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AN ACT

RELATING TO CHILDREN; AMENDING SECTIONS OF THE CHILDREN'S
CODE AND OTHER LAWS; REPLACING THE JUVENILE PAROLE BOARD WITH
A JUVENILE PUBLIC SAFETY ADVISORY BOARD; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 9-2A-5 NMSA 1978 (being Laws 1992,
Chapter 57, Section 5) is amended to read:

"9-2A-5. ADMINISTRATIVELY ATTACHED AGENCY.--The
juvenile public safety advisory board is administratively
attached to the department."

Section 2. Section 9-2A-16 NMSA 1978 (being Laws 1992,
Chapter 57, Section 16) is amended to read:

"9-2A-16. FUNCTIONS OF JUVENILE JUSTICE ADVISORY
COMMITTEE AND DEPARTMENT.--

A. The juvenile justice advisory committee shall
have policymaking, planning and review powers over only the
following functions pursuant to the federal Juvenile Justice
and Delinquency Prevention Act of 1974:

(1) in conjunction with the department,
approval of a comprehensive state plan and modifications
reflecting statewide goals, objectives and priorities for the
expenditure of federal funds received under that act;

(2) approval or disapproval of applications

1 or amendments submitted by eligible entities pursuant to that
2 act;

3 (3) in conjunction with the department,
4 assurance that fund accounting, auditing and evaluation of
5 programs and projects funded pursuant to that act comply with
6 federal requirements and state law;

7 (4) in conjunction with the department,
8 receive and review annual reports from adult jails and
9 lockups regarding compliance with federal requirements that
10 apply when a juvenile is temporarily held in an adult jail or
11 lockup. The juvenile justice advisory committee and the
12 department shall determine the format of the annual reports;

13 (5) assistance to the governor, the
14 legislature and entities created or funded pursuant to that
15 act in developing new or improved approaches, policies or
16 legislation designed to improve juvenile justice in New
17 Mexico; and

18 (6) provision of technical assistance by the
19 department to eligible entities pursuant to that act.

20 B. All budgetary, evaluation, monitoring and
21 grants administration functions required pursuant to the
22 federal Juvenile Justice and Delinquency Prevention Act of
23 1974 shall be carried out by the department."

24 Section 3. Section 30-22-11.1 NMSA 1978 (being Laws
25 1993, Chapter 121, Section 1) is amended to read:

1 "30-22-11.1. ESCAPE FROM THE CUSTODY OF THE CHILDREN,
2 YOUTH AND FAMILIES DEPARTMENT--ESCAPE FROM JUVENILE
3 DETENTION.--Escape from the custody of the children, youth
4 and families department consists of any person who has been
5 adjudicated as a delinquent child and has been committed
6 lawfully to the custody of a department juvenile justice
7 facility or who is alleged to be a delinquent child and has
8 been lawfully detained in a juvenile detention facility:

9 A. escaping or attempting to escape from custody
10 within the confines of a children, youth and families
11 department juvenile justice facility; or

12 B. escaping or attempting to escape from another
13 lawful place of custody or confinement that is not within the
14 confines of a children, youth and families department
15 juvenile justice facility.

16 Any person who commits escape from the custody of a
17 children, youth and families department juvenile justice
18 facility is guilty of a misdemeanor."

19 Section 4. Section 30-22-11.2 NMSA 1978 (being Laws
20 1994, Chapter 18, Section 1) is amended to read:

21 "30-22-11.2. AGGRAVATED ESCAPE FROM THE CUSTODY OF THE
22 CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--Aggravated escape
23 from the custody of the children, youth and families
24 department consists of any person who has been adjudicated as
25 a delinquent child and has been committed lawfully to the

1 custody of a department juvenile justice facility or who is
2 alleged to be a delinquent child and has been lawfully
3 detained in a juvenile detention facility:

4 A. escaping or attempting to escape from custody
5 within the confines of a children, youth and families
6 department juvenile justice facility and committing assault
7 or battery on another person in the course of escaping or
8 attempting to escape; or

9 B. escaping or attempting to escape from a lawful
10 place of custody or confinement that is not within the
11 confines of a children, youth and families department
12 juvenile justice facility and committing assault or battery
13 on another person in the course of escaping or attempting to
14 escape.

15 Any person who commits aggravated escape from the
16 custody of the children, youth and families department is
17 guilty of a fourth degree felony."

18 Section 5. Section 31-26-12 NMSA 1978 (being Laws 1994,
19 Chapter 144, Section 12, as amended) is amended to read:

20 "31-26-12. PROCEDURES WHEN AN INMATE IS RELEASED FROM
21 INCARCERATION--ADULT PAROLE BOARD--CORRECTIONS DEPARTMENT--
22 PROCEDURES WHEN A DELINQUENT CHILD IS RELEASED FROM CUSTODY--
23 JUVENILE PAROLE BOARD--CHILDREN, YOUTH AND FAMILIES
24 DEPARTMENT--DISTRICT ATTORNEYS.--

25 A. The adult parole board and the children, youth

1 and families department shall provide a copy of their
2 respective regular release dockets to each district attorney
3 in the state at least ten working days before the docket is
4 considered. The district attorney shall notify any person
5 known to reside in the district who was a victim of the
6 criminal offense for which the inmate was incarcerated or the
7 delinquent child was committed.

8 B. The adult parole board or the children, youth
9 and families department shall provide a copy of a
10 supplemental, addendum or special docket to each district
11 attorney at least five working days before the release docket
12 is considered.

13 C. Following consideration of a release docket by
14 the adult parole board or the children, youth and families
15 department, the board and department shall promptly notify
16 each district attorney of recommendations for release of an
17 inmate from incarceration or a delinquent child from custody.
18 The district attorney shall notify any person known to reside
19 in the district attorney's district who was a victim of the
20 criminal offense for which the inmate was incarcerated or the
21 delinquent child was committed.

22 D. In the case of an inmate scheduled to be
23 released from incarceration without parole or prior to parole
24 for any reason, or a delinquent child scheduled to be
25 released from custody, the corrections department or the

1 children, youth and families department shall notify each
2 district attorney at least fifteen working days before the
3 inmate's or delinquent child's release. The district
4 attorney shall notify any person known to reside in the
5 district who was a victim of the criminal offense for which
6 the inmate was incarcerated or the delinquent child was
7 committed."

8 Section 6. Section 32A-1-3 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 12, as amended) is amended to read:

10 "32A-1-3. PURPOSE OF ACT.--The Children's Code shall be
11 interpreted and construed to effectuate the following
12 legislative purposes:

13 A. first to provide for the care, protection and
14 wholesome mental and physical development of children coming
15 within the provisions of the Children's Code and then to
16 preserve the unity of the family whenever possible. A
17 child's health and safety shall be the paramount concern.
18 Permanent separation of a child from the child's family,
19 however, would especially be considered when the child or
20 another child of the parent has suffered permanent or severe
21 injury or repeated abuse. It is the intent of the
22 legislature that, to the maximum extent possible, children in
23 New Mexico shall be reared as members of a family unit;

24 B. to provide judicial and other procedures
25 through which the provisions of the Children's Code are

1 executed and enforced and in which the parties are assured a
2 fair hearing and their constitutional and other legal rights
3 are recognized and enforced;

4 C. to provide a continuum of services for children
5 and their families, from prevention to treatment, considering
6 whenever possible prevention, diversion and early
7 intervention, particularly in the schools;

8 D. to provide children with services that are
9 sensitive to their cultural needs;

10 E. to reduce overrepresentation of minority
11 children and families in the juvenile justice, family
12 services and abuse and neglect systems through early
13 intervention, linkages to community support services and the
14 elimination of discrimination;

15 F. to provide for the cooperation and coordination
16 of the civil and criminal systems for investigation,
17 intervention and disposition of cases, to minimize
18 interagency conflicts and to enhance the coordinated response
19 of all agencies to achieve the best interests of a child
20 victim; and

21 G. to provide continuity for children and families
22 appearing before the children's court by assuring that,
23 whenever possible, a single judge hears all successive cases
24 or proceedings involving a child or family."

