



Winter 2005

State v. Muniz: Authorizing Adult Sentencing of Juveniles Absent a Conviction That Authorizes an Adult Sentence

Kelly K. Waterfall

Recommended Citation

Kelly K. Waterfall, *State v. Muniz: Authorizing Adult Sentencing of Juveniles Absent a Conviction That Authorizes an Adult Sentence*, 35 N.M. L. Rev. 229 (2005).

Available at: <https://digitalrepository.unm.edu/nmlr/vol35/iss1/9>

STATE V. MUNIZ: AUTHORIZING ADULT SENTENCING OF JUVENILES ABSENT A CONVICTION THAT AUTHORIZES AN ADULT SENTENCE

KELLY K. WATERFALL*

I. INTRODUCTION

*State v. Muniz*¹ addresses an issue of statutory interpretation of juvenile sentencing provisions that has proven to be a point of contention in New Mexico's courts. When a child in New Mexico is charged with a delinquent act² allegedly committed before his or her eighteenth birthday, jurisdiction is vested immediately in the children's court,³ with only one exception. Under this exception, for cases in which a child is charged with committing first-degree murder while between the ages of fifteen to eighteen, jurisdiction lies with the district court.⁴ The New Mexico Legislature has decided to deny these juveniles charged with first-degree murder adjudication in the children's court and, if found guilty, denies them juvenile disposition as well.⁵ What is unclear, and at issue in *Muniz*, is the right to a juvenile disposition for juveniles initially charged with first-degree murder, but convicted of a lesser offense.⁶ *Muniz* addresses a question of first impression in New Mexico courts—whether a district court has authority to impose an adult sentence on a juvenile charged with first-degree murder, but convicted of lesser charges for which an adult sentence would not otherwise be authorized.⁷ The New Mexico Supreme Court held that such authority has been statutorily granted by provisions of the Delinquency Act.⁸

This Note will look at the State's provisions for adjudicating and sentencing juveniles⁹ and the application of these statutory provisions by the New Mexico Supreme Court in *Muniz*.¹⁰ Additionally, this Note will specifically discuss the

* University of New Mexico School of Law, Class of 2005. The author wishes to extend her sincere gratitude to Professor Leo Romero for his skilled advisement.

1. 2003-NMSC-021, 74 P.3d 86.

2. See NMSA 1978, § 32A-2-3(A) (2003) (defining "delinquent act" as "an act committed by a child that would be designated as a crime under the law if committed by an adult").

3. The children's court is a division of the state district court. See NMSA 1978, § 32A-1-4(C) (2003).

4. See NMSA 1978, § 32A-2-6 (1993) (requiring that in a criminal matter where it appears "that the defendant was under the age of eighteen years at the time the offense charged was alleged to have been committed and the offense charged is a delinquent act... the tribunal shall promptly transfer jurisdiction of the matter and the defendant to the [children's] court," which "shall have exclusive jurisdiction over the proceedings and the defendant," but does not allow for transfer of serious youthful offenders); NMSA 1978, § 32A-1-4(C) (2003) (defining court as "the children's court division of the district court"); NMSA 1978, § 32A-1-4(U) (2003) (defining tribunal as "any judicial forum other than the court"); NMSA 1978, § 32A-2-3(H) (2003) (defining serious youthful offender as "an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder").

5. See NMSA 1978, § 31-18-15.3(D) (1993) (requiring an adult sentence upon a finding of guilt for first-degree murder).

6. See 2003-NMSC-021, 74 P.3d 86.

7. See *id.*

8. *Id.* ¶¶ 18–19, 74 P.3d at 91; NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003).

9. See *infra* Part II.

10. See *infra* Part IV.

court's interpretation of the Delinquency Act¹¹ and Criminal Sentencing Act¹² provisions for disposition of juveniles charged with first-degree murder but convicted of lesser offenses.¹³ *Muniz* allows the offense charged, rather than the offense of conviction, to determine whether a juvenile charged with first-degree murder but convicted of a lesser offense will be subject to adult sanctions.¹⁴ This Note critiques the *Muniz* decision and argues that due process and statutory interpretation of the juvenile sentencing provisions support an alternate reading that bases sentencing on the offense of conviction, not the offense charged.¹⁵ Finally, the effects on the adult sentencing of juveniles, implicated by the *Muniz* decision, will be considered.¹⁶

II. BACKGROUND

A. History

To understand the point of juvenile delinquency law addressed by *Muniz*,¹⁷ it will be helpful to have in mind the development of juvenile justice, both in the United States and particularly in New Mexico. The philosophy underlying the juvenile justice system has been to remove delinquent children from the adult criminal system and provide them with "rehabilitation through individualized justice."¹⁸ The first juvenile court was established in Illinois with the passage of the Juvenile Court Act of 1899.¹⁹ By 1925, juvenile courts focused on the welfare and rehabilitation of delinquent youth were established in all but two states.²⁰ For the following fifty years, exclusive original jurisdiction over juveniles charged with violating criminal laws was primarily vested in juvenile courts.²¹ Juvenile court proceedings were civil, not criminal.²² Transfer to adult criminal court was available only through waiver of jurisdiction by the juvenile court; these transfer decisions were individualized and made in the "best interests of the child and public."²³

In the 1960s, concern about the procedural informality of the individualized justice approach implemented by the juvenile courts began to develop, as well as concern for "the growing number of juveniles institutionalized indefinitely in the name of treatment."²⁴ Rulings by the U.S. Supreme Court reflected this concern and "required that juvenile courts become more formal—more like criminal courts."²⁵

11. NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003).

12. NMSA 1978, § 31-18-12 (1994).

13. NMSA 1978, § 32A-2-20(G) (2003); NMSA 1978, § 31-18-15.3(F) (1993); *see infra* Part IV.

14. *See infra* Part V.

15. *See id.*

16. *See infra* Part VI.

17. 2003-NMSC-021, 74 P.3d 86.

18. Shay Bilchik, U.S. Dep't of Justice, *The Juvenile Justice System Was Founded on the Concept of Rehabilitation Through Individualized Justice*, 1999 NAT'L REPORT SERIES: JUVENILE JUSTICE BULL. (Dec. 1999), at http://www.ncjrs.org/html/ojjdp/9912_2/juv1.html.

19. *Id.*

20. *Id.* "Rather than merely punishing delinquents for their crimes, juvenile courts sought to turn delinquents into productive citizens—through treatment." *Id.*

21. *Id.*

22. *See id.*

23. *Id.*

24. *See id.*

25. *Id.*; *see, e.g., In re Gault*, 387 U.S. 1 (1967) (holding that juveniles are entitled to constitutional due process in delinquency proceedings); *Kent v. United States*, 383 U.S. 541 (1966) (holding that due process is required for transfer of a juvenile to adult court).

During the 1980s, "substantial [public] misperception regarding increases in juvenile crime" led many states to begin passing legislation that took a more punitive approach to juvenile justice.²⁶ This legislation, which continued through the 1990s, was "designed to crack down on juvenile crime," and generally involved "expanded eligibility for criminal court processing and adult correctional sanctioning."²⁷ By 1997, forty-four states and the District of Columbia had passed laws increasing the availability of juvenile offender transfers to the adult criminal justice system.²⁸

B. New Mexico Provisions

In keeping with this national shift in juvenile justice, the 1993 amendments to the New Mexico Children's Code established statutory authority to impose adult sanctions on children convicted of certain criminal offenses.²⁹ These 1993 amendments constitute the Delinquency Act, which has remained substantially unchanged over the past decade.³⁰

The Delinquency Act delineates New Mexico's current system for the adjudication and disposition of juvenile offenders.³¹ In seeking to balance the rehabilitative needs of juvenile offenders with the "protection of the public interest,"³² the Act provides for differing treatments of juvenile offenders based upon their classification.³³ Three distinct classifications of juvenile offenders are identified in the Delinquency Act: serious youthful offender, youthful offender, and delinquent offender.³⁴ These classifications depend primarily on the nature of the adjudicated offense, the existence of prior offenses, and the age of the juvenile.³⁵

26. Bilchik, *supra* note 18.

27. *Id.*

28. *Id.*

29. See NMSA 1978, §§ 32A-2-1 to 32A-2-33 (1993) (amended 2003).

30. Compare *id.*, with NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003). The Delinquency Act was amended in 1995, 1996, 1998, 1999, and 2003. See Act of Apr. 6, 2003, ch. 225, 2003 N.M. Laws §§ 2-16; Act of Apr. 6, 2003, ch. 239, 2003 N.M. Laws §§ 5-6; Act of Apr. 8, 1999, ch. 265, 1999 N.M. Laws § 44; Act of Mar. 9, 1998, ch. 55, 1998 N.M. Laws § 42; Act of Mar. 6, 1996, ch. 85, 1996 N.M. Laws §§ 2-5; Act of Apr. 6, 1995, ch. 204, 1995 N.M. Laws §§ 2-3; Act of Apr. 6, 1995, ch. 205, 1995 N.M. Laws § 2; Act of Apr. 6, 1995, ch. 206, 1995 N.M. Laws §§ 10-17. Though numerous small changes have been made, the only significant changes to the portions of the Act at issue in *Muniz* were the 1996 amendments that lowered the minimum age at which a juvenile could be classified as a youthful offender from fifteen to fourteen and lowered the minimum age for serious youthful offenders from sixteen to fifteen. Compare NMSA 1978, § 32A-2-3(H), (I) (1995), with NMSA 1978, § 32A-2-3(H), (I) (1996).

31. See NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003). The Act defines both jurisdiction (whether a juvenile will be subject to criminal proceedings in district court or civil adjudication in children's court) and sentencing (whether a juvenile will be subject to adult criminal sentencing or civil juvenile sanctions). See *id.*; *supra* Part I; *infra* Parts II.B, IV.

32. NMSA 1978, § 32A-2-2 (2003).

33. NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003). While classification provides definition of treatment options, judicial and prosecutorial discretion exist within each option. See *infra* Part II.B.

34. NMSA 1978, § 32A-2-3 (2003).

35. See *id.*

1. Serious Youthful Offender

A serious youthful offender is a fifteen- to eighteen-year-old child "charged with and indicted or bound over for trial for first degree murder."³⁶ The district court has jurisdiction in these cases and tries serious youthful offenders as adults, under the authority of the Criminal Sentencing Act.³⁷ If found guilty of first-degree murder, serious youthful offenders are subject to adult criminal sentencing by the district court and placement in an adult facility.³⁸ The sentence imposed may be less than, but may not exceed, the mandatory sentence for an adult.³⁹ If the serious youthful offender is not found guilty of first-degree murder, but convicted of a lesser offense, the dispositional options available are less clear.⁴⁰ The scope of the district court's authority to impose an adult sentence on a juvenile originally charged as a serious youthful offender, but convicted of a lesser offense, is the issue addressed by the New Mexico Supreme Court in *Muniz*.⁴¹

2. Youthful Offender

A juvenile will be classified as a youthful offender when adjudicated for a delinquent act⁴² while between the ages of fourteen and eighteen, when the delinquent act is an enumerated offense⁴³ or any felony, if the offender has had three or more felony adjudications in the previous three years.⁴⁴ The youthful offender classification also includes fourteen-year-olds adjudicated for first-degree murder.⁴⁵ The children's court has exclusive jurisdiction over youthful offender adjudication and sentencing.⁴⁶ The Delinquency Act allows the children's court discretion, within statutory limits, to impose juvenile or adult sanctions upon youthful offenders.⁴⁷ An adult sentence may be imposed in the disposition of a youthful offender only where the children's court attorney has filed a timely notice of intent to seek an adult

36. NMSA 1978, § 32A-2-3(H) (2003).

37. NMSA 1978, § 31-18-15.3 (1993); *see* NMSA 1978, § 31-18-13(A) (1993).

38. NMSA 1978, § 31-18-13 (1993).

39. NMSA 1978, § 31-18-15.3(D) (1993).

40. Interpretation of the two statutory provisions defining the disposition of a serious youthful offender convicted of a lesser offense is a focus of this Note. *See* NMSA 1978, § 32A-2-20(G) (2003); NMSA 1978, § 31-18-15.3(F) (1993); *infra* Parts IV.B.1-3, V.A.2.a, V.A.3, V.B. The issue of whether the district court retains jurisdiction over the disposition of a serious youthful offender subsequent to the dismissal of a first-degree murder charge is not reached.

41. *See* 2003-NMSC-021, 74 P.3d 86.

42. *See* NMSA 1978, § 32A-2-3(A) (2003) (defining "delinquent act" as "an act committed by a child that would be designated as a crime under the law if committed by an adult"); NMSA 1978, § 32A-2-3(B) (2003); NMSA 1978, § 32A-2-3(I) (2003).

