(D).

2. **YOUTHFUL OFFENDER**

A child, ages 14 to 18, who has been adjudicated for any number of violent offenses, including but not limited to: second degree murder, kidnapping, shooting at an occupied dwelling, CSP, or a child age 14 who has been adjudicated for first degree

murder. The child is subject to adult or juvenile sanctions. NMSA 1978, Section 32A-2-3 (I).

A youthful offender who is not amenable to rehabilitation may be sentenced as an adult. NMSA 1978, Section 32A-2-20(A), (B).

3. **DELINQUENT OFFENDER**

A child who has committed a delinquent act but does not fit into either the youthful or serious youthful offender category. This child is subject to juvenile sanctions only. NMSA 1978, Section 32A-2-3-C. The Court can order one of the following commitments for a delinquent offender:

1. A short-term commitment of one year,
2. A long term commitment for no more than two years,
3. For certain crimes a commitment to age twenty-one.

NMSA 1978, 32A-2-19 (B)(1).

FACTS:

A thirteen year old child in Eddy County was adjudicated (convicted) of first degree murder. Since she was only thirteen, she couldn't be sentenced as a youthful or serious youthful offender. She was committed to the custody of the Children, Youth and Families Department (CYFD) until the age of twenty-one. This sentence was affirmed (upheld) by the Court of Appeals. State v. Indie C. (2005).

What about motor vehicle code violations?

The municipal, magistrate or metropolitan court, with some exceptions, has jurisdiction over the majority of traffic offenses. NMSA 1978, Section 32A-2-29. Some exceptions, which will be heard in Children's Court, include DWI, vehicular homicide, unlawful taking of a motor vehicle, etc. NMSA 1978, Section 32A-2-3 (A)(1).

What about the sealing of records for juveniles?

- Juveniles, unlike adults, can have their records sealed.
- There shall be automatic sealing of records if there is no adjudication of delinquency or if a juvenile has not received a new allegation of delinquency for two years after release from custody. NMSA 1978, Section 32A-2-26 (G)(H).
- Upon entry of a sealing order, the proceedings shall be treated as if they had never occurred. Law enforcement officers and departments shall reply to an inquiry that no record exists with respect to the juvenile. NMSA 1978, Section 32A-2-26- C.
- However, the file can be reviewed in certain cases: (1) upon motion of the Child, and (2) to a clinic, hospital or agency that has the person under care or treatment. NMSA 1978, Section 32A-2-26 (D).

CHAPTER 32A, ARTICLE 3A: FAMILY SERVICES ACT

- Some families have children who create problems and need assistance. If the state can assist the family, and do so before minor things become serious offenses, much will be accomplished. Some of these offenses apply only to juveniles: truancy, curfew, running away. These are known as status offenses (because of their age, only a juvenile can commit them) and are not criminal offenses.
- The Family Services Act was enacted to provide assistance. On a **voluntary** basis, a family or others may contact the Children, Youth and Families Department which can then provide prevention, diversion and intervention services for a child or family. NMSA 1978, Section 32A-3A-1.
- “family services” means services that address specific needs of the child or family. NMSA 1978, Section 32A-3A-2 (B).

CHAPTER 32A, ARTICLE 3B: FAMILY IN NEED OF COURT-ORDERED SERVICES

- Sometimes it is not enough to rely upon a voluntary referral; there are occasions where court intervention is needed to provide services. Article 3A dealt with voluntary cooperation; article 3B provides guidance when the courts have to become involved. NMSA 1978, Section 32A-3B-1.
- If a child is absent from school more than ten days without authorization during a school semester, what options do we have? What should we do if a child is absent from his or her residence for twenty-four hours or more without permission of the parents or guardian? What should we do if a child refuses to return home and will run away if forced to do so? This is where the courts can help.

The type of situation which would justify taking a child into protective custody

- If the child without parental supervision is suffering from illness or injury, has been abandoned, or is endangered by his or her surroundings and removal is necessary for the child’s safety. NMSA 1978, Section 32A-3B- 3(A).

What should an Officer do upon taking a child into protective custody?

- With all reasonable speed, the Officer **shall** inform the Child of the reasons for protective custody and contact the Children, Youth and Families Department. NMSA 32A-3B-4 A)

Do any guidelines apply when transporting a child to protective custody?

- Unless there is a substantial danger to the child’s physical safety, a child should never be transported in a vehicle with an adult who is under arrest. NMSA 1978, Section 32A-3B-4.

Are there any restrictions as to where to take a child for protective custody?

- A child may be placed in a licensed foster-care home, a facility operated by a licensed child welfare services agency, or a home of a relative of the child. NMSA 1978, Section 32A-3B-6.

What if someone interferes with the Officer’s effort to put a child in protective custody?

- Any person, other than the child taken into protective custody, who interferes with placing the child in protective custody is guilty of a petty misdemeanor. NMSA 1978, Section 32A-3B-3(D).

What can an officer take a runaway child into protective custody?

- A child may be taken into protective custody by a law enforcement officer without a court order when the officer has reasonable grounds to believe that the child has run away from the child’s parent, guardian or custodian. NMSA 1978, Section 32A-3B-3(A).

What if an officer wants to return a runaway to parents?

Protective custody involves placing the child with CYFD or an institution. But sometimes, when there is a runaway, the officer may simply want to return the runaway to his or her parents. If so, the officer is permitted to detain the runaway for up to six hours while attempting to locate the runaway’s parent or guardian.

CHAPTER 32A, ARTICLE 4: CHILD ABUSE AND NEGLECT

- Some children suffer from being abandoned, abused or neglected because of the family situation. This article gives certain members of our society – nurses, teachers, social workers, physicians, etc. - a duty to report abuse and neglect to a local law enforcement agency, CYFD, or tribal law enforcement. Failure to do so is a misdemeanor offense. NMSA 1978, Section 32A-4-3(A).
- Article 4 is different from Article 3A/3B. In Article 3A/3B, Families in Need of Services, CYFD was trying to assist the families in supervising their child. In Article 4 parents have been abusive or neglectful of their children.
- A law enforcement agency receiving a report of child abuse or neglect **shall** immediately forward facts of the report by telephone and transmit the same information in writing within forty-eight hours to CYFD. NMSA 1978, Section 32A-4-3(B).

- A major objective is to keep the family together whenever possible. However, if the family environment is perceived as being hostile to the best interests of the child, the State, after court hearings, may intervene and place the child elsewhere. NMSA 1978, Section 32A-4-28.

CONCLUSION

This class hopefully has given you a better understanding and appreciation of the juvenile justice system.