25 Section 7. Section 32A-1-4 NMSA 1978 (being Laws 1993,

1 Chapter 77, Section 13, as amended) is amended to read:

2 "32A-1-4. DEFINITIONS.--As used in the Children's Code:

3 A. "adult" means a person who is eighteen years of
4 age or older;

5 B. "child" means a person who is less than
6 eighteen years old;

7 C. "court", when used without further
8 qualification, means the children's court division of the
9 district court and includes the judge, special master or
10 commissioner appointed pursuant to the provisions of the
11 Children's Code or supreme court rule;

12 D. "court-appointed special advocate" or "CASA"
13 means a person appointed as a CASA, pursuant to the
14 provisions of the Children's Court Rules, who assists the
15 court in determining the best interests of the child by
16 investigating the case and submitting a report to the court;

17 E. "custodian" means an adult with whom the child
18 lives who is not a parent or guardian of the child;

19 F. "department" means the children, youth and
20 families department, unless otherwise specified;

21 G. "disproportionate minority contact" means the
22 involvement of a racial or ethnic group with the criminal or
23 juvenile justice system at a proportion either higher or
24 lower than that group's proportion in the general population;

25 H. "foster parent" means a person, including a

1 relative of the child, licensed or certified by the
2 department or a child placement agency to provide care for
3 children in the custody of the department or agency;

4 I. "guardian" means a person appointed as a
5 guardian by a court or Indian tribal authority or a person
6 authorized to care for the child by a parental power of
7 attorney as permitted by law;

8 J. "guardian ad litem" means an attorney appointed
9 by the children's court to represent and protect the best
10 interests of the child in a court proceeding; provided that
11 no party or employee or representative of a party to the
12 proceeding shall be appointed to serve as a guardian ad
13 litem;

14 K. "Indian child" means an unmarried person who
15 is:

16 (1) less than eighteen years old;

17 (2) a member of an Indian tribe or is
18 eligible for membership in an Indian tribe; and

19 (3) the biological child of a member of an
20 Indian tribe;

21 L. "Indian child's tribe" means:

22 (1) the Indian tribe in which an Indian
23 child is a member or eligible for membership; or

24 (2) in the case of an Indian child who is a
25 member or eligible for membership in more than one tribe, the

1 Indian tribe with which the Indian child has more significant
2 contacts;

3 M. "Indian tribe" means a federally recognized
4 Indian tribe, community or group pursuant to 25 U.S.C.
5 Section 1903(1);

6 N. "judge", when used without further
7 qualification, means the judge of the court;

8 O. "legal custody" means a legal status created by
9 order of the court or other court of competent jurisdiction
10 or by operation of statute that vests in a person, department
11 or agency the right to determine where and with whom a child
12 shall live; the right and duty to protect, train and
13 discipline the child and to provide the child with food,
14 shelter, personal care, education and ordinary and emergency
15 medical care; the right to consent to major medical,
16 psychiatric, psychological and surgical treatment and to the
17 administration of legally prescribed psychotropic medications
18 pursuant to the Children's Mental Health and Developmental
19 Disabilities Act; and the right to consent to the child's
20 enlistment in the armed forces of the United States;

21 P. "parent" or "parents" includes a biological or
22 adoptive parent if the biological or adoptive parent has a
23 constitutionally protected liberty interest in the care and
24 custody of the child;

25 Q. "permanency plan" means a determination by the

1 court that the child's interest will be served best by:

2 (1) reunification;

3 (2) placement for adoption after the
4 parents' rights have been relinquished or terminated or after
5 a motion has been filed to terminate parental rights;

6 (3) placement with a person who will be the
7 child's permanent guardian;

8 (4) placement in the legal custody of the
9 department with the child placed in the home of a fit and
10 willing relative; or

11 (5) placement in the legal custody of the
12 department under a planned permanent living arrangement;

13 R. "person" means an individual or any other form
14 of entity recognized by law;

15 S. "preadoptive parent" means a person with whom a
16 child has been placed for adoption;

17 T. "protective supervision" means the right to
18 visit the child in the home where the child is residing,
19 inspect the home, transport the child to court-ordered
20 diagnostic examinations and evaluations and obtain
21 information and records concerning the child;

22 U. "reunification" means either a return of the
23 child to the parent or to the home from which the child was
24 removed or a return to the noncustodial parent;

25 V. "tribal court" means:

1 (1) a court established and operated
2 pursuant to a code or custom of an Indian tribe; or

3 (2) any administrative body of an Indian
4 tribe that is vested with judicial authority;

5 W. "tribal court order" means a document issued by
6 a tribal court that is signed by an appropriate authority,
7 including a judge, governor or tribal council member, and
8 that orders an action that is within the tribal court's
9 jurisdiction; and

10 X. "tribunal" means any judicial forum other than
11 the court."

12 Section 8. Section 32A-1-8 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 17, as amended) is amended to read:

14 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
15 JURISDICTION.--

16 A. The court has exclusive original jurisdiction
17 of all proceedings under the Children's Code in which a
18 person is eighteen years of age or older and was a child at
19 the time the alleged act in question was committed or is a
20 child alleged to be:

21 (1) a delinquent child;

22 (2) a child of a family in need of
23 court-ordered services or a child in need of services
24 pursuant to the Family in Need of Court-Ordered Services Act;

25 (3) a neglected child;

- 1 (4) an abused child;
2 (5) a child subject to adoption; or
3 (6) a child subject to placement for a
4 developmental disability or a mental disorder.

5 B. The court has exclusive original jurisdiction
6 to emancipate a minor.

7 C. During abuse or neglect proceedings in which
8 New Mexico is the home state, pursuant to the provisions of
9 the Uniform Child-Custody Jurisdiction and Enforcement Act,
10 the court shall have jurisdiction over both parents to
11 determine the best interest of the child and to decide all
12 matters incident to the court proceedings.

13 D. Nothing in this section shall be construed to
14 in any way abridge the rights of any Indian tribe to exercise
15 jurisdiction over child custody matters as defined by and in
16 accordance with the federal Indian Child Welfare Act of 1978.

17 E. A tribal court order pertaining to an Indian
18 child in an action under the Children's Code shall be
19 recognized and enforced by the district court for the
20 judicial district in which the tribal court is located. A
21 tribal court order pertaining to an Indian child that
22 accesses state resources shall be recognized and enforced
23 pursuant to the provisions of intergovernmental agreements
24 entered into by the Indian child's tribe and the department
25 or another state agency. An Indian child residing on or off

1 a reservation, as a citizen of this state, shall have the
2 same right to services that are available to other children
3 of the state, pursuant to intergovernmental agreements. The
4 cost of the services provided to an Indian child shall be
5 determined and provided for in the same manner as services
6 are made available to other children of the state, utilizing
7 tribal, state and federal funds and pursuant to
8 intergovernmental agreements. The tribal court, as the court
9 of original jurisdiction, shall retain jurisdiction and
10 authority over the Indian child.

11 F. The court may acquire jurisdiction over a Motor
12 Vehicle Code or municipal traffic code violation as set forth
13 in Section 32A-2-29 NMSA 1978."

14 Section 9. Section 32A-1-21 NMSA 1978 (being Laws 2007,
15 Chapter 185, Section 2) is amended to read:

16 "32A-1-21. RUNAWAY CHILD--LAW ENFORCEMENT--PERMITTED
17 ACTS.--Whenever a law enforcement agency receives a report
18 from a parent, guardian or custodian that a child over whom
19 the parent, guardian or custodian has custody has, without
20 permission, left the home or residence lawfully prescribed
21 for the child and the parent, guardian or custodian believes
22 the child has run away, a law enforcement agent may help the
23 parent, guardian or custodian locate the child and:

24 A. return the child to the parent, guardian or
25 custodian unless safety concerns are present;

1 B. hold the child for up to six hours if the
2 parent, guardian or custodian cannot be located; provided,
3 however, that no child shall be placed in a secured setting
4 pursuant to this section; or

5 C. after the six hours has expired, follow the
6 procedures outlined in Section 32A-3B-3 NMSA 1978."

7 Section 10. Section 32A-2-3 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 32, as amended) is amended to read:

9 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

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

13 (1) any of the following offenses pursuant
14 to municipal traffic codes or the Motor Vehicle Code:

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

17 (b) failure to stop in the event of an
18 accident causing death, personal injury or damage to
19 property;

20 (c) unlawful taking of a vehicle or
21 motor vehicle;

22 (d) receiving or transferring of a
23 stolen vehicle or motor vehicle;

24 (e) homicide by vehicle;

25 (f) injuring or tampering with a

1 vehicle;

2 (g) altering or changing of an engine
3 number or other vehicle identification numbers;

4 (h) altering or forging of a driver's
5 license or permit or any making of a fictitious license or
6 permit;

7 (i) reckless driving;

8 (j) driving with a suspended or revoked
9 license; or

10 (k) an offense punishable as a felony;

11 (2) buying, attempting to buy, receiving,
12 possessing or being served any alcoholic liquor or being
13 present in a licensed liquor establishment, other than a
14 restaurant or a licensed retail liquor establishment, except
15 in the presence of the child's parent, guardian, custodian or
16 adult spouse. As used in this paragraph, "restaurant" means
17 an establishment where meals are prepared and served
18 primarily for on-premises consumption and that has a dining
19 room, a kitchen and the employees necessary for preparing,
20 cooking and serving meals. "Restaurant" does not include an
21 establishment, as defined in regulations promulgated by the
22 director of the special investigations division of the
23 department of public safety, that serves only hamburgers,
24 sandwiches, salads and other fast foods;