43. The offenses included in the youthful offender definition are:

[S]econd degree murder,...assault with intent to commit a violent felony,...kidnapping,... aggravated battery,...aggravated battery on a peace officer,... shooting at a dwelling or occupied building or shooting at or from a motor vehicle,... dangerous use of explosives,... criminal sexual penetration,... robbery,... aggravated burglary,... aggravated arson,... abuse of a child that results in great bodily harm or death to the child....

NMSA 1978, § 32A-2-3(I)(1) (2003).

44. NMSA 1978, § 32A-2-3(I)(2) (2003).

45. NMSA 1978, § 32A-2-3(I)(3) (2003).

46. *See* NMSA 1978, § 32A-2-6 (1993); *supra* notes 3-4.

47. NMSA 1978, § 32A-2-20 (2003).

sentence,⁴⁸ and the court finds that the child is “not amenable to treatment or rehabilitation as a child in available facilities” nor “eligible for commitment to an institution for the developmentally disabled or mentally disordered.”⁴⁹ In making findings on amenability or eligibility for institutionalization, the Delinquency Act requires the court to consider seven specific factors, but also allows consideration of “any other relevant factor.”⁵⁰ Juvenile sanctions are limited to civil commitment until the age of twenty-one in a juvenile facility.⁵¹ Adult criminal sentences for youthful offenders may be less than, but no longer than, the mandatory adult sentence.⁵² If the children’s court imposes an adult sentence, the juvenile is transferred to the custody of the adult detention system and the juvenile’s sentence is served in an adult incarceration facility.⁵³

3. Delinquent Offender

The Delinquency Act defines a delinquent offender as any child who commits a delinquent act,⁵⁴ but “who is not a youthful offender or a serious youthful offender.”⁵⁵ The children’s court has exclusive jurisdiction over delinquent offender adjudication and sentencing.⁵⁶ Only juvenile civil sanctions may be imposed on a delinquent offender by the children’s court.⁵⁷ Delinquent offender commitments will be in a juvenile facility⁵⁸ and are generally limited to no more than two years.⁵⁹

The three juvenile offender classifications establish distinct adjudication and sentencing procedures for juveniles charged with delinquent acts in New Mexico. Only serious youthful offenders are tried in the district court rather than the children’s court. While both serious youthful offenders and youthful offenders may be subject to adult criminal sentences, youthful offenders may only be subject in certain limited circumstances. On the other hand, delinquent offenders are subject to only juvenile civil commitments.

48. NMSA 1978, § 32A-2-20(A) (2003).

49. NMSA 1978, § 32A-2-20(B) (2003).

50. The statute requires that the judge consider:

(1) [T]he seriousness of the alleged offense; (2) whether...committed in an aggressive, violent, premeditated or willful manner; (3) whether a firearm was used...; (4) whether...offense was against persons or against property...; (5) the sophistication and maturity of the child...; (6) the record and previous history...; (7) prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child...; (8) any other relevant factor....

NMSA 1978, § 32A-2-20(C) (2003).

51. NMSA 1978, § 32A-2-20(F) (2003); NMSA 1978, § 32A-2-19(B)(2)(d) (2003).

52. NMSA 1978, § 32A-2-20(E) (2003).

53. *Id.*

54. *See supra* note 42.

55. *See* NMSA 1978, § 32A-2-3(C) (2003); NMSA 1978, § 32A-2-3(B) (2003).

56. *See* NMSA 1978, § 32A-2-6 (1993); *supra* note 4.

57. NMSA 1978, § 32A-2-19 (2003) (listing sentencing options, all of which are juvenile); NMSA 1978, § 32A-2-3(C) (2003).

58. NMSA 1978, § 32A-2-19(B)(2) (2003); *see also* NMSA 1978, § 32A-2-19(D) (2003) (stating that no delinquent child “shall be committed or transferred to a penal institution or facility” where criminals are serving their sentences).

59. NMSA 1978, § 32A-2-19(B)(2) (2003). While commitments for delinquent offenders are primarily for a short term of one year or a long term of two years, a long-term commitment may be extended in one-year increments until the age of twenty-one where the court determines that “the extension is necessary to safeguard the welfare of the child or the public interest.” NMSA 1978, § 32A-2-23(D) (2003).

III. STATEMENT OF THE CASE

A. Facts

Richard Muniz was seventeen years old when he was “indicted on one count of first degree murder, four counts of tampering with evidence, and [one count of] conspiracy to tamper with evidence.”⁶⁰ The first-degree murder charge established his classification as a serious youthful offender under the provisions of the Delinquency Act⁶¹ and gave the district court jurisdiction to try Muniz as an adult.⁶²

In a plea agreement, Muniz pled guilty to tampering with evidence and conspiracy to tamper with evidence.⁶³ He also agreed to provide the State with evidence against his two co-defendants in exchange for the State’s dismissal of the charge of first-degree murder and all other remaining charges.⁶⁴ Had Richard Muniz not initially been charged with first-degree murder, he would have been classified as a delinquent offender, subject to only a juvenile commitment.⁶⁵

B. District Court

More than a year after making this plea agreement,⁶⁶ Muniz’s sentencing hearing was held and Muniz argued against imposition of an adult sentence.⁶⁷ The State claimed that once a serious youthful offender became subject to district court jurisdiction, the district court retained authority to impose an adult sentence, even subsequent to the dismissal of the first-degree murder charge that initially conferred that authority.⁶⁸ Muniz countered that the State’s argument contradicted the statutory provisions for adult sentencing of juveniles because the charges to which he pled guilty were not among the enumerated offenses for which adult sentencing may be considered.⁶⁹ Despite the State’s failure to cite any supporting authority for its argument,⁷⁰ the district court adopted the State’s position and imposed an adult sentence of two consecutive eighteen-month terms for the two fourth-degree

60. *Muniz*, 2003-NMSC-021, ¶ 2, 74 P.3d at 87.

61. NMSA 1978, § 32A-2-3(H) (1996) (amended 2003).

62. *See* NMSA 1978, § 31-18-15.3 (1993).

63. *Muniz*, 2003-NMSC-021, ¶ 2, 74 P.3d at 87.

64. *Id.* The significance of the charges pled by Muniz lies in the distinctions made between types of juvenile offenders defined in the Delinquency Act. NMSA 1978, § 32A-2-3(C), (H), (I) (2003); *see supra* Part II.B. The charges to which Richard Muniz pled guilty, and of which he was convicted, are statutorily defined as delinquent offender offenses. *See* NMSA 1978, § 32A-2-3 (2003). Delinquent offenders are subject to only juvenile sanctions; no authority exists to impose an adult sentence on a delinquent offender. *See supra* Part II.B.3; *see also* NMSA 1978, § 32A-2-3 (2003); NMSA 1978, § 32A-2-19 (2003).

65. *See supra* Part II.B.3.

66. *See Muniz*, 2003-NMSC-021, ¶ 3, 74 P.3d at 87; *State v. Muniz*, 2000-NMCA-089, ¶ 5, 11 P.3d 613, 615 (noting that the record is not clear as to why sentencing was delayed, but the “sentencing hearing transcript indicates that during this time the parties had been disputing whether [Muniz] could be sentenced as an adult”), *rev’d*, 2003-NMSC-021, 74 P.3d 86.

67. *Muniz*, 2003-NMSC-021, ¶ 3, 74 P.3d at 87.

68. *Id.*

69. *See Muniz*, 2000-NMCA-089, ¶ 10, 11 P.3d at 616; *see also* NMSA 1978, § 32A-2-3(I)(1) (2003) (enumerating charges for which adult sentence may be sought for youthful offenders); *supra* note 43. Muniz also challenged the sentence on the ground that the State failed to give proper notice of intent to invoke an adult sentence, as required by the Delinquency Act. *Muniz*, 2000-NMCA-089, ¶ 5, 11 P.3d at 615; *see also* NMSA 1978, § 32A-2-20 (2003) (requiring children’s court attorney to “file notice of intent to invoke an adult sentence” prior to youthful offender adjudication where an adult sentence is sought).

70. *Muniz*, 2003-NMSC-021, ¶ 7, 74 P.3d at 89.

felonies.⁷¹ It is unclear from the record which statutory provision was relied upon by the district court in its sentencing of Richard Muniz.

C. New Mexico Court of Appeals

On appeal, the State conceded that the district court lacked authority to sentence Muniz as an adult, but argued instead that he had waived his right to appeal the sentence by entering into a plea agreement.⁷² The New Mexico Court of Appeals reversed the sentence, holding that the district court lacked statutory authority to impose an adult sentence on Muniz,⁷³ and that his plea agreement did not constitute a waiver of his right to appeal.⁷⁴ The court remanded, allowing Muniz the option of either waiving his right to a juvenile disposition or withdrawing his plea agreement.⁷⁵

D. New Mexico Supreme Court

In his writ of certiorari and brief to the New Mexico Supreme Court, Muniz challenged the remedies suggested by the court of appeals,⁷⁶ but the New Mexico Supreme Court did not reach the issues raised by Muniz.⁷⁷ The court instead considered the preliminary issue of whether the district court had the authority to impose an adult sentence in this case.⁷⁸ Chief Justice Maes, writing for the court, held that the district court retained statutory authority to sentence Muniz as an adult, subsequent to the dismissal of his charge for first-degree murder, based on statutory sentencing provisions⁷⁹ and district court findings that he was not amenable to treatment in an available juvenile facility.⁸⁰ Muniz had failed to challenge these

71. *Id.* ¶ 3, 74 P.3d at 87. Thus, an adult sentence was imposed for conviction of delinquent offender offenses, which would be subject to only juvenile sanctions if brought independent of the first-degree murder charge. *See supra* Part II.B.3; *see also* NMSA 1978, § 32A-2-3 (2003); NMSA 1978, § 32A-2-19 (2003).

72. *Muniz*, 2000-NMCA-089, ¶ 8, 11 P.3d at 615; *Muniz*, 2003-NMSC-021, ¶ 4, 74 P.3d at 87. The State changed its position once again, at oral argument, claiming that the voluntary plea agreement authorized the “otherwise illegal sentence.” *Muniz*, 2000-NMCA-089, ¶ 8, 11 P.3d at 615.

73. *Muniz*, 2000-NMCA-089, ¶¶ 14, 20, 11 P.3d at 617–18.

74. *Muniz*, 2003-NMSC-021, ¶ 4, 74 P.3d at 87.

75. *Muniz*, 2000-NMCA-089, ¶ 20, 11 P.3d at 618; *Muniz*, 2003-NMSC-021, ¶ 4, 74 P.3d at 87. Judge Kennedy concurred in holding that the district court lacked authority to impose an adult sentence. However, he took issue with the proposed remedy in his partial dissent, arguing that Muniz cannot confer jurisdiction on the district court by waiving his right to a juvenile disposition. *Muniz*, 2000-NMCA-089, ¶¶ 22–23, 11 P.3d at 618–19 (Kennedy, J., concurring in part and dissenting in part). Judge Kennedy stated, “I believe children’s court has exclusive jurisdiction over the remaining offenses once [Muniz] is no longer charged with crimes that confer youthful offender status for adult sentencing in district court.” *Id.* ¶ 22, 11 P.3d at 618. *But see In re Guardianship of Arnall*, 94 N.M. 306, 308, 610 P.2d 193, 195 (1980) (holding that the legislature may not limit district court jurisdiction “to a particular division of the court,” and that while it may be “proper and preferable” that certain matters be heard in the children’s court, “failure to do so does not constitute a jurisdictional defect”).

76. Muniz argued that the court’s conclusion that he may waive his right to juvenile adjudication was in error, and that nullification of the plea agreement was without basis. *Muniz*, 2003-NMSC-021, ¶ 4, 74 P.3d at 87.

77. *Id.* ¶ 18, 74 P.3d at 91.

78. *Id.* ¶ 5, 74 P.3d at 88.

79. The supreme court interpreted the Delinquency Act disposition of a youthful offender provision, NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)), to establish authority to impose an adult sentence on a serious youthful offender convicted of only delinquent offender offenses. *See Muniz*, 2003-NMSC-021, ¶¶ 11–12, 74 P.3d at 89; *infra* Part IV.B.