25 (3) a violation of Section 30-29-2 NMSA

1 1978, regarding the illegal use of a glue, aerosol spray
2 product or other chemical substance;

3 (4) a violation of the Controlled Substances
4 Act;

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

9 (6) a violation of Section 30-15-1.1 NMSA
10 1978 regarding unauthorized graffiti on personal or real
11 property; or

12 (7) a violation of an order of protection
13 issued pursuant to the provisions of the Family Violence
14 Protection Act;

15 B. "delinquent child" means a child who has
16 committed a delinquent act;

17 C. "delinquent offender" means a delinquent child
18 who is subject to juvenile sanctions only and who is not a
19 youthful offender or a serious youthful offender;

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

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

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

3 G. "restitution" means financial reimbursement by
4 the child to the victim or community service imposed by the
5 court and is limited to easily ascertainable damages for
6 injury to or loss of property, actual expenses incurred for
7 medical, psychiatric and psychological treatment for injury
8 to a person and lost wages resulting from physical injury,
9 which are a direct and proximate result of a delinquent act.

10 "Restitution" does not include reimbursement for damages for
11 mental anguish, pain and suffering or other intangible
12 losses. As used in this subsection, "victim" means a person
13 who is injured or suffers damage of any kind by an act that
14 is the subject of a complaint or referral to law enforcement
15 officers or juvenile probation authorities. Nothing
16 contained in this definition limits or replaces the
17 provisions of Subsections A and B of Section 32A-2-27 NMSA
18 1978;

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

24 I. "supervised release" means the release of a
25 juvenile, whose term of commitment has not expired, from a

1 facility for the care and rehabilitation of adjudicated
2 delinquent children, with specified conditions to protect
3 public safety and promote successful transition and
4 reintegration into the community. A juvenile on supervised
5 release is subject to monitoring by the department until the
6 term of commitment has expired, and may be returned to
7 custody for violating conditions of release; and

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

10 (1) fourteen to eighteen years of age at the
11 time of the offense and who is adjudicated for at least one
12 of the following offenses:

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

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

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

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

21 (e) aggravated battery against a
22 household member, as provided in Subsection C of Section
23 30-3-16 NMSA 1978;

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

1 1978;

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

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

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

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

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

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

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

18 (2) fourteen to eighteen years of age at the
19 time of the offense, who is adjudicated for any felony
20 offense and who has had three prior, separate felony
21 adjudications within a three-year time period immediately
22 preceding the instant offense. The felony adjudications
23 relied upon as prior adjudications shall not have arisen out
24 of the same transaction or occurrence or series of events
25 related in time and location. Successful completion of

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

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

6 Section 11. Section 32A-2-4 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 33, as amended) is amended to read:

8 "32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--
9 APPEALS.--

10 A. The department shall promulgate updated
11 standards for all detention facilities, including standards
12 for site, design, construction, equipment, care, program,
13 personnel and clinical services. The department shall
14 certify as approved all detention facilities in the state
15 meeting the standards promulgated. The department may
16 establish by rule appropriate procedures for provisional
17 certification and the waiving of any of its standards for
18 facilities in existence at the time of the adoption of the
19 standards, except that it shall not allow waiver of any
20 standard pertaining to adequate health and safety protection
21 of the residents and staff of the facility. No child shall
22 be detained in a detention facility unless it is certified as
23 approved by the department, except as otherwise provided in
24 Chapter 32A, Article 2 NMSA 1978.

25 B. The department shall inspect all detention

1 facilities in the state at least once each twelve months and
2 shall require those reports it deems necessary from detention
3 facilities in a form and containing the information
4 determined by the department. If as the result of an
5 inspection a certified detention facility is determined as
6 failing to meet the required standards, its certification is
7 subject to revocation or refusal for renewal by the
8 department.

9 C. The department shall promulgate rules
10 establishing procedures that provide for prior notice and
11 public hearings on detention facilities' standards adoption
12 and changes. The department shall also promulgate rules
13 establishing procedures for facility certification, renewal
14 of certification, refusal to renew certification and
15 revocation of certification. The procedures adopted on these
16 matters shall provide for adequate prior notice of intended
17 action by the department, opportunity for the aggrieved
18 person to have an administrative hearing and written
19 notification of the administrative decision. Rules
20 promulgated under this subsection shall not be effective
21 unless filed in accordance with the State Rules Act.

22 D. Any person aggrieved by an administrative
23 decision of the department rendered under the provisions of
24 this section may petition for the review of the
25 administrative decision by appealing to the district court

1 pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

2 E. After January 1, 1994, no state or county
3 detention facility shall hold juveniles sentenced by a
4 federal court, unless the facility meets state standards
5 promulgated by the department.

6 F. A juvenile detention facility certified by the
7 department shall comply with the daily reporting requirement
8 for children in detention, including reports on the length of
9 stay for each child. This information shall be reported as
10 required by the department."

11 Section 12. A new Section 32A-2-4.1 NMSA 1978 is
12 enacted to read:

13 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
14 HOLDING FACILITIES--REPORTS.--

15 A. A child arrested and detained for an alleged
16 delinquent act may be temporarily held in an adult jail or
17 lockup for no longer than six hours. A child who is detained
18 in an adult jail or lockup shall be placed in a setting that
19 is physically segregated by sight and sound from adult
20 offenders. After six hours, the child may be placed or
21 detained pursuant to the provisions of Section 32A-2-12 NMSA
22 1978.

23 B. An adult jail or lockup used as a temporary
24 holding facility for alleged delinquent offenders shall file
25 an annual report regarding its compliance with federal

1 requirements. The juvenile justice advisory committee and
2 the department shall determine the format of the annual
3 reports."

4 Section 13. Section 32A-2-5 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 34, as amended) is amended to read:

6 "32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
7 ESTABLISHMENT--JUVENILE PROBATION AND PAROLE OFFICERS--POWERS
8 AND DUTIES.--

9 A. Juvenile probation and parole services shall be
10 provided by the department.

11 B. To carry out the objectives and provisions of
12 the Delinquency Act, but subject to its limitations, the
13 department has the power and duty to:

14 (1) receive and examine complaints and
15 allegations that a child is a delinquent child for the
16 purpose of considering beginning a proceeding pursuant to the
17 provisions of the Delinquency Act;

18 (2) make case referrals for services as
19 appear appropriate or desirable;

20 (3) make predisposition studies and
21 assessments and submit reports and recommendations to the
22 court;

23 (4) supervise and assist a child placed on
24 probation or supervised release or under supervision by court
25 order or by the department;

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(5) give notice to any individual who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act of the sealing of that individual's records in accordance with that act;

(6) informally dispose of up to three misdemeanor charges brought against a child within two years;

(7) give notice to the children's court attorney of the receipt of any felony complaint and of any recommended adjustment of such felony complaint;

(8) identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases; and

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

C. A juvenile probation and parole officer does not have the powers of a law enforcement officer. A juvenile probation and parole officer may take into physical custody and place in detention, subject to application of a detention risk assessment instrument, a child who is under supervision as a delinquent child or as a youthful offender when there is

1 reasonable cause to believe that the child has violated the
2 conditions of the child's probation or that the child may
3 leave the jurisdiction of the court. Taking a child into
4 custody under this subsection is subject to and shall proceed
5 in accordance with the provisions of the Delinquency Act
6 relating to custody and detention procedures and criteria."

7 Section 14. Section 32A-2-10 NMSA 1978 (being Laws
8 1993, Chapter 77, Section 39, as amended) is amended to read:

9 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

10 A. A person taking a child into custody shall,
11 with all reasonable speed:

12 (1) release the child to the child's parent,
13 guardian or custodian or an adult authorized by the child's
14 parent, guardian or custodian and issue verbal counsel or
15 warning as may be appropriate;

16 (2) release the child to the child's parent,
17 guardian or custodian or an adult authorized to sign on
18 behalf of the child's parent, guardian or custodian upon
19 written promise to bring the child before the court when
20 requested by the court. If the parent, guardian or custodian
21 or an adult authorized to sign on behalf of the child's
22 parent, guardian or custodian fails, when requested, to bring
23 the child before the court as promised, the court may order
24 the child taken into custody and brought before the court;

25 (3) deliver the child to a place of

1 detention as provided in Section 32A-2-12 NMSA 1978;

2 (4) deliver the child to a medical facility,
3 if available, if the child is believed to be suffering from a
4 serious illness that requires prompt treatment or prompt
5 diagnosis;

6 (5) deliver the child to an evaluation
7 facility, if available, if the person taking the child into
8 custody has reasonable grounds to believe the child presents
9 a likelihood of serious harm to the child's self or others or
10 is suffering from some other serious mental condition or
11 illness that requires prompt treatment or prompt diagnosis;
12 or

13 (6) deliver the child to a center or
14 organization that the court or the department recognizes as
15 an alternative to secure detention.