80. *Muniz*, 2003-NMSC-021, ¶ 18, 74 P.3d at 91. A determination of non-amenability to treatment is a requirement of imposing an adult sentence on a juvenile. *See supra* notes 48–49 and accompanying text.

amenability findings on appeal.⁸¹ The court of appeals judgment was thereby reversed and the adult sentence imposed by the district court was affirmed.⁸² The New Mexico Supreme Court thus held that a charge of first-degree murder alone conferred authority to impose an adult sentence on a juvenile, subject only to a determination of non-amenability and judicial discretion, regardless of the nature of the resulting conviction.⁸³

IV. RATIONALE OF THE NEW MEXICO SUPREME COURT

With distinct interpretations of the relevant provisions of the Delinquency Act and Criminal Sentencing Act, the appellate courts arrived at contrary conclusions.⁸⁴ The court of appeals concluded that where a child is convicted of delinquent offender acts, committed while a juvenile, there is no statutory authority to sentence him or her as an adult based on a first-degree murder charge that was subsequently dismissed.⁸⁵ Conversely, the New Mexico Supreme Court concluded that when a juvenile is indicted or bound over for trial on the charge of first-degree murder, even when the charge is subsequently dismissed, the district court has authority to treat that juvenile as an adult for purposes of adjudication and sentencing.⁸⁶ Even where the juvenile is ultimately convicted of an offense otherwise subject to only juvenile sanctions, the court retains authority to impose an adult sentence where there has been a finding of non-amenability under the provision for disposition of youthful offenders.⁸⁷ Thus, while the court of appeals found the offense of conviction to be determinative in establishing authority to impose an adult sentence, the supreme court held that the offense charged conferred that authority.⁸⁸

A. Introduction

The New Mexico Supreme Court began its discussion in *Muniz* by addressing the issue of whether the court of appeals correctly held that the district court lacked authority to impose an adult sentence on Richard Muniz.⁸⁹ The court noted, as did the court of appeals below, that it was not bound by the State's concession that the district court lacked authority to sentence Muniz as an adult.⁹⁰ Additionally, the court acknowledged a "duty to interpret statutes in accordance with the intent of the

81. *Muniz*, 2003-NMSC-021, ¶ 18, 74 P.3d at 91.

82. *Id.* ¶ 19, 74 P.3d at 91.

83. *See id.* ¶¶ 18–19, 74 P.3d at 91.

84. *Compare Muniz*, 2003-NMSC-021, 74 P.3d 86, with *State v. Muniz*, 2000-NMCA-089, 11 P.3d 613, *rev'd*, 2003-NMSC-021, 74 P.3d 86.

85. *Muniz*, 2000-NMCA-089, ¶ 14, 11 P.3d at 617.

86. *See Muniz*, 2003-NMSC-021, ¶¶ 18–19, 74 P.3d at 91.

87. *See id.*

88. *Compare Muniz*, 2003-NMSC-021, 74 P.3d 86, with *Muniz*, 2000-NMCA-089, 11 P.3d 613.

89. *Muniz*, 2003-NMSC-021, ¶ 5, 74 P.3d at 88. The court began with this issue, though beyond the scope of the arguments raised by *Muniz*, because it felt that proper disposition of the case required resolution of this question. *Id.* (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 247 n.12 (1981) (holding that consideration of issues "outside the scope of the limited order" was permissible where proper disposition so required)). The court stated, further, that it had a duty to affirm the district court if correct. *Id.* (citing *State v. Beachum*, 83 N.M. 526, 527, 494 P.2d 188, 189 (Ct. App. 1972) (holding that if the judgment of the trial court is correct for any reason, it will be upheld)).

90. *Id.* (citing *State v. Foster*, 1999-NMSC-007, ¶ 25, 974 P.2d 140, 147 (holding that the court is "not bound by the State's concession")); *Muniz*, 2000-NMCA-089, ¶ 8, 11 P.3d at 615.

Legislature” in support of its decision to address the question of the district court’s authority to sentence Muniz as an adult.⁹¹ Determination of the district court’s sentencing powers required the court to consider whether this authority had been statutorily granted.⁹² The court stated that granting the district court authority to impose an adult sentence on a serious youthful offender subsequent to the dismissal of the first-degree murder charge “is within the purview of the Legislature.”⁹³ In addition to acknowledging legislative purview to grant sentencing provisions, the court noted that constitutional issues are not raised by a juvenile’s challenge to imposition of an adult sentence, because there is no constitutional right to adjudication and disposition as a child; that right is statutorily created.⁹⁴

B. Statutory Provisions

In its consideration of statutory authority of the district court to sentence Muniz as an adult, the court began by looking at the Delinquency Act⁹⁵ provision for disposition of a youthful offender.⁹⁶ Next, the court discussed a potential conflict between this Delinquency Act provision and the Criminal Sentencing Act provision for disposition of a serious youthful offender,⁹⁷ which it resolved by reading the provisions to avoid conflict.⁹⁸ The court subsequently concluded that, even if the provisions cannot be read to avoid conflict, the Delinquency Act provision prevails because it represents the more recent expression of the legislature.⁹⁹ The court further supported its interpretation of these provisions by looking at the statutory language defining serious youthful offender.¹⁰⁰

91. *Muniz*, 2003-NMSC-021, ¶ 5, 74 P.3d at 88 (citing *State v. Martinez*, 1998-NMSC-023, ¶ 8, 966 P.2d 747, 749). The *Martinez* court stated that the “primary goal in interpreting a statute is to give effect to the Legislature’s intent.” 1998-NMSC-023, ¶ 8, 966 P.2d at 749.

92. See *Muniz*, 2003-NMSC-021, ¶ 10, 74 P.3d at 89; see also *Muniz*, 2000-NMCA-089, ¶ 9, 11 P.3d at 616 (citing *Martinez*, 1998-NMSC-023, ¶ 12, 966 P.2d at 750). *Martinez* held that the sentencing authority of the district court is “derived exclusively from statute.” 1998-NMSC-023, ¶ 12, 966 P.2d at 750 (citing *State v. Dominguez*, 115 N.M. 445, 456, 853 P.2d 147, 158 (Ct. App. 1993)).

93. *Muniz*, 2003-NMSC-021, ¶ 10, 74 P.3d at 89.

94. *Id.* (citing *State v. Doe*, 91 N.M. 506, 510, 576 P.2d 1137, 1141 (Ct. App. 1978) (stating that “[t]he right to be treated as a child is a statutory, not a constitutional, right”). Because resolution of this question involved statutory interpretation, the court reviewed the appellate court’s decision de novo. *Id.* (citing *In re Zac McV.*, 1998-NMCA-114, ¶ 5, 964 P.2d 144, 145–46). *In re Zac McV.* held de novo review proper where ruling involved statutory construction of Delinquency Act provisions. 1998-NMCA-114, ¶ 5, 964 P.2d 144, 145–46 (citing *State v. Rowell*, 121 N.M. 111, 114, 908 P.2d 1379, 1382 (1995) (“Interpretation of a statute is an issue of law....”); *State v. Carlos A.*, 1996-NMCA-082, ¶ 6, 923 P.2d 608, 610 (conducting a de novo review of the Code)).

95. NMSA 1978, §§ 32A-2-1 to 32A-2-33 (1996) (amended 2003). Note that the court relied on the Delinquency Act statute in effect prior to the 2003 amendments. However, no changes relevant to this Note were enacted in 2003.

96. See *Muniz*, 2003-NMSC-021, ¶ 8, 74 P.3d at 89 (citing NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)) (“A fourteen to eighteen year old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this [disposition of youthful offenders] section.”)); *infra* Part IV.B.1.

97. See *Muniz*, 2003-NMSC-021, ¶¶ 12–14, 74 P.3d at 89–90 (discussing NMSA 1978, § 31-18-15.3(F) (1993) (providing that if an “alleged serious youthful offender is convicted of a lesser offense than first degree murder, the court shall provide for disposition of the offender pursuant to the provisions of” § 32A-2-19 (disposition of a delinquent offender) or § 32A-2-20 (disposition of a youthful offender)); *infra* Part IV.B.2.

98. See *Muniz*, 2003-NMSC-021, ¶¶ 13–14, 74 P.3d at 90; *infra* Part IV.B.3.

99. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91; see *infra* Part IV.B.3.

100. See *Muniz*, 2003-NMSC-021, ¶ 15, 74 P.3d at 90 (citing NMSA 1978, § 32A-2-3(H) (1996) (amended 2003)); see *infra* Part IV.B.4.

1. Delinquency Act: Disposition of Youthful Offenders

Under the Delinquency Act's disposition of a youthful offender provision, a "fourteen to eighteen year old child charged with first degree murder, but convicted of an offense less than first degree murder is subject to disposition" as a youthful offender.¹⁰¹ As detailed above, youthful offender disposition allows the imposition of either a juvenile or adult sentence, at the discretion of the court, where statutory requirements are met.¹⁰² Thus, the language of this provision suggests that a serious youthful offender convicted of only a lesser offense would be subject to adult sentencing where the remaining statutory requirements were met.

The New Mexico Supreme Court thought this provision a clear expression of "legislative intent to treat those children charged with first degree murder differently than other children, even if ultimately those children are not found guilty on the first degree murder charge."¹⁰³ Without further explanation for this conclusion, the court stated that this Delinquency Act provision¹⁰⁴ authorizes the district court to impose an adult sentence, regardless of the juvenile's actual conviction.¹⁰⁵ It did not find the provision ambiguous as the appellate court had.¹⁰⁶

The supreme court also declined to conclude that the legislature intended "an offense less than" in this provision to be read as "lesser-included" offense,¹⁰⁷ reasoning that the legislature would have used the phrase lesser-included offense if it intended to limit the provision in that manner.¹⁰⁸ The court interpreted "an offense less than" as simply "all crimes other than first degree murder."¹⁰⁹ The court read the youthful offender provision to mean that a juvenile classified as a serious youthful offender, but convicted of a lesser offense than first-degree murder, "should always be treated as a youthful offender" for disposition purposes,¹¹⁰ thus

101. *Muniz*, 2003-NMSC-021, ¶ 8, 74 P.3d at 89 (citing NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003))).

102. See NMSA 1978, § 32A-2-20 (2003); *supra* Part II.B.2. The statutory requirements of imposing an adult sentence include a determination of non-amenability to treatment. See *supra* notes 48–49 and accompanying text.

103. *Muniz*, 2003-NMSC-021, ¶ 10, 74 P.3d at 89.

104. NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)).

105. *Muniz*, 2003-NMSC-021, ¶ 10, 74 P.3d at 89.

106. *Id.* In fact, both the court of appeals and the State found this provision unclear. See *Muniz*, 2000-NMCA-089, ¶ 13, 11 P.3d at 616. The State, at oral argument before the court of appeals, stated that the meaning of this section was "a mystery." *Id.* The appellate court also found the language "perplexing" and "too ambiguous to provide the requisite sentencing authority in this case." *Id.* Concluding that criminal statutes require strict construction, the court of appeals did not find authority in the youthful offender provision to impose an adult sentence based on the offense charged, without regard for the offense of conviction. See *Muniz*, 2000-NMCA-089, ¶ 13, 11 P.3d at 616 (citing *Santillanes v. State*, 115 N.M. 215, 221, 849 P.2d 358, 364 (1993) ("[A] statute defining criminal conduct must be strictly construed."); see also *State v. Montano*, 120 N.M. 218, 219, 900 P.2d 967, 968 (Ct. App. 1995) (holding that criminal statutes are to be strictly construed to the extent that interpretation does not "render its application unreasonable") (citing *Santillanes*, 115 N.M. at 221, 849 P.2d at 364; *State v. Garcia*, 93 N.M. 51, 53, 596 P.2d 264, 266 (1979)). Interestingly, the court of appeals suggested that this provision "may have been inserted by the Legislature solely to obviate the notice otherwise required by" a children's court attorney seeking an adult sentence in a youthful offender disposition. *Muniz*, 2000-NMCA-089, ¶ 13, 11 P.3d at 617.

107. *Muniz*, 2003-NMSC-021, ¶ 11, 74 P.3d at 89; see also *Muniz*, 2000-NMCA-089, ¶ 13, 11 P.3d at 616–17 (questioning the meaning of "offense less than" but declining to determine a definitive interpretation).

108. *Muniz*, 2003-NMSC-021, ¶ 11, 74 P.3d at 89.

109. *Id.*

110. *Id.* ¶ 13, 74 P.3d at 90. Note that, while the court makes the distinction that serious youthful offenders convicted of lesser offenses should be "treated as" youthful offenders, the court still classifies these children as serious youthful offenders. See *id.*

allowing for the imposition of an adult sentence at the court's discretion where statutory requirements are met.¹¹¹

2. Criminal Sentencing Act: Disposition of Serious Youthful Offenders

The court next addressed a potential conflict between the above-noted provision of the Delinquency Act and the Criminal Sentencing Act's disposition of serious youthful offenders provision.¹¹² The Criminal Sentencing Act provision¹¹³ provides that a serious youthful offender¹¹⁴ convicted on a lesser charge than first-degree murder is subject to disposition pursuant to one of two Delinquency Act provisions: either disposition as a delinquent offender¹¹⁵ or disposition as a youthful offender.¹¹⁶ The court noted that this provision suggests that it is not a foregone conclusion that the juvenile should be subjected to disposition as a youthful offender, as reasoned above, but that disposition may be dependant upon the juvenile's actual convictions.¹¹⁷ In other words, a juvenile convicted of only delinquent offenses would be subject only to juvenile sanctions.¹¹⁸

The court rejected this interpretation, however, and resolved the conflict between the Delinquency Act and Criminal Sentencing Act provisions by reading the latter¹¹⁹ as meaning that the court has discretion to impose adult sentencing when the child has been found not amenable to treatment.¹²⁰ When found to be amenable, juvenile disposition "should" be imposed, in accordance with the delinquent offender provision.¹²¹ The court thus found a charge of first-degree murder, subject to a finding of non-amenable to treatment, to be determinative in establishing the authority to impose an adult sentence on Richard Muniz.¹²²

3. Application of Rules of Statutory Construction

The court applied two rules of statutory construction to determine legislative intent in support of its interpretation of these statutes.¹²³ First, the court reasoned that its construction of the provisions was in keeping with the requirement to read

111. *Id.*; NMSA 1978, § 32A-2-20 (1996) (amended 2003); *supra* Part II.B.2.