16 B. When an alleged delinquent child is delivered
17 to a place of detention or a center or organization
18 recognized as an alternative to secure detention as provided
19 in Section 32A-2-12 NMSA 1978, only a department employee or
20 a trained county detention professional designated by the
21 department may place the child in detention or with a center
22 or organization recognized as an alternative to secure
23 detention in accordance with the criteria for detention set
24 forth in Section 32A-2-11 NMSA 1978. If the criteria for
25 detention of an alleged delinquent child are not met, the

1 child shall be released from custody.

2 C. A child under the age of eleven shall not be
3 held in detention. If a child under the age of eleven poses
4 a substantial risk of harm to the child's self or others, a
5 peace officer may detain and transport that child for
6 emergency mental health evaluation and care in accordance
7 with Section 32A-6A-19 NMSA 1978.

8 D. If a child is taken into custody and is not
9 released to the child's parent, guardian or custodian or an
10 adult authorized by the child's parent, guardian or
11 custodian, the person taking the child into custody shall
12 give written notice thereof as soon as possible, and in no
13 case later than twenty-four hours, to the child's parent,
14 guardian or custodian or an adult authorized by the child's
15 parent, guardian or custodian and to the court, together with
16 a statement of the reason for taking the child into custody.

17 E. In all cases when a child is taken into
18 custody, the child shall be released to the child's parent,
19 guardian or custodian or an adult authorized by the child's
20 parent, guardian or custodian in accordance with the
21 conditions and time limits set forth in the Children's Court
22 Rules."

23 Section 15. Section 32A-2-12 NMSA 1978 (being Laws
24 1993, Chapter 77, Section 41, as amended) is amended to read:

25 "32A-2-12. PLACEMENT OR DETENTION.--

1 A. A child alleged to be a delinquent child may be
2 placed or detained, pending a court hearing, in any of the
3 following places:

4 (1) a licensed foster home or a home
5 otherwise authorized under the law to provide foster or group
6 care;

7 (2) a facility operated by a licensed child
8 welfare services agency;

9 (3) a shelter-care facility provided for in
10 the Children's Shelter Care Act that is in compliance with
11 all standards, conditions and regulatory requirements and
12 that shall be considered a temporary placement subject to
13 judicial review within thirty days of placement;

14 (4) a detention facility certified by the
15 department for children alleged to be delinquent children;

16 (5) any other suitable place, other than a
17 facility for the long-term care and rehabilitation of
18 delinquent children to which children adjudicated as
19 delinquent may be confined pursuant to Section 32A-2-19 NMSA
20 1978, designated by the court and that meets the standards
21 for detention facilities pursuant to the Children's Code and
22 federal law; or

23 (6) the child's home or place of residence,
24 under conditions and restrictions approved by the court.

25 B. A child alleged to be a youthful offender may

1 be detained, pending a court hearing, in any of the following
2 places:

3 (1) a detention facility, licensed by the
4 department, for children alleged to be delinquent children;
5 or

6 (2) any other suitable place, other than a
7 facility for the long-term care and rehabilitation of
8 delinquent children to which children adjudicated as
9 delinquent children may be confined pursuant to Section
10 32A-2-19 NMSA 1978, designated by the court and that meets
11 the standards for detention facilities pursuant to the
12 Children's Code and federal law.

13 C. A child adjudicated as a youthful offender who
14 is violent toward staff or other residents in a detention
15 facility may be transferred and detained, pending a court
16 hearing, in a county jail. In the event that a child is
17 detained in a jail, the director of the jail shall presume
18 that the child is vulnerable to victimization by inmates
19 within the adult population because of the child's age, and
20 shall take measures to provide protection to the child.
21 However, provision of protective measures shall not result in
22 diminishing a child's civil rights to less than those
23 existing for an incarcerated adult.

24 D. A child who has previously been incarcerated as
25 an adult or a person eighteen years of age or older shall not

1 be detained in a juvenile detention facility or a facility
2 for the long-term care and rehabilitation of delinquent
3 children, but may be detained in a county jail. A child
4 shall not be transferred to a county jail solely on the basis
5 of attaining the age of eighteen while detained in a juvenile
6 detention facility. In the event that a child is detained in
7 a jail, the director of the jail shall presume that the child
8 is vulnerable to victimization by inmates within the adult
9 population because of the child's age, and shall take
10 measures to provide protection to the child. However,
11 provision of protective measures shall not result in
12 diminishing a child's civil rights to less than those
13 existing for an incarcerated adult.

14 E. A child alleged to be a serious youthful
15 offender may be detained pending a court hearing in any of
16 the following places, prior to arraignment in metropolitan,
17 magistrate or district court:

18 (1) a detention facility, licensed by the
19 department, for children alleged to be delinquent children;

20 (2) any other suitable place, other than a
21 facility for the long-term care and rehabilitation of
22 delinquent children to which children adjudicated as
23 delinquent children may be confined pursuant to Section
24 32A-2-19 NMSA 1978, designated by the court that meets the
25 standards for detention facilities pursuant to the Children's

1 Code and federal law; or

2 (3) a county jail, if a facility in
3 Paragraph (1) or (2) of this subsection is not appropriate.
4 In the event that a child is detained in a jail, the director
5 of the jail shall presume that the child is vulnerable to
6 victimization by inmates within the adult population because
7 of the child's age and shall take measures to provide
8 protection to the child. However, provision of protective
9 measures shall not result in diminishing a child's civil
10 rights to less than those existing for an incarcerated adult.

11 F. When a person who is eighteen years of age or
12 older is taken into custody and transported to an adult
13 facility on a juvenile warrant or an adult warrant or other
14 adult charges and an outstanding juvenile warrant exists,
15 notice shall be given to the children's court attorney and
16 the juvenile probation and parole office in the jurisdiction
17 where the juvenile warrant was issued within one day of the
18 person being taken into custody. The juvenile probation and
19 parole office shall give notice that the person has been
20 taken into custody to the children's court judge and the
21 attorney who represented the person in the juvenile
22 proceeding.

23 G. In addition to the judicial review required by
24 Paragraph (3) of Subsection A of this section, a child
25 detained in an out-of-home placement pursuant to this section

1 may request judicial review of the appropriateness of the
2 placement."

3 Section 16. Section 32A-2-13 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 42, as amended) is amended to read:

5 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED
6 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--
7 DISPOSITION.--

8 A. When a child who has been taken into custody is
9 not released but is detained:

10 (1) a judicial determination of probable
11 cause shall be made by a judge or special master or
12 magistrate within forty-eight hours, including Saturdays,
13 Sundays and legal holidays, except for children taken into
14 custody under an arrest warrant pursuant to the Children's
15 Court Rules. A statement by a law enforcement officer, which
16 shall include the charges, may be the basis of a probable
17 cause determination. The probable cause determination shall
18 be nonadversarial, may be held in the absence of the child
19 and counsel and may be conducted by telephone. If the court
20 finds no probable cause to believe the child committed an
21 offense, the child shall be released;

22 (2) a petition shall be filed within
23 twenty-four hours from the time the child is taken into
24 custody, excluding Saturdays, Sundays and legal holidays, and
25 if not filed within the stated time, the child shall be

1 released; and

2 (3) a detention hearing shall be held within
3 twenty-four hours, excluding Saturdays, Sundays and legal
4 holidays, from the time of filing the petition to determine
5 whether continued detention is required pursuant to the
6 criteria established by the Children's Code. At the request
7 of any party, the court may permit a detention hearing to be
8 conducted by appropriate means of electronic communication;
9 provided that all hearings conducted by electronic means
10 shall be recorded and preserved as part of the record, the
11 child shall have legal representation present with the child,
12 no plea shall be allowed to be taken via electronic
13 communication and the court finds:

14 (a) that undue hardship will result
15 from conducting the hearing with all parties, including the
16 child, present in the courtroom; and

17 (b) that the hardship substantially
18 outweighs any prejudice or harm to the child that is likely
19 to result from the hearing being conducted by electronic
20 means.

21 B. The judge may appoint one or more persons to
22 serve as special master on a full- or part-time basis for the
23 purpose of holding detention hearings. A juvenile probation
24 and parole officer shall not be appointed as a special
25 master. The judge shall approve all contracts with special

1 masters and shall fix their hourly compensation, subject to
2 the approval of the director of the administrative office of
3 the courts.

4 C. Notice of the detention hearing, either oral or
5 written, stating the time, place and purpose of the hearing
6 shall be given by the person designated by the court to the
7 child's parents, guardian or custodian, if they can be found,
8 and to the child. The department shall be provided with
9 reasonable oral or written notification and an opportunity to
10 be heard. At any hearing held pursuant to this subsection,
11 the department may appear as a party.

12 D. At the commencement of the detention hearing,
13 the judge or special master shall advise the parties of their
14 basic rights provided in the Children's Code and shall
15 appoint counsel, guardians and custodians, if appropriate.

16 E. If the judge or special master finds that the
17 child's detention is appropriate under the criteria
18 established by the Children's Code, the judge or special
19 master shall order detention in an appropriate facility in
20 accordance with the Children's Code.

21 F. If the judge or special master finds that
22 detention of the child is not appropriate under the criteria
23 established by the Children's Code, the judge or special
24 master shall order the release of the child, but, in so
25 doing, may order one or more of the following conditions to

1 meet the individual needs of the child:

2 (1) place the child in the custody of a
3 parent, guardian or custodian or under the supervision of an
4 agency agreeing to supervise the child;

5 (2) place restrictions on the child's
6 travel, association with other persons or place of abode
7 during the period of the child's release; or

8 (3) impose any other condition deemed
9 reasonably necessary and consistent with the criteria for
10 detaining children established by the Children's Code,
11 including a condition requiring that the child return to
12 custody as required.

13 G. An order releasing a child on any conditions
14 specified in this section may at any time be amended to
15 impose additional or different conditions of release or to
16 return the child to custody or detention for failure to
17 conform to the conditions originally imposed.

18 H. At the detention hearing, all relevant and
19 material evidence helpful in determining the need for
20 detention may be admitted by the judge or special master even
21 though it would not be admissible in a hearing on the
22 petition.

23 I. If the child is not released at the detention
24 hearing and a parent, guardian or custodian was not notified
25 of the hearing and did not appear or waive appearance at the

1 detention hearing, the judge or special master shall rehear
2 the detention matter without unnecessary delay upon the
3 filing of an affidavit stating the facts and a motion for
4 rehearing.

5 J. If a child is not released at the detention
6 hearing, the child's detention may be subsequently reviewed
7 by the court or the court may review the child's detention in
8 conjunction with a pretrial conference.

9 K. If a child is not placed within ten days after
10 a disposition hearing, the child may be released and placed
11 under appropriate supervision, so long as the child does not
12 pose a flight risk or substantial risk of harm to the child's
13 self or others."

14 Section 17. Section 32A-2-14 NMSA 1978 (being Laws
15 1993, Chapter 77, Section 43, as amended) is amended to read:

16 "32A-2-14. BASIC RIGHTS.--

17 A. A child subject to the provisions of the
18 Delinquency Act is entitled to the same basic rights as an
19 adult, except as otherwise provided in the Children's Code,
20 including rights provided by the Delinquency Act, except as
21 otherwise provided in the Children's Code.

22 B. If after due notice to the parent, guardian or
23 custodian and after a hearing determining indigency, the
24 parent, guardian or custodian is declared indigent by the
25 court, the public defender shall represent the child. If the

1 court finds that the parent, guardian or custodian is
2 financially able to pay for an attorney but is unwilling to
3 do so, the court shall order the parent, guardian or
4 custodian to reimburse the state for public defender
5 representation.

6 C. No person subject to the provisions of the
7 Delinquency Act who is alleged or suspected of being a
8 delinquent child shall be interrogated or questioned without
9 first advising the child of the child's constitutional rights
10 and securing a knowing, intelligent and voluntary waiver.

11 D. Before any statement or confession may be
12 introduced at a trial or hearing when a child is alleged to
13 be a delinquent child, the state shall prove that the
14 statement or confession offered in evidence was elicited only
15 after a knowing, intelligent and voluntary waiver of the
16 child's constitutional rights was obtained.

17 E. In determining whether the child knowingly,
18 intelligently and voluntarily waived the child's rights, the
19 court shall consider the following factors:

- 20 (1) the age and education of the respondent;
21 (2) whether the respondent is in custody;
22 (3) the manner in which the respondent was
23 advised of the respondent's rights;
24 (4) the length of questioning and
25 circumstances under which the respondent was questioned;

1 (5) the condition of the quarters where the
2 respondent was being kept at the time of being questioned;

3 (6) the time of day and the treatment of the
4 respondent at the time of being questioned;

5 (7) the mental and physical condition of the
6 respondent at the time of being questioned; and

7 (8) whether the respondent had the counsel
8 of an attorney, friends or relatives at the time of being
9 questioned.

10 F. Notwithstanding any other provision to the
11 contrary, no confessions, statements or admissions may be
12 introduced against a child under the age of thirteen years on
13 the allegations of the petition. There is a rebuttable
14 presumption that any confessions, statements or admissions
15 made by a child thirteen or fourteen years old to a person in
16 a position of authority are inadmissible.

17 G. An extrajudicial admission or confession made
18 by the child out of court is insufficient to support a
19 finding that the child committed the delinquent acts alleged
20 in the petition unless it is corroborated by other evidence.

21 H. The child and the parent, guardian or custodian
22 of the child shall be advised by the court or its
23 representative that the child shall be represented by counsel
24 at all stages of the proceedings on a delinquency petition,
25 including all post-dispositional court proceedings. If

1 counsel is not retained for the child or if it does not
2 appear that counsel will be retained, counsel shall be
3 appointed for the child.

4 I. A child under the age of thirteen alleged or
5 adjudicated to be a delinquent child shall not be
6 fingerprinted or photographed for identification purposes
7 without obtaining a court order.

8 J. The court, at any stage of the proceeding on a
9 petition under the Children's Code, may appoint a guardian ad
10 litem for a child who is a party if the child has no parent,
11 guardian or custodian appearing on behalf of the child or if
12 the parent's, guardian's or custodian's interests conflict
13 with those of the child. A party to the proceeding or an
14 employee or representative of a party shall not be appointed
15 as guardian ad litem.

16 K. The court shall appoint a guardian for a child
17 if the court determines that the child does not have a parent
18 or a legally appointed guardian in a position to exercise
19 effective guardianship. No officer or employee of an agency
20 that is vested with the legal custody of the child shall be
21 appointed guardian of the child except when parental rights
22 have been terminated and the agency is authorized to place
23 the child for adoption.

24 L. A person afforded rights under the Delinquency
25 Act shall be advised of those rights at that person's first

1 appearance before the court on a petition under that act.

2 M. A serious youthful offender who is detained
3 prior to trial in an adult facility has a right to bail as
4 provided under SCRA 1986, Rule 5-401. A child held in a
5 juvenile facility designated as a place of detention prior to
6 adjudication does not have a right to bail but may be
7 released pursuant to the provisions of the Delinquency Act.

8 N. The provisions of the Delinquency Act shall not
9 be interpreted to limit the right of a child to petition a
10 court for a writ of habeas corpus."

11 Section 18. Section 32A-2-16 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 45) is amended to read:

13 "32A-2-16. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
14 DISPOSITIONAL MATTERS--PENALTY.--

15 A. Hearings on petitions shall be conducted by the
16 court separate from other proceedings. A jury trial on the
17 issues of alleged delinquent acts may be demanded by the
18 child, parent, guardian, custodian or counsel in proceedings
19 on petitions alleging delinquency when the offense alleged
20 would be triable by jury if committed by an adult. If a jury
21 is demanded and the child is entitled to a jury trial, the
22 jury's function is limited to that of trier of the factual
23 issue of whether the child committed the alleged delinquent
24 acts. If no jury is demanded, the hearing shall be by the
25 court without a jury. Jury trials shall be conducted in

1 accordance with rules promulgated under the provisions of
2 Subsection B of Section 32A-1-5 NMSA 1978. A delinquent
3 child facing a juvenile disposition shall be entitled to a
4 six-member jury. If the children's court attorney has filed
5 a motion to invoke an adult sentence, the child is entitled
6 to a twelve-member jury. A unanimous verdict is required for
7 all jury trials. The proceedings shall be recorded by
8 stenographic notes or by electronic, mechanical or other
9 appropriate means.