112. *Muniz*, 2003-NMSC-021, ¶ 13, 74 P.3d 86, 90; NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)); NMSA 1978, § 31-18-15.3 (1993).

113. NMSA 1978, § 31-18-15.3 (1993).

114. A serious youthful offender is a fifteen- to eighteen-year-old child charged with first-degree murder. NMSA 1978, § 32A-2-3(H) (2003).

115. NMSA 1978, § 32A-2-19 (1996) (amended 2003).

116. NMSA 1978, § 32A-2-20 (1996) (amended 2003).

117. *Muniz*, 2003-NMSC-021, ¶ 13, 74 P.3d at 90.

118. *Id.*

119. NMSA 1978, § 31-18-15.3 (1993).

120. *Muniz*, 2003-NMSC-021, ¶ 14, 74 P.3d at 90; *see also* NMSA 1978, § 32A-2-20 (1996) (amended 2003).

121. *Muniz*, 2003-NMSC-021, ¶ 14, 74 P.3d at 90; *see also* NMSA 1978, § 32A-2-19 (1996) (amended 2003). The court acknowledged the requirement that the child also be found ineligible for "commitment to an institution for the developmentally disabled or mentally disordered," *id.* ¶ 6 n.1, 74 P.3d at 88 n.1 (quoting NMSA 1978, § 32A-2-20(B)(2) (1996) (amended 2003)), prior to adult sentencing under the youthful offender disposition, but noted that this requirement was "not at issue in this case." *Id.*

122. *See Muniz*, 2003-NMSC-021, ¶¶ 13-14, 74 P.3d at 90.

123. *Id.* ¶¶ 14, 17, 74 P.3d at 90, 91.

legislative enactments to avoid conflict whenever possible.¹²⁴ The court stated that the provisions could be read to avoid conflict if the Delinquency Act provision¹²⁵ were viewed “as providing guidance in our interpretation of” the Criminal Sentencing Act provision.¹²⁶ Without further explanation, the court reached its conclusion that it could read these provisions to avoid conflict if it read the Criminal Sentencing Act provision¹²⁷ “as giving the district court discretion to impose an adult sentence as indicated in [the youthful offenders provision] based on a finding that a child is not amenable to treatment.”¹²⁸

Second, the court went on to conclude that the “most recent expression of legislative intent” should prevail.¹²⁹ While both statutes were passed initially in 1993, the court held that the Delinquency Act provision is the controlling legislative expression because it was amended more recently than the Criminal Sentencing Act provision.¹³⁰ The court relied on this principle of statutory construction in its decision not to follow the rule of lenity, which suggests that courts interpret ambiguity in criminal statutes as favoring the most lenient punishment.¹³¹ The court declined to follow lenity in determining which statutory provision controls, having reasoned that a later statute “effectively repeals by implication the earlier conflicting legislative language.”¹³²

4. Statutory Definition of Serious Youthful Offender

The court also considered the definition of serious youthful offender¹³³ as further indication of legislative intent to allow imposition of adult sentences on serious youthful offenders, regardless of offense of conviction.¹³⁴ Serious youthful offender

124. *Id.* ¶ 14, 74 P.3d at 90 (citing *Luboyeski v. Hill*, 117 N.M. 380, 384, 872 P.2d 353, 357 (1994) (holding the court “must read different legislative enactments as harmonious” whenever possible) (quoting *Quintana v. N.M. Dep’t of Corrections*, 100 N.M. 224, 227, 668 P.2d 1101, 1104 (1983) (basing this rule on the presumption “that the Legislature was informed as to existing law and...did not intend to enact a law inconsistent with any existing law”))).

125. NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)).

126. *Muniz*, 2003-NMSC-021, ¶ 14, 74 P.3d at 90; NMSA 1978, § 31-18-15.3 (1993).

127. NMSA 1978, § 31-18-15.3(F) (1993).

128. *Muniz*, 2003-NMSC-021, ¶ 14, 74 P.3d at 90 (citing NMSA 1978, § 32A-2-20 (1996) (amended 2003)). The youthful offender provision allowing for imposition of an adult sentence where statutory requirements, including a finding of non-amenability to treatment, are met is at NMSA 1978, § 32A-2-20 (1996) (amended 2003).

129. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91 (citing *Abbott v. Armijo*, 100 N.M. 190, 191, 668 P.2d 306, 307 (1983) (holding that “a later statute, as the most recent expression of legislative intent, will control over an earlier statute to the extent of any inconsistency”)).

130. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91 (citing NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)); NMSA 1978, § 31-18-15.3(F) (1993)). Note that while the youthful offender statute has been more recently amended, the text of the relevant provision has not changed, except in 1996 to accommodate the inclusion of younger offenders, consistent with the changes in the Delinquency Act definitions of serious youthful offender and youthful offender. *See* NMSA 1978, § 32A-2-20(F) (1995) (amended 1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)); NMSA 1978, § 32A-2-3(H)-(I) (1995) (amended 2003).

131. BLACK’S LAW DICTIONARY 1332–33 (7th ed. 1999) (defining rule of lenity as “[t]he judicial doctrine holding that a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment”).

132. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91 (quoting *Jaramillo v. Kaufman Plumbing & Heating Co.*, 103 N.M. 400, 405, 708 P.2d 312, 317 (1985)).

133. NMSA 1978, § 32A-2-3(H) (1996) (amended 2003).

134. *Muniz*, 2003-NMSC-021, ¶ 15, 74 P.3d at 90.

status is triggered when a fifteen- to eighteen-year-old child is “charged with and indicted or bound over for trial for first degree murder.”¹³⁵ The court reasoned that this language indicates that the charge alone, not conviction, establishes serious youthful offender status and, thus, district court jurisdiction.¹³⁶ The court distinguished this language from that found in the definition for youthful offenders,¹³⁷ which requires an adjudication of guilt for an enumerated offense to establish classification as a youthful offender.¹³⁸ The court noted that the statutory definition also states that a serious youthful offender is “not a delinquent child.”¹³⁹ In “[r]ead- ing these two parts of the statutory definition of serious youthful offender together and in context,” the court found legislative intent to treat serious youthful offenders, based on charge alone, as adults rather than as delinquent children.¹⁴⁰ Contrary to the court of appeals’ conclusion that this language indicated a legislative intent to treat serious youthful offenders as adults in the adjudication stage,¹⁴¹ the court held that this definition indicates an intent to treat serious youthful offenders as adults throughout the sentencing process as well.¹⁴²

C. Statutory Authority to Impose an Adult Sentence Granted

Having concluded that the district court had authority, under the Delinquency Act provision,¹⁴³ to impose an adult sentence on Richard Muniz,¹⁴⁴ the judgment of the court of appeals was reversed and the adult sentence imposed by the district court affirmed.¹⁴⁵ The supreme court thus held that a *serious youthful offender*, convicted only of *delinquent offender* offenses, is subject to disposition as a *youthful offender*, despite lacking either a charge or conviction for any enumerated youthful offender offense.¹⁴⁶

V. ANALYSIS

Contrary to both criminal and juvenile justice laws and policies, *Muniz* expanded district court authority to impose adult criminal sanctions on juveniles.¹⁴⁷ *Muniz* raised the major issue of whether the district court had authority to sentence Richard

135. NMSA 1978, § 32A-2-3(H) (1996) (amended 2003).

136. *Muniz*, 2003-NMSC-021, ¶ 15, 74 P.3d at 90.

137. NMSA 1978, § 32A-2-3(I) (1996) (amended 2003).

138. *Muniz*, 2003-NMSC-021, ¶ 15, 74 P.3d at 90.

139. *Id.* (citing NMSA 1978, § 32A-2-3(H) (1996) (amended 2003)).

140. *Muniz*, 2003-NMSC-021, ¶ 15, 74 P.3d at 90.

141. *Muniz*, 2000-NMCA-089, ¶ 11, 11 P.3d at 616 (holding that in defining a serious youthful offender as “not a delinquent child,” the legislature intended to “clarify that serious youthful offenders, unlike youthful offenders, should be treated as adults for the purposes of their adjudication of guilt and therefore the basic rights and procedural protections found in the Children’s Code should not apply during the adjudication phase”) (citing NMSA 1978, § 32A-2-3(H) (1996) (amended 2003); NMSA 1978, § 32A-2-14 (1993) (amended 2003) (basic rights); NMSA 1978, § 32A-2-15 (1993) (time limitations on delinquency adjudicatory hearings); NMSA 1978, § 32A-2-16 (1993) (conduct of hearings)).

142. *Muniz*, 2003-NMSC-021, ¶ 15, 74 P.3d at 90.

143. NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003)).

144. *Muniz*, 2003-NMSC-021, ¶¶ 18–19, 74 P.3d at 91. Holding that the district court had authority to sentence Muniz as an adult, the court did not reach the issues raised on appeal. *Id.*

145. *Muniz*, 2003-NMSC-021, ¶ 19, 74 P.3d at 91.

146. *See id.* ¶¶ 18–19, 74 P.3d at 91; NMSA 1978, § 32A-2-3 (2003); *see also supra* Part II.B.

147. 2003-NMSC-021, 74 P.3d 86.

Muniz as an adult.¹⁴⁸ Analysis begins with consideration of the court's conclusion that the authority to sentence Richard Muniz as an adult was statutorily granted.¹⁴⁹ The supreme court read provisions of two statutes—the Delinquency Act¹⁵⁰ and the Criminal Sentencing Act¹⁵¹—to support its holding that the offense charged, and not the offense of conviction, is determinative in establishing authority to sentence serious youthful offenders as adults.¹⁵² While the statutory provisions may offer some support for the supreme court's interpretation that charge alone conveys authority for adult sentencing, the contrary reading of the statutory provisions by the court of appeals, that offense of conviction determines sentencing, is more consistent with legislative intent and good policy. Furthermore, the extent to which the two appellate courts came to different interpretations indicates sufficient ambiguity such that the rule of lenity should apply.¹⁵³

A. *Offense of Conviction, Not Charge, Should Determine Sentence*

Due process,¹⁵⁴ the Delinquency Act provisions read in the overall context of the Act,¹⁵⁵ and the serious youthful offender provision of the Criminal Sentencing Act¹⁵⁶ support the reading of the statutory provisions adopted by the court of appeals. This reading requires that offense of conviction, rather than offense charged, serve as the basis for determining sentencing of serious youthful offenders.

1. Due Process

Due process requires that criminal sentencing be based on offense of conviction, rather than offense charged. This fundamental due process should be required for juvenile offenders as well as adults. While the New Mexico Supreme Court dismissed any constitutional concerns quickly,¹⁵⁷ the due process argument is complex and requires further attention.

a. Criminal Due Process Protections

The Fifth Amendment and the Fourteenth Amendment to the U.S. Constitution require due process in criminal proceedings to minimize the risk that citizens might

148. *Id.*

149. *Muniz*, 2003-NMSC-021, ¶ 19, 74 P.3d at 91. The New Mexico Supreme Court's underlying premise, that proper resolution of *Muniz* required determination of whether the district court had authority to sentence Richard Muniz as an adult, has considerable support. *See supra* note 89. Similarly, the court's conclusions that it is not bound by the State's concessions, and that authority to impose an adult sentence must be statutorily granted, are well established. *See supra* notes 90, 92–93, and accompanying text. Precedent likewise supports a de novo standard of review where statutory interpretations are at issue. *See supra* note 94. Analysis will not consider these clearly established, initial assertions of the supreme court.

150. NMSA 1978, § 32A-2-1 (1993).

151. NMSA 1978, § 31-18-12 (1994).

152. *See supra* Part IV.B.

153. Under the rule of lenity, the offense of conviction, and not the crime charged, should control the authority to sentence serious youthful offenders. *See infra* Part V.B.

154. *See* U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1; *infra* Part V.A.1.

155. *See* NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003); *infra* Part V.A.2.

156. NMSA 1978, § 31-18-15.3(F) (1993); *see infra* Part V.A.3.

157. The court did not address due process but held that there is no constitutional right to a juvenile sentence. *See supra* note 94 and accompanying text.

be subjected to loss of liberty for a crime they did not commit.¹⁵⁸ Due process protects the rights of individuals by requiring legal proceedings to comport with established rules and procedures.¹⁵⁹ Sentencing authority and maxima are set according to the crime of which the defendant is convicted; neither federal nor New Mexico criminal statutes base sentencing upon the crime charged.¹⁶⁰

b. Due Process Protections Extended to Juvenile Proceedings

A number of criminal due process rights have been extended to juvenile civil adjudicatory proceedings that may result in confinement.¹⁶¹ *In re Gault*¹⁶² acknowledged the Fourteenth Amendment due process rights of children in juvenile adjudicatory proceedings.¹⁶³ *In re Winship*¹⁶⁴ held that juvenile adjudication for delinquent acts requires a standard of proof beyond a reasonable doubt.¹⁶⁵ And *Kent v. United States*¹⁶⁶ held that implementation of the statutes providing for transfer to adult

158. See U.S. CONST. amend. V (“No person shall be...deprived of life, liberty, or property, without due process of law....”); U.S. CONST. amend. XIV, § 1 (“No State shall...deprive any person of life, liberty, or property, without due process of law....”); *In re Winship*, 397 U.S. 358, 371–72 (1970) (Harlan, J., concurring) (noting that “we do not view the social disutility of convicting an innocent man as equivalent to the disutility of acquitting someone who is guilty”); see also N.M. CONST. art. II, § 18 (“No person shall be deprived of life, liberty or property without due process of law....”).

159. See BLACK’S LAW DICTIONARY 516–17 (7th ed. 1999) (defining due process as “[t]he conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights....”); *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004) (“The gist of the Due Process Clause, as understood at the founding and since, was to force the Government to follow those common-law procedures traditionally deemed necessary before depriving a person of life, liberty, or property.”).

160. See, e.g., 18 U.S.C. § 3551 (2000) (establishing sentencing authority based on a finding of guilt for a federal criminal offense); NMSA 1978, § 31-18-13 (1993) (establishing sentencing authority under the Criminal Sentencing Act based on the offense of conviction); NMSA 1978, § 31-18-14(A) (1993) (stating that “[w]hen a defendant has been convicted of a capital felony, he shall be punished by life imprisonment or death”) (emphasis added). See also NMSA 1978, § 31-18-15(A) (2003) (emphasis added), which states:

If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment; (2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment; (3) for a second degree felony for a sexual offense against a child, fifteen years imprisonment; (4) for a second degree felony, nine years imprisonment; (5) for a third degree felony resulting in the death of a human being, six years imprisonment; (6) for a third degree felony for a sexual offense against a child, six years imprisonment; (7) for a third degree felony, three years imprisonment; or (8) for a fourth degree felony, eighteen months imprisonment.

161. Note that serious youthful offenders are tried and, if convicted of first-degree murder, sentenced as adults in district court—where standards of criminal due process apply. However, the issue of the process due in juvenile adjudicatory proceedings remains relevant for serious youthful offenders convicted of lesser offenses, because they are subject to juvenile adjudication provisions of the Delinquency Act. See *supra* Parts II.B.1, IV.B.

162. 387 U.S. 1 (1967).

163. See *id.* at 19. “The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing.” *Id.* at 19 (quoting Arthur T. Vanderbilt, C.J., *Foreword*, in VIRTUE, BASIC STRUCTURE FOR CHILDREN’S SERVICES IN MICHIGAN x (1953)). The Court held that delinquency proceedings require these “indispensable” due process protections. *Id.* *In re Gault* further held that due process for delinquency proceedings that may result in secure detention also requires (1) notice of the charge, *id.* at 31–34; (2) right to counsel, and notice of this right, *id.* at 34–42; (3) Fifth Amendment protection from self-incrimination, see *id.* at 42–58; and (4) that the sentence be based on a valid confession or sworn testimony subject to cross examination, *id.* at 57.

164. 397 U.S. 358 (1970).

165. See *id.* The U.S. Supreme Court held that “[t]he same considerations that demand extreme caution in fact finding to protect the innocent adult apply as well to the innocent child.” *Id.* at 365.

166. 383 U.S. 541, 553 (1966).

court requires “procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness.”¹⁶⁷ The Court concluded:

[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society’s special concern for children, as reflected in [state juvenile laws], permitted this procedure. We hold that it does not.¹⁶⁸

While the Court recognized a distinction between adult and juvenile adjudicatory proceedings, it held that the rehabilitative goals of the juvenile justice systems and the *parens patriae* role assumed by the state do not constitute “an invitation to procedural arbitrariness.”¹⁶⁹ Thus, while continuing to distinguish between the process due for adult criminal proceedings and juvenile adjudicatory proceedings, federal law has extended considerable due process to juveniles.

The New Mexico Delinquency Act codifies due process requirements for juvenile delinquency proceedings.¹⁷⁰ The Act provides heightened protections against self-incrimination for juveniles,¹⁷¹ in addition to federal and state constitutional due process requirements.¹⁷² Furthermore, the Act provides juveniles with the right to trial by jury for any offense for which an adult would be granted a jury trial.¹⁷³ Thus, both federal and state law have extended due process protections to juvenile proceedings.

c. Due Process in Sentencing

Beginning with *Apprendi v. New Jersey*,¹⁷⁴ the U.S. Supreme Court has clarified that due process requires that sentences imposed be statutorily authorized and based only on facts admitted or proven.¹⁷⁵ More recently, in *Blakely v. Washington*,¹⁷⁶ the Court held that the Sixth Amendment right to trial by jury was violated by the

167. *Id.* at 553.

168. *Id.* at 554.

169. *Id.* at 555 (emphasis added).

170. See NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003).

171. See NMSA 1978, § 32A-2-14(C)–(G) (2003); Maria E. Touchet, Note *Children’s Law: Investigatory Detention of Juveniles in New Mexico: Providing Greater Protection than Miranda Rights for Children in the Area of Police Questioning*—State of New Mexico v. Javier M., 32 N.M. L. REV. 393 (2002).

172. See *supra* note 158 and accompanying text.

173. NMSA 1978, § 32A-2-16(A) (1993) (allowing for trial by a six-person jury for offenses subject to juvenile sentencing, and by a twelve-person jury where notice of intent to invoke an adult sentence has been given). A preliminary hearing before a grand jury to establish probable cause is also required where notice to invoke an adult sentence has been given to a youthful offender. NMSA 1978, § 32A-2-20(A) (2003).

174. 530 U.S. 466 (2000).

175. The Court held that a jury finding of proof beyond a reasonable doubt was required for any fact other than a previous conviction that increased the sentence beyond the legislative maximum. Due process was violated where a sentence was imposed beyond that statutorily authorized by the proven facts. *Id.* at 491–97. The Court, in *Ring v. Arizona*, held that due process was violated by a statute authorizing imposition of the death penalty upon a judicial finding of an enumerated aggravating factor, because the sentence imposed exceeded that authorized by proven factors alone. 536 U.S. 584, 603–09 (2002).

176. 124 S. Ct. 2531 (2004). *Blakely*, 124 S. Ct. 2531, was decided after *Muniz*, 2003-NMSC-021, 74 P.3d 86.

imposition of an extended sentence based on facts “neither admitted by the petitioner nor found by a jury.”¹⁷⁷ *Blakely* further held that “the relevant ‘statutory maximum’ is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings.”¹⁷⁸

Federal case law establishes that due process and the Sixth Amendment require that only facts admitted or proven at trial may be used in sentencing beyond the statutory maximum. Unlike a conviction, which requires the government to prove its case beyond a reasonable doubt,¹⁷⁹ a charge may be based only on a showing of probable cause.¹⁸⁰ The fact that a juvenile is charged with a given offense cannot constitute a fact admitted or proven beyond a reasonable doubt. It follows that an offense charged but unproven cannot be used to extend sentencing beyond the statutory maximum of the offense of conviction. The *Apprendi* rule allowed an exception for prior convictions.¹⁸¹ In contrast to a prior conviction, the facts upon which Richard Muniz’s first-degree murder charge is based have not been admitted or proven and, thus, cannot be used to extend a sentence beyond the statutory maximum under the laws of criminal due process.

Federal case law requiring that only facts admitted or proven at trial may be used in sentencing beyond the statutory maximum should be extended to juvenile proceedings. An extension of this due process is of particular importance where an adult criminal sentence may be imposed as a result of juvenile proceedings. If the due process required by the *Apprendi* line of cases is extended to juveniles, a charged but unproven offense cannot be used to extend a juvenile’s sentence beyond the statutory maximum. The statutory maximum for the delinquent acts admitted by Richard Muniz is limited to a civil juvenile commitment.¹⁸² The criminal adult sentence imposed upon Richard Muniz was not authorized, even under the New Mexico Supreme Court’s reading of the statute, absent consideration of the initial, and unproven, first-degree murder charge. Under *Apprendi*, authorizing imposition of an adult sentence based on a juvenile’s offense of charge constitutes a due process violation. This constitutional due process argument, defined by the *Apprendi* line of cases, should be extended to juvenile civil adjudication proceedings and would invalidate the sentencing authorized by *Muniz*.

177. *Id.* at 2537–38.

178. *Id.* at 2537 (quoting 1 J. BISHOP, CRIMINAL PROCEDURE § 87, at 55 (2d ed. 1872)).

179. See BLACK’S LAW DICTIONARY 1272–73 (7th ed. 1999) (defining reasonable doubt as “the doubt that prevents one from being firmly convinced of a defendant’s guilt, or the belief that there is a real possibility that a defendant is not guilty”) (citing Commonwealth v. Webster, 59 Mass. (5 Cush.) 295, 320 (1850) (“Reasonable doubt. . . [i]s that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.”)).

180. See BLACK’S LAW DICTIONARY 1219 (7th ed. 1999) (defining probable cause as “[a] reasonable ground to suspect that a person has committed or is committing a crime; . . . probable cause. . . amounts to more than a bare suspicion but less than evidence that would justify a conviction”).

181. This exception is logical in that prior convictions are based upon facts admitted by the defendant or proven beyond a reasonable doubt, thus the *Apprendi* criteria are met.

182. Richard Muniz pled guilty to tampering with evidence and conspiracy to tamper with evidence. See *supra* Part III.A. His convictions placed him in the delinquent offender category, which does not authorize an adult criminal sentence. See *supra* note 64 and accompanying text.

d. Applying *Apprendi* and *Blakely* to *Muniz*

While the New Mexico Court of Appeals has held that *Apprendi* does not apply to the amenability determination required by the disposition of youthful offenders provision,¹⁸³ the issue presented in *Muniz* is distinguishable, and *Apprendi* should apply.¹⁸⁴ *State v. Gonzales*¹⁸⁵ upheld a juvenile's adult sentence under the youthful offender provision and rejected challenges to the standard of proof required for a finding of non-amenability.¹⁸⁶ In doing so, the court held that "the jury's finding beyond a reasonable doubt that a child *committed the offenses that form the foundation permitting the court to sentence the child as an adult*" is sufficient to satisfy constitutional concerns raised by *Apprendi*.¹⁸⁷ In other words, because an adult sentence was authorized by the conviction, beyond a reasonable doubt, of an enumerated youthful offender offense, the court found no constitutional infirmity.¹⁸⁸ The court's reasoning implies that it is the offense of conviction that establishes authority to impose an adult sentence on a juvenile.

Colin Gonzales was convicted of an enumerated youthful offender offense, which the court relied upon in holding that due process was met.¹⁸⁹ Richard Muniz, however, was subjected to an adult sentence absent the requisite enumerated offense of conviction relied upon in *Gonzales*. The reasoning of the court in *Gonzales*, and its interpretation of the Delinquency Act, are predicated upon an assumption that two facts must be established to subject a juvenile to an adult sentence: the child must be fourteen years of age or older *and* the child has to have been convicted of an enumerated offense.¹⁹⁰ While *Gonzales* does not hold that using the offense charged to establish authority to sentence as an adult violates *Apprendi*, the court's rationale implies that *Apprendi* may apply where no conviction authorizes an adult sentence.

Similarly, *Blakely* should apply to juvenile proceedings. *Blakely* based its holding on a violation of the Sixth Amendment right to trial by jury.¹⁹¹ As noted above, the Delinquency Act provides for trial by jury in juvenile adjudication proceedings.¹⁹² Thus, the rule in *Blakely*, which implicates the right to trial by jury, should logically apply. The Petitioner in *Blakely* entered a guilty plea, admitting to facts authorizing a sentence of forty-nine to fifty-three months.¹⁹³ Based on a judicial finding that he acted with "deliberate cruelty," *Blakely* was sentenced to more than three years

183. See *State v. Gonzales*, 2001-NMCA-025, 24 P.3d 776; NMSA 1978, § 32A-2-20 (2003). Recall that amenability to treatment is a consideration in determining whether a youthful offender may receive an adult sentence. See *supra* Part II.B.2.