10 B. All hearings to declare a person in contempt of
11 court and all hearings on petitions pursuant to the
12 provisions of the Delinquency Act shall be open to the
13 general public, except where the court in its discretion,
14 after a finding of exceptional circumstances, deems it
15 appropriate to conduct a closed delinquency hearing. Only
16 the parties, their counsel, witnesses and other persons
17 approved by the court may be present at a closed hearing.
18 Those other persons the court finds to have a proper interest
19 in the case or in the work of the court may be admitted by
20 the court to closed hearings on the condition that they
21 refrain from divulging any information concerning the
22 exceptional circumstances that resulted in the need for a
23 closed hearing. Accredited representatives of the news media
24 shall be allowed to be present at closed hearings subject to
25 the conditions that they refrain from divulging information

1 concerning the exceptional circumstances that resulted in the
2 need for a closed hearing and subject to such enabling
3 regulations as the court finds necessary for the maintenance
4 of order and decorum and for the furtherance of the purposes
5 of the Delinquency Act.

6 C. Those persons or parties granted admission to a
7 closed hearing who intentionally divulge information in
8 violation of Subsection B of this section are guilty of a
9 petty misdemeanor.

10 D. The court shall determine if the allegations of
11 the petition are admitted or denied. If the allegations are
12 denied, the court shall proceed to hear evidence on the
13 petition. The court after hearing all of the evidence
14 bearing on the allegations of delinquency shall make and
15 record its findings on whether the delinquent acts subscribed
16 to the child were committed by the child. If the court finds
17 that the allegations of delinquency have not been
18 established, it shall dismiss the petition and order the
19 child released from any detention or legal custody imposed in
20 connection with the proceedings.

21 E. The court shall make a finding of delinquency
22 based on a valid admission of the allegations of the petition
23 or on the basis of proof beyond a reasonable doubt.

24 F. If the court finds on the basis of a valid
25 admission of the allegations of the petition or on the basis

1 of proof beyond a reasonable doubt that the child is a
2 delinquent, the court may proceed immediately or at a
3 postponed hearing to make disposition of the case.

4 G. In that part of the hearings held under the
5 Delinquency Act on dispositional issues, all relevant and
6 material evidence helpful in determining the questions
7 presented, including oral and written reports, may be
8 received by the court and may be relied upon to the extent of
9 its probative value even though not competent had it been
10 offered during the part of the hearings on adjudicatory
11 issues.

12 H. On the court's motion or that of a party, the
13 court may continue the hearing on the petition for a
14 reasonable time to receive reports and other evidence in
15 connection with disposition. The court may continue the
16 hearing pending the receipt of the predisposition study and
17 report if that document has not been prepared and received.
18 During any continuances under this subsection, the court
19 shall make an appropriate order for detention or legal
20 custody."

21 Section 19. Section 32A-2-17 NMSA 1978 (being Laws
22 1993, Chapter 77, Section 46, as amended) is amended to read:

23 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
24 EXAMINATIONS.--

25 A. After a petition has been filed and either a

1 finding with respect to the allegations of the petition has
2 been made or a notice of intent to admit the allegations of
3 the petition has been filed, the court may direct that a
4 predisposition study and report to the court be made in
5 writing by the department or an appropriate agency designated
6 by the court concerning the child, the family of the child,
7 the environment of the child and any other matters relevant
8 to the need for treatment or to appropriate disposition of
9 the case. The following predisposition reports shall be
10 provided to the parties and the court five days before actual
11 disposition or sentencing:

12 (1) the adult probation and parole division
13 of the corrections department shall prepare a predisposition
14 report for a serious youthful offender;

15 (2) the department shall prepare a
16 predisposition report for a serious youthful offender who is
17 convicted of an offense other than first degree murder;

18 (3) the department shall prepare a
19 predisposition report for a youthful offender concerning the
20 youthful offender's amenability to treatment and if:

21 (a) the court determines that a
22 juvenile disposition is appropriate, the department shall
23 prepare a subsequent predisposition report; or

24 (b) the court makes the findings
25 necessary to impose an adult sentence pursuant to Section

1 32A-2-20 NMSA 1978, the adult probation and parole division
2 of the corrections department shall prepare a subsequent
3 predisposition report; and

4 (4) the department shall prepare a
5 predisposition report for a delinquent offender, upon the
6 court's request.

7 B. Where there are indications that the child may
8 have a mental disorder or developmental disability, the
9 court, on motion by the children's court attorney or that of
10 counsel for the child, may order the child to be examined at
11 a suitable place by a physician or psychiatrist, a licensed
12 psychologist, a licensed professional clinical counselor or a
13 licensed independent social worker prior to a hearing on the
14 merits of the petition. An examination made prior to the
15 hearing or as a part of the predisposition study and report
16 shall be conducted on an outpatient basis, unless the court
17 finds that placement in a hospital or other appropriate
18 facility is necessary.

19 C. The court, after a hearing, may order
20 examination by a physician or psychiatrist, a licensed
21 psychologist or a licensed professional clinical counselor or
22 a licensed independent social worker of a parent or custodian
23 whose ability to care for or supervise a child is an issue
24 before the court.

25 D. The court may order that a child adjudicated as SB 248
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1 a delinquent child be administered a predispositional
2 evaluation by a professional designated by the department for
3 purposes of diagnosis, with direction that the court be given
4 a report indicating what disposition appears most suitable
5 when the interests of the child and the public are
6 considered. The evaluation shall be completed within fifteen
7 days of the court's order and the preference shall be for
8 performing the evaluation in the child's community.

9 E. If a child is detained for purposes of
10 performing a predispositional evaluation, it shall be
11 completed within fifteen days and in no event shall a child
12 be detained for more than fifteen days within a
13 three-hundred-sixty-five-day period for a predispositional
14 evaluation, unless for good cause shown."

15 Section 20. Section 32A-2-19 NMSA 1978 (being Laws
16 1993, Chapter 77, Section 48, as amended) is amended to read:

17 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
18 OFFENDER.--

19 A. At the conclusion of the dispositional hearing,
20 the court may make and include in the dispositional judgment
21 its findings on the following:

22 (1) the interaction and interrelationship of
23 the child with the child's parents and siblings and any other
24 person who may significantly affect the child's best
25 interests;

1 (2) the child's adjustment to the child's
2 home, school and community;

3 (3) the mental and physical health of all
4 individuals involved, including consideration of such factors
5 as the child's brain development, maturity, trauma history
6 and disability;

7 (4) the wishes of the child as to the
8 child's custodian;

9 (5) the wishes of the child's parents as to
10 the child's custody;

11 (6) whether there exists a relative of the
12 child or other individual who, after study by the department,
13 is found to be qualified to receive and care for the child;

14 (7) the availability of services recommended
15 in the predisposition report; and

16 (8) the ability of the parents to care for
17 the child in the home.

18 B. If a child is found to be delinquent, the court
19 may impose a fine not to exceed the fine that could be
20 imposed if the child were an adult and may enter its judgment
21 making any of the following dispositions for the supervision,
22 care and rehabilitation of the child:

23 (1) transfer legal custody to the
24 department, an agency responsible for the care and
25 rehabilitation of delinquent children, which shall receive

1 the child at a facility designated by the secretary of the
2 department as a juvenile reception facility. The department
3 shall thereafter determine the appropriate placement,
4 supervision and rehabilitation program for the child. The
5 judge may include recommendations for placement of the child.
6 Commitments are subject to limitations and modifications set
7 forth in Section 32A-2-23 NMSA 1978. The types of
8 commitments include:

9 (a) a short-term commitment of one year
10 in a facility for the care and rehabilitation of adjudicated
11 delinquent children. No more than nine months shall be
12 served at the facility and no less than ninety days shall be
13 served on supervised release, unless: 1) a petition to
14 extend the commitment has been filed prior to the
15 commencement of supervised release; 2) the commitment has
16 been extended pursuant to Section 32A-2-23 NMSA 1978; or 3)
17 supervised release is revoked pursuant to Section 32A-2-25
18 NMSA 1978;

19 (b) a long-term commitment for no more
20 than two years in a facility for the care and rehabilitation
21 of adjudicated delinquent children. No more than twenty-one
22 months shall be served at the facility and no less than
23 ninety days shall be served on supervised release, unless:
24 1) supervised release is revoked pursuant to Section 32A-2-25
25 NMSA 1978; or 2) the commitment is extended pursuant to

1 Section 32A-2-23 NMSA 1978;

2 (c) if the child is a delinquent
3 offender who committed one of the criminal offenses set forth
4 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to
5 age twenty-one, unless sooner discharged; or

6 (d) if the child is a youthful
7 offender, a commitment to age twenty-one, unless sooner
8 discharged;

9 (2) place the child on probation under those
10 conditions and limitations as the court may prescribe;

11 (3) place the child in a local detention
12 facility that has been certified in accordance with the
13 provisions of Section 32A-2-4 NMSA 1978 for a period not to
14 exceed fifteen days within a three hundred sixty-five day
15 time period; or if a child is found to be delinquent solely
16 on the basis of Paragraph (3) of Subsection A of Section
17 32A-2-3 NMSA 1978, the court shall only enter a judgment
18 placing the child on probation or ordering restitution or
19 imposing a fine not to exceed the fine that could be imposed
20 if the child were an adult or any combination of these
21 dispositions; or

22 (4) if a child is found to be delinquent
23 solely on the basis of Paragraph (2), (3) or (4) of
24 Subsection A of Section 32A-2-3 NMSA 1978, the court may make
25 any disposition provided by this section and may enter its

1 judgment placing the child on probation and, as a condition
2 of probation, transfer custody of the child to the department
3 for a period not to exceed six months without further order
4 of the court; provided that this transfer shall not be made
5 unless the court first determines that the department is able
6 to provide or contract for adequate and appropriate treatment
7 for the child and that the treatment is likely to be
8 beneficial.