184. Note that the New Mexico appellate courts have not considered the issue raised in *Gonzales* since *Ring* and *Blakely* were decided.

185. 2001-NMCA-025, ¶ 37, 24 P.3d at 787.

186. The court neglected to establish a standard of proof, holding that it "need not decide in this case whether to adopt the preponderance standard advocated by the State in view of the trial court's use of the 'clear and convincing' standard...." *Id.*; see also *id.* ¶¶ 51–58, 24 P.3d at 789–92 (Bustamante, J., specially concurring) (arguing that a clear and convincing standard of proof should be required).

187. *Gonzales*, 2001-NMCA-025, ¶ 25, 24 P.3d at 784 (emphasis added).

188. See *supra* note 184.

189. *Gonzales*, 2001-NMCA-025, ¶ 31, 24 P.3d at 785.

190. 2001-NMCA-025, ¶¶ 31–32, 24 P.3d at 785.

191. See *supra* Part V.A.1.c.

192. See *supra* Part V.A.1.b.

193. *Blakely*, 124 S. Ct. at 2534–35.

above the fifty-three-month statutory maximum.¹⁹⁴ The Court held that this sentence violated the Sixth Amendment right to trial by jury because the facts supporting the finding of deliberate cruelty were not admitted nor found by a jury.¹⁹⁵ Similarly, Richard Muniz pled guilty to offenses that authorized only a juvenile sentence but was given an adult sentence based on a charge of first-degree murder, which was neither admitted nor found by a jury. Thus, application of *Blakely* would invalidate the adult sentence imposed on Richard Muniz.

An argument could be made that what is at issue is not the severity of Richard Muniz's sentence, but rather his right to a juvenile disposition. In practical application, however, a substantial increase in punishment results from the imposition of an adult sentence.¹⁹⁶ Due process must apply to the decision to impose an adult sentence. The New Mexico courts have held that there is no constitutional right to a juvenile disposition, but *Kent v. United States*¹⁹⁷ held that procedural protections are required to transfer a juvenile to adult court.¹⁹⁸ The Delinquency Act is constructed to provide procedural safeguards by establishing age limits and requiring conviction of an enumerated offense.¹⁹⁹ Using the offense of charge to establish authority to sentence juveniles as adults ignores these procedural safeguards and is contrary to the Court's holding in *Kent*. Though Richard Muniz may not have been subjected to the complete lack of procedure at issue in *Kent*, the reliance on the offense of charge to establish authority to sentence as an adult is arbitrary.²⁰⁰ Although age or offense of conviction might rationally relate to a child's threat to the community or potential for rehabilitation in a juvenile facility, offense of charge does not. Offense of charge cannot rationally relate to the potential rehabilitative success of a juvenile, unless culpability is assumed based on the probable cause determination that allowed the indictment. To make such an assumption is contrary to due process. The fundamental due process requiring that criminal sentencing be based on offense of conviction, rather than offense charged, should be required for juvenile offenders as well as adults. Due process should prohibit the use of an offense charged to authorize imposition of an adult sentence on a juvenile.

2. Delinquency Act Context

Reading the youthful offender provision²⁰¹ and the serious youthful offender definition²⁰² within the context of the Delinquency Act²⁰³ as a whole supports sentencing based on the offense of conviction. Statutory construction begins "with

194. *Id.* at 2537.

195. *Id.* at 2537-38.

196. *See infra* Part VI.

197. 383 U.S. 541 (1966).

198. *Id.* at 557-63 (1966) (holding that the statutory provisions allowing transfer of a juvenile to adult court "read in the context of constitutional principles relating to due process" required (1) a hearing, (2) access by the juvenile's counsel to social service records and probation reports, and (3) a sufficiently detailed statement of the court's reason for the transfer to allow for meaningful review); *see supra* Part V.A.1.b.

199. *See supra* Part II.B.

200. As noted above, *Kent* held that juvenile adjudicatory procedure must not be arbitrary. *See* 383 U.S. at 555; *supra* Part V.A.1.b.

201. NMSA 1978, § 32A-2-20(G) (2003).

202. NMSA 1978, § 32A-2-3(H) (2003).

203. *See* NMSA 1978, §§ 32A-2-1 to 32A-2-33 (2003).

the presumption that the statutory scheme is comprehensive”²⁰⁴ and that statutes “must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter.”²⁰⁵

a. The Delinquency Act Youthful Offender Provision

The statutory sentencing scheme in the Delinquency Act bases disposition of juvenile offenders on the offense of conviction, not upon the offense charged.²⁰⁶ The Delinquency Act explicitly authorizes disposition of youthful offenders and delinquent offenders on the basis of offense of conviction.²⁰⁷ The longer-term juvenile sanctions and possible adult sentencing authorized by youthful offender classification can only be applied to juveniles convicted of certain enumerated offenses.²⁰⁸ Although a court must also make findings as to amenability in order to sentence a youthful offender as an adult, a conviction of an enumerated offense is required before amenability to treatment is even considered.²⁰⁹ The supreme court read the Delinquency Act youthful offender provision as bypassing this threshold—the offense of conviction requirement.²¹⁰ The text of the Delinquency Act youthful offender provision on its own, and in the context of the entire Delinquency Act, does not support the supreme court’s decision that a conviction of an enumerated offense is not required for sentencing a juvenile as an adult.

The relevant Delinquency Act provision states that “[a] fourteen to eighteen year old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this [disposition of a youthful offender] section.”²¹¹ The dispositions that are set forth provide the court with “discretion to invoke either an adult sentence or juvenile sanctions on a *youthful offender*.”²¹² A juvenile charged as a serious youthful offender but convicted of only delinquent offenses is not a youthful offender. Youthful offender classification requires a conviction of an enumerated youthful offender offense.²¹³ There is no indication in the Delinquency Act’s *definition* of youthful offenders that serious youthful offenders, convicted of any lesser offense, are to be classified as youthful offenders.²¹⁴ The dispositions set forth in the youthful offender section

204. *State v. Rivera*, 2004-NMSC-001, ¶ 13, 82 P.3d 939, 942 (quoting *Sims v. Sims*, 1996-NMSC-078, ¶ 21, 930 P.2d 153, 157).

205. *Rivera*, 2004-NMSC-001, ¶ 13, 82 P.3d at 942 (citing 2A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 46:05, at 165 (6th ed., rev. 2000)).

206. *See supra* Part II.B; *see also* NMSA 1978, § 32A-2-3 (2003); NMSA 1978, § 32A-2-19 (2003); NMSA 1978, § 32A-2-20 (2003).

207. *See* NMSA 1978, § 32A-2-3 (2003); NMSA 1978, § 32A-2-19 (2003); NMSA 1978, § 32A-2-20 (2003). Note that the term “conviction” is being used in reference to findings of guilt within both the delinquency and criminal contexts. However, the Delinquency Act does not refer to findings of guilt resulting in juvenile sanctions as “convictions,” but rather uses the term “adjudicated for.” *Id.*; *see also* Part II.B.

208. *See* NMSA 1978, § 32A-2-3(I) (2003); NMSA 1978, § 32A-2-20 (2003).

209. NMSA 1978, § 32A-2-20(A)–(B) (2003). Where only delinquent offender offenses have been committed, a child is subject to only juvenile sanctions and an amenability determination is not required. *See* NMSA 1978, § 32A-2-3(A) (2003); NMSA 1978, § 32A-2-19 (2003).

210. *See Muniz*, 2003-NMSC-021, ¶¶ 8–12, 74 P.3d at 89.

211. NMSA 1978, § 32A-2-20(G) (2003).

212. NMSA 1978, § 32A-2-20(A) (2003) (emphasis added).

213. *See* NMSA 1978, § 32A-2-3(I) (2003); *supra* Part II.B.2.

214. *See id.*

further state that, where the requirements of the provisions are not met, juvenile sanctions are appropriate and “the court shall follow the provisions set forth” in the disposition of a delinquent offender section.²¹⁵

Thus, the youthful offender section authorizes the imposition of an adult sentence only where a juvenile has been convicted of a youthful offender offense. The text of the Delinquency Act youthful offender provision,²¹⁶ both in plain meaning and in the context of the entire Delinquency Act, indicates a legislative intent to authorize imposition of an adult sentence on a juvenile charged with first-degree murder but convicted of a lesser offense only where the conviction is for a youthful offender offense and the additional statutory requirements are met.²¹⁷ If, however, the first-degree murder prosecution results in a conviction for a delinquent offense, the juvenile is subject only to juvenile sanctions.

b. The Delinquency Act Serious Youthful Offender Definition

The definition of serious youthful offender in the Delinquency Act,²¹⁸ when read within the context of the Act as a whole, supports an understanding of the definition that is consistent with sentencing based on offense of conviction. The serious youthful offender definition serves to distinguish serious youthful offenders for purposes of adjudication, but reading the definition in context suggests that this distinction is not extended to sentencing absent a conviction for first-degree murder.²¹⁹

The Delinquency Act provides exclusive jurisdiction of the children’s court over a “delinquent child.”²²⁰ Under the jurisdictional construct of the Delinquency Act, the legislative intent in defining a serious youthful offender as “not a delinquent child” may have been to clarify district court jurisdiction over serious youthful offender cases.²²¹ Serious youthful offenders are distinguished from other juvenile offenders in that their classification is established by the offense charged, first-degree murder, rather than the offense of conviction.²²² The reason for this distinction rests logically on the necessity to establish district court jurisdiction for purposes of adjudicating serious youthful offenders. Because the children’s court has exclusive jurisdiction over the adjudication and disposition of both youthful and delinquent offenders,²²³ there is no need to establish their classification prior to adjudication.

As with the Delinquency Act youthful offender provision, reading the serious youthful offender definition within the Delinquency Act context suggests a reading

215. NMSA 1978, § 32A-2-20(A), (B), (F) (2003) (subsection (F) citing NMSA 1978, § 32A-2-19 (2003)).

216. NMSA 1978, § 32A-2-20(G) (2003).

217. See NMSA 1978, § 32A-2-20 (2003).

218. NMSA 1978, § 32A-2-3(H) (2003).

219. See, e.g., *supra* note 141.

220. NMSA 1978, § 32A-1-8(A) (2003) (“The court has exclusive original jurisdiction of all proceedings under the Children’s Code [this chapter] in which a person...is a child alleged to be a *delinquent child*....”) (emphasis added); NMSA 1978, § 32A-1-4(C) (2003) (“As used in the Children’s Code [Chapter 32A NMSA 1978]...‘court,’ when used without further qualification, means the children’s court division of the district court....”).

221. NMSA 1978, § 32A-2-3(H) (2003).

222. NMSA 1978, § 32A-2-3(A), (H), (I) (2003).

223. See *supra* note 220.

that is contrary to that relied upon by the New Mexico Supreme Court in *Muniz*.²²⁴ The jurisdictional construct of the Delinquency Act favors the interpretation of the court of appeals that the serious youthful offender definition was intended to distinguish serious youthful offenders for purposes of adjudication but does not extend to sentencing absent a conviction for first-degree murder.²²⁵ Implicit in this understanding of the serious youthful offender definition is the assumption that sentencing is based on offense of conviction.

3. Criminal Sentencing Act Disposition of a Serious Youthful Offender Provision

The serious youthful offender provision of the Criminal Sentencing Act offers insight in determining the legislative intent for sentencing serious youthful offenders convicted of lesser offenses.²²⁶ The relevant section provides that when an “*alleged* serious youthful offender is convicted of a lesser offense than first degree murder, the court shall provide for disposition of the offender pursuant to the provisions” for disposition of a delinquent offender *or* disposition of a youthful offender.²²⁷ The supreme court acknowledged that this provision “seems to provide that some serious youthful offenders have a right to be treated as delinquent offenders, and therefore receive an automatic juvenile disposition [under the disposition of a delinquent offender provision] without having to go through an amenability hearing,” depending upon the “nature of their actual convictions.”²²⁸ Additional language in the Criminal Sentencing Act provision, which the supreme court did not address, states that, “[w]hen an offender is adjudicated *as a delinquent child*, the conviction shall not be used as a conviction for purposes of the Criminal Sentencing Act.”²²⁹ This language provides an even clearer indication that juvenile sanctions and classification as a delinquent child were contemplated and intended by the legislature when a juvenile initially charged with first-degree murder is convicted of only a delinquent act.

Under the Criminal Sentencing Act, the offense of conviction determines whether a child should be sentenced as a delinquent or youthful offender.²³⁰ In other words, the serious youthful offender provision would permit sentencing as a youthful offender if convicted of a youthful offender offense, and it would require sentencing as a delinquent offender if convicted of a delinquent offender offense. While this reading of the Criminal Sentencing Act provision is consistent with both the plain meaning of the provision and the Delinquency Act, it was not adopted by the supreme court.²³¹

224. See *supra* Part IV.B.4.

225. See *supra* note 141 and accompanying text.

226. NMSA 1978, § 31-18-15.3(F) (1993).

227. NMSA 1978, § 31-18-15.3(F) (1993) (emphasis added); NMSA 1978, § 32A-2-19 (2003); NMSA 1978, § 32A-2-20 (2003).

228. *Muniz*, 2003-NMSC-021, ¶ 13, 74 P.3d at 90 (citation omitted).

229. NMSA 1978, § 31-18-15.3(F) (1993) (emphasis added).

230. See NMSA 1978, § 32A-2-19 (2003); NMSA 1978, § 32A-2-20 (2003).

231. The supreme court addressed the serious youthful offender provision, but summarily dismissed the potential inconsistencies raised when comparing it to the youthful offender provision. *Muniz*, 2003-NMSC-021, ¶¶ 12–14, 74 P.3d at 89–90; NMSA 1978, § 31-18-15.3(F) (1993); see *supra* Part IV.B.2.

Though the supreme court rejected the Criminal Sentencing Act's serious youthful offender provision, and ultimately held that the Delinquency Act youthful offender provision controlled,²³² a previous holding by the court relied on the Criminal Sentencing Act provision to establish sentencing authority. In *State v. Sosa*,²³³ the New Mexico Supreme Court relied on the Criminal Sentencing Act provision to uphold the court's authority to sentence a serious youthful offender convicted of lesser charges as an adult.²³⁴ The court cited the Criminal Sentencing Act provision as the trigger for the Delinquency Act provision in establishing sentencing authority.²³⁵ The court held that, "[w]here a serious youthful offender is convicted of a lesser offense than first degree murder, the offender will be sentenced pursuant to *provisions of the Children's Code*."²³⁶ In *Sosa*, the court found no conflict between the two provisions, as it did in *Muniz*.²³⁷ Presumably the lack of conflict resulted from the court's understanding of the Criminal Sentencing Act provision as establishing sentencing authority through the Delinquency Act provision, based on offense of conviction.²³⁸ While both Richard Muniz and Jesse Sosa were charged as serious youthful offenders, Sosa was convicted of an enumerated youthful offender offense, not delinquent offender offenses alone; thus, authority to sentence Sosa as an adult was statutorily authorized by the offenses of which he was convicted.²³⁹ The supreme court's reliance on the Criminal Sentencing Act's serious youthful offender provision to define sentencing authority in *Sosa* implies that sentencing is based on offense of conviction and is inconsistent with its decision in *Muniz*, where it ignored the offense of conviction and relied on the offense charged.²⁴⁰

Muniz held that the Criminal Sentencing Act and Delinquency Act provisions should be read to avoid conflict whenever possible.²⁴¹ The provisions can be read to avoid conflict by adopting the plain meaning of the Criminal Sentencing Act serious youthful offender provision, basing sentencing authority on offense of conviction.²⁴² As applied in *Sosa*, this interpretation authorizes an adult sentence under the Delinquency Act youthful offender provision when the juvenile has been convicted of a youthful offender offense.²⁴³ Conversely, when there has been a conviction of only a delinquent offender offense, the Delinquency Act provision

232. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91.

233. 1997-NMSC-032, 943 P.2d 1022.

234. *Id.* ¶ 8, 943 P.2d at 1022 (citing NMSA 1978, § 31-18-15.3(F) (1993)).

235. *Id.*

236. *Id.* (emphasis added). Note that the court indicated that the Criminal Sentencing Act provision authorized sentencing of a serious youthful offender convicted of a lesser offense pursuant to *Children's Code provisions*, not the Delinquency Act youthful offender provision alone.

237. Compare *id.* with *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91.

238. *Id.*

239. See *Sosa*, 1997-NMSC-032, ¶ 8, 943 P.2d at 1022; NMSA 1978, § 32A-2-3(I) (2003) (enumerating youthful offender offenses).

240. Compare *Sosa*, 1997-NMSC-032, ¶ 8, 943 P.2d at 1022 (citing NMSA 1978, § 31-18-15.3(F) (1993)), with *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91 (citing NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003))).

241. *Muniz*, 2003-NMSC-021, ¶ 14, 74 P.3d at 90; see also *supra* Part IV.B.2-3.

242. See NMSA 1978, § 31-18-15.3(F) (1993).

243. *Sosa*, 1997-NMSC-032, ¶ 8, 943 P.2d at 1022 (citing NMSA 1978, § 31-18-15.3(F) (1993); NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003))).

authorizes the court to apply the delinquent offender provision.²⁴⁴ Thus, the dispositional provisions can be read to avoid conflict in a way that bases sentencing on offense of conviction and is more consistent with the plain meaning of the Criminal Sentencing Act provision.

B. The Rule of Lenity Should Apply

Due process requirements, the context of the Delinquency Act, and the serious youthful offender provision in the Criminal Sentencing Act support the statutory interpretation by the court of appeals basing sentencing on the offense of conviction. Even if these provisions could be read differently, the resulting ambiguity should invoke the rule of lenity. Under this rule, the offense of conviction, and not the offense charged, should govern the sentencing of serious youthful offenders.

1. The Rule of Lenity

In determining that the youthful offender provision controlled sentencing, notwithstanding the offense of conviction, the supreme court in *Muniz* relied on the rule of statutory construction allowing for the most recent legislative enactment to control in the case of conflicting statutes,²⁴⁵ while at the same time dismissing the rule of lenity.²⁴⁶ The supreme court ignored other cases in which it held that the “rule of lenity counsels that criminal statutes should be interpreted in the defendant’s favor when *insurmountable ambiguity* persists regarding the intended scope of a criminal statute.”²⁴⁷ Lenity applies to “those situations in which a reasonable doubt persists about a statute’s intended scope even *after* resort to ‘the language and structure, legislative history, and motivating policies’ of the statute.”²⁴⁸ The supreme court did not directly address whether an “insurmountable ambiguity” existed in the two provisions construed in *Muniz*. Nor did the court go so far as to address policy considerations and legislative history in its reading of the two statutory provisions.²⁴⁹ The court simply stated that it would not apply the rule of lenity,²⁵⁰ citing a civil case holding that “a later declaration of legislative intent... effectively repeals by implication the earlier conflicting legislative language.”²⁵¹ The court cited no authority to support its choice to follow this rule of statutory interpretation rather than the rule of lenity.²⁵²

244. See NMSA 1978, § 31-18-15.3(F) (1993); NMSA 1978, § 32A-2-20(E) (1996) (current version at NMSA 1978, § 32A-2-20(F) (2003)).

245. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91; see *supra* Part IV.B.3; see also Uniform Statute and Rule Construction Act, NMSA 1978, § 12-2A-10(A) (1997) (“If statutes appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-enacted statute governs.”).

246. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91.

247. *State v. Ogden*, 118 N.M. 234, 242, 880 P.2d 845, 853 (1994) (citing *State v. Edmondson*, 112 N.M. 654, 658, 818 P.2d 855, 859 (Ct. App. 1991) (emphasis added)).

248. *Moskal v. United States*, 498 U.S. 103, 108 (1990) (quoting *Bifulco v. United States*, 447 U.S. 381, 387 (1980)), quoted in *State v. Santillanes*, 2001-NMSC-018, ¶ 34, 27 P.3d 456, 470.

249. See generally *Muniz*, 2003-NMSC-021, ¶¶ 5–17, 74 P.3d at 88–91. See *supra* Part IV.B.3.

250. *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91.

251. *Id.* (quoting *Jaramillo v. Kaufman Plumbing & Heating Co.*, 103 N.M. 400, 405, 708 P.2d 312, 317 (1985)).

252. See *supra* Part IV.B.3.

Where insurmountable ambiguity exists in criminal sentencing statutes,²⁵³ however, both New Mexico and federal law hold that lenity should be applied. The New Mexico Supreme Court has held that statutes defining “criminal conduct should be strictly construed and doubts regarding their interpretation or construction should be resolved in favor of lenity,”²⁵⁴ and where “criminal cases involve the interpretation of two criminal statutes, the existence of any ambiguity as to their intended scope requires us to apply the rule of lenity.”²⁵⁵ Furthermore, the U.S. Supreme Court has held that, where “ambiguity survives,” the Court “would choose the construction yielding the shorter sentence by resting on the venerable rule of lenity.”²⁵⁶ Lenity is “rooted in ‘the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should,’”²⁵⁷ and “has been applied not only to resolve issues about the substantive scope of criminal statutes, but to answer questions about the severity of sentencing.”²⁵⁸

2. Insurmountable Ambiguity of the Statutory Provisions

Insurmountable ambiguity exists both in reading the serious youthful offender and youthful offender provisions together and in reading the youthful offender provision on its own. Given that the *serious youthful offender* provision in the Criminal Sentencing Act clearly bases sentencing on conviction, rather than charge,²⁵⁹ and given that the supreme court read the *youthful offender* provision in the Delinquency Act as basing sentencing on charge, rather than conviction,²⁶⁰ insurmountable ambiguity between the two statutory provisions exists. The ambiguity created by the two statutes is further raised by the apparent inconsistency between *Sosa* and *Muniz*.²⁶¹

Ambiguity in reading the Delinquency Act youthful offender provision on its own was noted by the State and held to exist by the court of appeals in *Muniz*.²⁶² The contrary interpretations of the youthful offender provision by the appellate courts further indicate the insurmountable ambiguity of this sentencing provision.²⁶³ While the court of appeals held that the adult sentence imposed on Richard Muniz was “illegal” under the youthful offender provision,²⁶⁴ the New Mexico Supreme Court held that the provision authorized the sentence.²⁶⁵ In both reading the

253. Note that while the Delinquency Act is not a criminal statute, *see supra* text accompanying note 22, the provision in question is being applied to impose a criminal sentence. Additionally, the Criminal Sentencing Act provision at issue is part of a criminal statute.

254. *State v. Anaya*, 1997-NMSC-010, ¶ 30, 933 P.2d. 223, 232 (citing *State v. Ogden*, 118 N.M. 234, 242, 880 P.2d 845, 853 (1994)).

255. *Anaya*, 1997-NMSC-010, ¶ 32, 933 P.2d. at 233 (citing *Ogden*, 118 N.M. at 242, 880 P.2d at 853).

256. *United States v. R.L.C.*, 503 U.S. 291, 305 (1992) (citing *United States v. Bass*, 404 U.S. 336, 347–48 (1971)).

257. *R.L.C.*, 503 U.S. at 305 (quoting *Bass*, 404 U.S. at 348 (quoting HENRY J. FRIENDLY, BENCHMARKS 209 (1967))).

258. *Id.* (citing *Bifulco v. United States*, 447 U.S. 381, 387 (1980)).

259. *See* NMSA 1978, § 31-18-15.3(F) (1993); *supra* Part V.A.3.

260. *See* *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91.

261. *See supra* Part V.A.3.

262. *See supra* note 106 and accompanying text.

263. *See supra* Part V.B.1.

264. *State v. Muniz*, 2000-NMCA-089, ¶ 20, 11 P.3d 613, 618, *rev'd*, 2003-NMSC-021, 74 P.3d 86.

265. *Muniz*, 2003-NMSC-021, ¶¶ 18–19, 74 P.3d at 91.

provisions of the two statutes together and reading the youthful offender provision on its own, insurmountable ambiguity exists and lenity should apply.

3. Applying the Rule of Lenity

Application of the rule of lenity dictates that the offense of conviction, and not charge, be determinative in sentencing serious youthful offenders. The rule of lenity is "[t]he judicial doctrine holding that a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment."²⁶⁶ Thus, the ambiguity in the sentencing of serious youthful offenders convicted of a lesser offense should be resolved in favor of the more lenient of the two conflicting provisions. The serious youthful offender provision in the Criminal Sentencing Act bases sentencing on the offense of conviction, rather than the offense charged.²⁶⁷ Requiring that the offense of conviction authorize adult sentencing of juveniles will prohibit adult criminal sentencing where the offense charged authorizes only civil juvenile commitments, allowing for a more lenient sentencing structure. Thus, application of the rule of lenity resolves the conflict in favor of the Criminal Sentencing Act provision.

Alternatively, if the serious youthful and youthful offender provisions *can* be read to avoid conflict, the more lenient interpretation should prevail. In *Muniz*, the supreme court read the provisions to avoid conflict, with a resulting interpretation that sentencing is determined by the offense charged.²⁶⁸ As discussed above, however, these provisions can also be read to avoid conflict, with a resulting interpretation that bases sentencing on offense of conviction.²⁶⁹ The contrary interpretations point to the ambiguity of reading the provisions to avoid conflict. Given this ambiguity, the interpretation that bases sentencing on offense of conviction is the more lenient and should prevail.