9 C. When the child is an Indian child, the Indian
10 child's cultural needs shall be considered in the
11 dispositional judgment and reasonable access to cultural
12 practices and traditional treatment shall be provided.

13 D. A child found to be delinquent shall not be
14 committed or transferred to a penal institution or other
15 facility used for the execution of sentences of persons
16 convicted of crimes.

17 E. Whenever the court vests legal custody in an
18 agency, institution or department, it shall transmit with the
19 dispositional judgment copies of the clinical reports,
20 predisposition study and report and other information it has
21 pertinent to the care and treatment of the child.

22 F. Prior to any child being placed in the custody
23 of the department, the department shall be provided with
24 reasonable oral or written notification and an opportunity to
25 be heard.

1 G. In addition to any other disposition pursuant
2 to Subsection B of this section, the court may make an abuse
3 or neglect report for investigation and proceedings as
4 provided for in the Abuse and Neglect Act. The report may be
5 made to a local law enforcement agency, the department or a
6 tribal law enforcement or social service agency for an Indian
7 child residing in Indian country.

8 H. In addition to any other disposition pursuant
9 to this section or any other penalty provided by law, if a
10 child fifteen years of age or older is adjudicated delinquent
11 on the basis of Paragraph (2), (3) or (4) of Subsection A of
12 Section 32A-2-3 NMSA 1978, the child's driving privileges may
13 be denied or the child's driver's license may be revoked for
14 a period of ninety days. For a second or a subsequent
15 adjudication, the child's driving privileges may be denied or
16 the child's driver's license revoked for a period of one
17 year. Within twenty-four hours of the dispositional
18 judgment, the court may send to the motor vehicle division of
19 the taxation and revenue department the order adjudicating
20 delinquency. Upon receipt of an order from the court
21 adjudicating delinquency, the director of the motor vehicle
22 division of the taxation and revenue department may revoke or
23 deny the delinquent's driver's license or driving privileges.
24 Nothing in this section may prohibit the delinquent from
25 applying for a limited driving privilege pursuant to Section

1 66-5-35 NMSA 1978 or an ignition interlock license pursuant
2 to the Ignition Interlock Licensing Act, and nothing in this
3 section precludes the delinquent's participation in an
4 appropriate educational, counseling or rehabilitation
5 program.

6 I. In addition to any other disposition pursuant
7 to this section or any other penalty provided by law, when a
8 child is adjudicated delinquent on the basis of Paragraph (6)
9 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall
10 perform the mandatory community service set forth in Section
11 30-15-1.1 NMSA 1978. When a child fails to completely
12 perform the mandatory community service, the name and address
13 of the child's parent or legal guardian shall be published in
14 a newspaper of general circulation, accompanied by a notice
15 that the parent or legal guardian is the parent or legal
16 guardian of a child adjudicated delinquent for committing
17 graffiti."

18 Section 21. Section 32A-2-20 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 49, as amended) is amended to read:

20 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

21 A. The court has the discretion to invoke either
22 an adult sentence or juvenile sanctions on a youthful
23 offender. The children's court attorney shall file a notice
24 of intent to invoke an adult sentence within ten working days
25 of the filing of the petition, provided that the court may

1 extend the time for filing of the notice of intent to invoke
2 an adult sentence, for good cause shown, prior to the
3 adjudicatory hearing. A preliminary hearing by the court or
4 a hearing before a grand jury shall be held, within ten days
5 after the filing of the intent to invoke an adult sentence,
6 to determine whether probable cause exists to support the
7 allegations contained in the petition.

8 B. If the children's court attorney has filed a
9 notice of intent to invoke an adult sentence and the child is
10 adjudicated as a youthful offender, the court shall make the
11 following findings in order to invoke an adult sentence:

12 (1) the child is not amenable to treatment
13 or rehabilitation as a child in available facilities; and

14 (2) the child is not eligible for commitment
15 to an institution for children with developmental
16 disabilities or mental disorders.

17 C. In making the findings set forth in Subsection
18 B of this section, the judge shall consider the following
19 factors:

20 (1) the seriousness of the alleged offense;

21 (2) whether the alleged offense was
22 committed in an aggressive, violent, premeditated or willful
23 manner;

24 (3) whether a firearm was used to commit the
25 alleged offense;

1 (4) whether the alleged offense was against
2 persons or against property, greater weight being given to
3 offenses against persons, especially if personal injury
4 resulted;

5 (5) the maturity of the child as determined
6 by consideration of the child's home, environmental
7 situation, social and emotional health, pattern of living,
8 brain development, trauma history and disability;

9 (6) the record and previous history of the
10 child;

11 (7) the prospects for adequate protection of
12 the public and the likelihood of reasonable rehabilitation of
13 the child by the use of procedures, services and facilities
14 currently available; and

15 (8) any other relevant factor, provided that
16 factor is stated on the record.

17 D. If a child has previously been sentenced as an
18 adult pursuant to the provisions of this section, there shall
19 be a rebuttable presumption that the child is not amenable to
20 treatment or rehabilitation as a child in available
21 facilities.

22 E. If the court invokes an adult sentence, the
23 court may sentence the child to less than, but shall not
24 exceed, the mandatory adult sentence. A youthful offender
25 given an adult sentence shall be treated as an adult offender

1 and shall be transferred to the legal custody of an agency
2 responsible for incarceration of persons sentenced to adult
3 sentences. This transfer terminates the jurisdiction of the
4 court over the child with respect to the delinquent acts
5 alleged in the petition.

6 F. If a juvenile disposition is appropriate, the
7 court shall follow the provisions set forth in Section
8 32A-2-19 NMSA 1978. A youthful offender may be subject to
9 extended commitment in the care of the department until the
10 age of twenty-one, pursuant to the provisions of Section
11 32A-2-23 NMSA 1978.

12 G. A child fourteen years of age or older, charged
13 with first degree murder, but not convicted of first degree
14 murder and found to have committed a youthful offender
15 offense as set forth in Subsection I of Section 32A-2-3 NMSA
16 1978, is subject to the dispositions set forth in this
17 section.

18 H. A child fourteen years of age or older charged
19 with first degree murder, but found to have committed a
20 delinquent act that is neither first degree murder nor a
21 youthful offender offense as set forth in Subsection I of
22 Section 32A-2-3 NMSA 1978, shall be adjudicated as a
23 delinquent subject to the dispositions set forth in Section
24 32A-2-19 NMSA 1978."

25 Section 22. Section 32A-2-23 NMSA 1978 (being Laws

1 1993, Chapter 77, Section 52, as amended) is amended to read:

2 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
3 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

4 A. A judgment transferring legal custody of an
5 adjudicated delinquent child to an agency responsible for the
6 care and rehabilitation of delinquent children divests the
7 court of jurisdiction at the time of transfer of custody,
8 unless the transfer of legal custody is for a commitment not
9 exceeding fifteen days pursuant to the provisions of
10 Section 32A-2-19 NMSA 1978, in which case the court retains
11 jurisdiction.

12 B. A judgment of probation or protective
13 supervision shall remain in force for an indeterminate period
14 not to exceed the term of commitment from the date entered.

15 C. A child shall be released by an agency and
16 probation or supervision shall be terminated by juvenile
17 probation and parole services or the agency providing
18 supervision when it appears that the purpose of the order has
19 been achieved before the expiration of the period of the
20 judgment. A release or termination and the reasons therefor
21 shall be reported promptly to the court in writing by the
22 releasing authority.

23 D. Prior to the expiration of a short-term
24 commitment of one year, as provided for in Section 32A-2-19
25 NMSA 1978, the court may extend the judgment for up to one

1 six-month period if the court finds that the extension is
2 necessary to safeguard the welfare of the child or the public
3 safety. If a short-term commitment is extended, the
4 mandatory ninety-day supervised release, as required by
5 Section 32A-2-19 NMSA 1978, shall be included in the
6 extension. Notice and hearing are required for any extension
7 of a juvenile's commitment.