Whether an alternate statutory construction or the rule of lenity is relied upon, basing the authority to sentence a juvenile as an adult on the offense of conviction, rather than charge, creates a rule more in keeping with longstanding principles of criminal law and the Delinquency Act as a whole.

VI. IMPLICATIONS

As a result of the New Mexico Supreme Court's holding in *Muniz*, juveniles initially charged with first-degree murder may be subject to criminal sentencing as adults even if the crime of which they are actually convicted would not authorize an adult sentence.²⁷⁰ An adult sentence carries with it considerable consequences for juvenile offenders: longer sentences,²⁷¹ creation of a criminal record,²⁷² and incarceration in an adult facility that fails to provide adequate programming or pro-

266. BLACK'S LAW DICTIONARY 1332-33 (7th ed. 1999).

267. See *supra* Part V.A.3.

268. See *Muniz*, 2003-NMSC-021, ¶ 17, 74 P.3d at 91; see also *supra* Part IV.B.3.

269. See *supra* Part V.A.3.

270. See *Muniz*, 2003-NMSC-021, ¶¶ 17, 19, 74 P.3d at 91.

271. Compare NMSA 1978, § 31-18-15.3(F) (1993), § 32A-2-19(B) (2003), and NMSA 1978, § 32A-2-20(F) (2003), with NMSA 1978, § 31-18-15.3(D) (1993), and NMSA 1978, § 32A-2-20(E) (2003).

272. See NMSA 1978, § 31-18-15.3(F) (1993).

tection for juveniles.²⁷³ Following *Muniz*, these weighty consequences may now be imposed on the basis of a prosecutor's charge, notwithstanding that the charge cannot be proven and the juvenile is convicted of only a delinquent offender offense.

A. Longer Sentences

Richard Muniz received a three-year sentence²⁷⁴ for convictions that would have been limited to a two-year sentence under the delinquent offender sentencing provision.²⁷⁵ Sanctions for delinquent offenders are generally limited to only one- or two-year terms.²⁷⁶ Even for the most serious youthful offender convictions, juvenile sentencing can only extend to the age of twenty-one.²⁷⁷ In contrast, an adult sentence imposed on a juvenile can be as long as the mandatory sentence for an adult.²⁷⁸ Thus, a juvenile may receive a substantial adult criminal sentence.²⁷⁹

B. Creation of an Adult Criminal Record

Unlike juvenile sanctions imposed on either youthful or delinquent offenders, a juvenile's adult sentence is not a civil commitment.²⁸⁰ An adult sentence imposed on a juvenile becomes a conviction for purposes of the Criminal Sentencing Act.²⁸¹ Therefore, such convictions will count for purposes of the habitual offender statute²⁸² or other provisions increasing the penalty for those convicted of prior offenses.²⁸³ Additionally, while a juvenile's delinquency record is to be sealed after two years outside of legal custody or supervision and absent any further allegations, a juvenile's adult criminal record will not be sealed.²⁸⁴

273. PATRICIA TORBET ET AL., U.S. DEP'T OF JUSTICE, JUVENILES FACING CRIMINAL SANCTIONS: THREE STATES THAT CHANGED THE RULES xiv (Apr. 2000), available at <http://www.ncjrs.org/pdffiles1/ojdp/181203.pdf>.

274. *Muniz*, 2003-NMSC-021, ¶ 3, 74 P.3d at 87.

275. See NMSA 1978, § 32A-2-19(B) (2003).

276. See *supra* Part II.B.3.

277. See *supra* Part II.B.2.

278. NMSA 1978, § 32A-2-20(E) (2003).

279. See, e.g., *State v. Perez*, 2002-NMCA-040, ¶ 9, 44 P.3d 530, 532 (sentencing a juvenile to forty-seven and one-half years on five counts of *accessory* to criminal sexual penetration); *State v. Ira*, 2002-NMCA-037, ¶¶ 1-4, 43 P.3d 359, 361-62 (2002) (sentencing a juvenile to ninety-one and one-half years for acts committed while fourteen and fifteen years old, on a plea of no contest to ten counts of first-degree criminal sexual penetration, one count of aggravated battery against a household member, one count of aggravated battery, and one count of intimidation of a witness).

280. NMSA 1978, § 32A-2-18(A) (1996) ("A judgment in proceedings on a petition under the Delinquency Act resulting in a juvenile disposition shall not be deemed a conviction of crime....").

281. NMSA 1978, § 31-18-15.3(D) (1993); NMSA 1978, § 32A-2-18(C) (1996).

282. See, e.g., NMSA 1978, § 31-18-17 (2003) (defining habitual offender as an individual with a prior felony conviction and providing for extension of the basic sentence by one year for one prior felony conviction, four years for two priors, and eight years for three or more prior felony convictions).

283. See, e.g., *State v. Jameson*, 83 N.M. 392, 393, 492 P.2d 1009, 1010 (Ct. App. 1971) (holding that prior criminal convictions may be considered in sentencing) (quoting *State v. Helm*, 79 N.M. 305, 306, 442 P.2d 795, 796 (1968) (holding that "[i]t is proper for a trial court to take into consideration the criminal record of one upon whom sentence is to be imposed"))).

284. NMSA 1978, § 32A-2-26(H) (2003) ("If two years have elapsed since a person was released from legal custody and supervision and the department has not received any new allegations of delinquency regarding that person, that person's files and records shall be automatically sealed."). Note, however, that the same statute indicates that a motion is required to effectuate the sealing of a juvenile's records; so it is unclear whether sealing is in fact automatic. NMSA 1978, § 32A-2-26(A) (2003). Furthermore, sealed records may be reopened at the discretion of the court in certain circumstances. See NMSA 1978, § 32A-2-26(E) (2003).

C. Nature of Incarceration

An adult sentence requires incarceration in an adult facility, generally ill-equipped to provide adequate programs or protection for juveniles. New Mexico's 1993 juvenile justice reforms preserved the rehabilitative intent of the Children's Code for most delinquent children, but provided for more punitive adult sentencing for older offenders convicted of more serious crimes.²⁸⁵ When these juvenile justice reforms were made, however, separate accommodations for juveniles serving adult sentences and specialized programs for juveniles in adult facilities were both recommended by the Juvenile Justice Advisory Committee and authorized by the legislature.²⁸⁶ The Department of Corrections declined to provide either based on a rationale that the number of juveniles that would serve adult sentences would not warrant making the accommodations.²⁸⁷ The result has been that juveniles who are sentenced as adults serve time in adult facilities without separation from adult prisoners or specialized programs to meet their needs as juveniles.²⁸⁸

D. Sentencing Is Based on a Probable Cause Standard

The *Muniz* decision authorizes imposition of an adult sentence based on a probable cause standard. The supreme court's decision requires that all juveniles charged with first-degree murder but convicted of any lesser offense be subject to adult sanctions upon a determination of non-amenability, without consideration of the actual conviction.²⁸⁹ Once probable cause has been established to support an indictment for first-degree murder, a juvenile becomes subject to an adult sentence regardless of his or her ultimate conviction.²⁹⁰ Thus, in holding that the offense charged, and not the offense of conviction, is determinative in sentencing serious youthful offenders for offenses less than first-degree murder, *Muniz* in essence permits imposition of an adult sentence based on a probable cause standard.

E. Greater Judicial Discretion

Finally, *Muniz* has expanded judicial discretion in authorizing imposition of an adult sentence on a serious youthful offender convicted of a lesser offense. In allowing an adult sentence to be predicated upon the offense charged, rather than the offense of conviction, judges have been afforded greater discretion in determining when an adult sentence is appropriate. *Muniz* removed the threshold requirement of conviction, beyond a reasonable doubt, of an enumerated offense. The only remaining barrier to imposing an adult sentence on juveniles such as Richard Muniz is a finding of non-amenability, by a standard of proof not conclusively defined by New Mexico courts.²⁹¹ Thus, the prosecutorial burden of proof has been lowered to

285. TORBET ET AL., *supra* note 273, at xiv; *see also supra* Part II.

286. TORBET ET AL., *supra* note 273, at xiv.

287. *Id.*

288. Additionally, "juveniles are more likely to be victimized in adult correction facilities than in juvenile facilities." David P. Farrington & Rolf Loeber, *Serious and Violent Juvenile Offenders*, in A CENTURY OF JUVENILE JUSTICE 206-36 (Margaret K. Rosenheim et al. eds., 2002).

289. 2003-NMSC-021, ¶ 16, 74 P.3d 86, 89-90; NMSA 1978, § 32A-2-20(G) (2003); *see supra* Part IV.

290. NMSA 1978, § 32A-2-20(G) (2003); *Muniz*, 2003-NMSC-021, ¶¶ 16-19, 74 P.3d at 90-91; *see supra* Part IV.

291. *See Muniz*, 2003-NMSC-021, ¶¶ 18-19, 74 P.3d at 91; *State v. Gonzales*, 2001-NMCA-025, ¶ 36, 24

probable cause and judicial discretion has been increased to allow sentencing of delinquent offenders initially charged with first-degree murder as adults.²⁹²

VII. CONCLUSION

In *Muniz*, the Supreme Court of New Mexico held that the youthful offender provision of the Delinquency Act granted authority to impose an adult sentence on a serious youthful offender convicted only of delinquent offender offenses.²⁹³ Although Richard Muniz was charged as a *serious youthful offender*²⁹⁴ and convicted of offenses under the *delinquent offender* classification,²⁹⁵ the court held that his adult sentence was authorized by the *youthful offender* provision²⁹⁶—though neither the charges against him nor his ultimate conviction are enumerated youthful offender offenses.²⁹⁷ As a result, Richard Muniz was given an adult sentence for crimes that, if brought independently, would have subjected him to only juvenile sanctions.

The supreme court's decision rejected the statutory interpretation of the court of appeals that supports a sentencing structure based on offense of conviction, rather than charge. Due process, the Delinquency Act, and the serious youthful offender provision of the Criminal Sentencing Act support the legislature's intent to base sentencing on the offense of conviction. Even though there is a provision that creates some ambiguity, the rule of lenity applies and favors the decision of the court of appeals. Lenity requires that sentencing be based on offense of conviction, not charge.

The consequences of an adult criminal sentence are significant for a juvenile. *Muniz* expands the authority and discretion to impose an adult sentence, absent any conviction for an offense authorizing an adult sentence. Simply stated, while it seems clear that it should be "illegal to sentence [Richard Muniz] as an adult for offenses that are not adult offenses,"²⁹⁸ the New Mexico Supreme Court came erroneously to this conclusion. The New Mexico Legislature should overrule this decision by amending the Delinquency Act to make clear that the offense of conviction controls the authority to sentence a juvenile.²⁹⁹

P.3d 776, 786 (holding that amenability does not require a proof beyond a reasonable doubt, but declining to clearly define the requisite standard of proof; holding that clear and convincing evidence is sufficient proof, but suggesting that proof by a preponderance of the evidence is generally sufficient).

292. Additionally, "[e]xisting empirical evidence suggests that it is not effective to transfer [serious and violent juvenile offenders] to adult courts." Further, "[s]tudies suggest that juveniles in adult court receive more severe sanctions but have higher recidivism rates." Farrington & Loeber, *supra* note 288, at 229–30.

293. 2003-NMSC-021, ¶ 19, 74 P.3d 86, 91.

294. *Muniz*, 2003-NMSC-021, ¶ 2, 74 P.3d at 87 (citing NMSA 1978, § 32A-2-3(H) (1996) (amended 2003)).

295. See *Muniz*, 2003-NMSC-021, ¶ 2, 74 P.3d at 87; NMSA 1978, § 32A-2-3 (2003).

296. *Muniz*, 2003-NMSC-021, ¶ 19, 74 P.3d at 91 (citing NMSA 1978, § 32A-2-20(F) (1996) (current version at NMSA 1978, § 32A-2-20(G) (2003))).

297. See NMSA 1978, § 32A-2-20(G) (2003); NMSA 1978, § 32A-2-3(I).

298. *State v. Muniz*, 2000-NMCA-089, ¶ 22, 11 P.3d 613, 618 (Kennedy, J., concurring in part), *rev'd*, 2003-NMSC-021, 74 P.3d 86.

299. NMSA 1978, § 32A-2-20(G) should be amended to indicate that a fourteen- to eighteen-year-old child charged with first-degree murder but convicted of a youthful offender offense, as defined by section 32A-2-3(I), is subject to the dispositions set forth in this section. A fourteen- to eighteen-year-old child charged with first-degree murder but convicted only of a delinquent offender offense is subject to the dispositions set forth in section 32A-2-19.