8 E. Prior to the expiration of a long-term
9 commitment, as provided for in Section 32A-2-19 NMSA 1978,
10 the court may extend the judgment for additional periods of
11 one year until the child reaches the age of twenty-one if the
12 court finds that the extension is necessary to safeguard the
13 welfare of the child or the public safety. If a long-term
14 commitment is extended, the mandatory ninety-day supervised
15 release, as required by Section 32A-2-19 NMSA 1978, shall be
16 included in the extension. Notice and hearing are required
17 for any extension of a juvenile's commitment.

18 F. Prior to the expiration of a judgment of
19 probation, the court may extend the judgment for an
20 additional period of one year until the child reaches the age
21 of twenty-one if the court finds that the extension is
22 necessary to protect the community or to safeguard the
23 welfare of the child.

24 G. The court may dismiss a motion if it finds
25 after preliminary investigation that the motion is without

1 substance. If the court is of the opinion that the matter
2 should be reviewed, it may, upon notice to all necessary
3 parties, proceed to a hearing in the manner provided for
4 hearings on petitions alleging delinquency. The court may
5 terminate a judgment if it finds that the child is no longer
6 in need of care, supervision or rehabilitation or it may
7 enter a judgment extending or modifying the original judgment
8 if it finds that action necessary to safeguard the child or
9 the public interest.

10 H. A child may make a motion to modify a
11 children's court or adult disposition within thirty days of
12 the judge's decision. If the court is of the opinion that
13 the matter should be reviewed, it may, upon notice to all
14 necessary parties, proceed to a hearing in the manner
15 provided for hearings on petitions alleging delinquency.

16 I. The department may seek a bench warrant from
17 the court when the child absconds from supervised release."

18 Section 23. A new Section 32A-2-23.1 NMSA 1978 is
19 enacted to read:

20 "32A-2-23.1. RELEASE ELIGIBILITY.--

21 A. The department shall have exclusive
22 jurisdiction and authority to release an adjudicated
23 delinquent child during the term of the child's commitment,
24 consistent with the provisions of the Victims of Crime Act.
25 In determining whether to release a child, the department

1 shall give due consideration to public safety, the extent to
2 which the child has been rehabilitated, the adequacy and
3 suitability of the proposed release plan and the needs and
4 best interests of the child, including the child's need for
5 behavioral health or medical services that are not available
6 in facilities for adjudicated delinquent children.

7 B. The decision to grant or deny release shall be
8 made by the secretary of children, youth and families or the
9 secretary's designee. The department may impose such
10 conditions of release as it deems appropriate.

11 C. A child is eligible for release any time after
12 the entry of a judgment transferring legal custody to the
13 department, and the department may consider a reasonable
14 request for release from the child at any time sixty days
15 after the child has been committed.

16 D. In the event release for a child is denied by
17 the department after release is recommended for the child by
18 the juvenile public safety advisory board, or release is
19 approved by the department after the board has recommended
20 that the child not be released, within ten days, the board
21 may request a review of the decision by the court of the
22 judicial district from which legal custody of the child was
23 transferred, and the department shall transmit the child's
24 records to the court. The court shall have jurisdiction to
25 review the matter without conducting a formal hearing and to

1 issue an order that either denies or grants release to the
2 child. If the board requests review under this section, the
3 child shall not be released until such time as the court has
4 issued a decision. If the board does not petition the
5 district court for review of the department's decision to
6 grant or deny release within ten days of the department's
7 decision, the department's decision shall be final, and the
8 department shall release the child or continue the commitment
9 in accordance with the terms of its decision.

10 E. The secretary of children, youth and families
11 or the secretary's designee may review the case of any child
12 upon the child's or the juvenile public safety advisory
13 board's reasonable request at any time after release is
14 denied."

15 Section 24. A new Section 32A-2-23.2 NMSA 1978 is
16 enacted to read:

17 "32A-2-23.2. RELEASE PROCEEDINGS.--

18 A. When the department determines that a child is
19 ready to be released, it shall provide a list of children to
20 the juvenile public safety advisory board at least
21 thirty-five days prior to the next regularly scheduled
22 release consideration meeting. The department shall ensure
23 that all other notifications of a pending release proceeding
24 are accomplished consistent with the provisions of the
25 Victims of Crime Act.

1 B. Release consideration meetings shall be held at
2 least quarterly, are not open to the public and shall include
3 the child, a quorum of the board and a representative of the
4 department. The child's attorney shall receive notice and may
5 be present at the release meeting."

6 Section 25. Section 32A-2-24 NMSA 1978 (being Laws
7 1993, Chapter 77, Section 53) is amended to read:

8 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

9 A. A child on probation incident to an
10 adjudication as a delinquent child who violates a term of the
11 probation may be proceeded against in a probation revocation
12 proceeding. A proceeding to revoke probation shall be begun
13 by filing in the original proceeding a petition styled as a
14 "petition to revoke probation". Petitions to revoke
15 probation shall be screened, reviewed and prepared in the
16 same manner and shall contain the same information as
17 petitions alleging delinquency. Procedures of the
18 Delinquency Act regarding taking into custody and detention
19 shall apply. The petition shall state the terms of probation
20 alleged to have been violated and the factual basis for these
21 allegations.

22 B. The standard of proof in probation revocation
23 proceedings shall be evidence beyond a reasonable doubt and
24 the hearings shall be before the court without a jury. In
25 all other respects, proceedings to revoke probation shall be

1 governed by the procedures, rights and duties applicable to
2 proceedings on a delinquency petition. If a child is found
3 to have violated a term of the child's probation, the court
4 may extend the period of probation or make any other judgment
5 or disposition that would have been appropriate in the
6 original disposition of the case."

7 Section 26. Section 32A-2-26 NMSA 1978 (being Laws
8 1993, Chapter 77, Section 55, as amended) is amended to read:

9 "32A-2-26. SEALING OF RECORDS.--

10 A. On motion by or on behalf of a person who has
11 been the subject of a delinquency petition or on the court's
12 own motion, the court shall vacate its findings, orders and
13 judgments on the petition and order the legal and social
14 files and records of the court, probation services, and any
15 other agency in the case sealed. If requested in the motion,
16 the court shall also order law enforcement files and records
17 sealed. An order sealing records and files shall be entered
18 if the court finds that:

19 (1) two years have elapsed since the final
20 release of the person from legal custody and supervision or
21 two years have elapsed since the entry of any other judgment
22 not involving legal custody or supervision;

23 (2) the person has not, within the two years
24 immediately prior to filing the motion, been convicted of a
25 felony or of a misdemeanor involving moral turpitude or been

1 found delinquent by a court and no proceeding is pending
2 seeking such a conviction or finding; and

3 (3) the person is eighteen years of age or
4 older or the court finds that good cause exists to seal the
5 records prior to the child's eighteenth birthday.

6 B. Reasonable notice of the motion shall be given
7 to:

8 (1) the children's court attorney;

9 (2) the authority granting the release;

10 (3) the law enforcement officer, department
11 and central depository having custody of the law enforcement
12 files and records; and

13 (4) any other agency having custody of
14 records or files subject to the sealing order.

15 C. Upon the entry of the sealing order, the
16 proceedings in the case shall be treated as if they never
17 occurred and all index references shall be deleted. The
18 court, law enforcement officers and departments and agencies
19 shall reply, and the person may reply, to an inquiry that no
20 record exists with respect to the person. Copies of the
21 sealing order shall be sent to each agency or official named
22 in the order.

23 D. Inspection of the files and records or the
24 release of information in the records included in the sealing
25 order may thereafter be permitted by the court only:

1 (1) upon motion by the person who is the
2 subject of the records and only to those persons named in the
3 motion; and

4 (2) in its discretion, in an individual
5 case, to any clinic, hospital or agency that has the person
6 under care or treatment or to other persons engaged in fact
7 finding or research.

8 E. Any finding of delinquency or need of services
9 or conviction of a crime subsequent to the sealing order may
10 at the court's discretion be used by the court as a basis to
11 set aside the sealing order.

12 F. A child who has been the subject of a petition
13 filed pursuant to the provisions of the Delinquency Act shall
14 be notified in writing by the department when the child
15 reaches the age of eighteen or at the expiration of legal
16 custody and supervision, whichever occurs later, that the
17 department's records have been sealed and that the court, the
18 children's court attorney, the child's attorney and the
19 referring law enforcement agency have been notified that the
20 child's records are subject sealing.

21 G. The department shall seal the child's files and
22 records when the child reaches the age of eighteen or at the
23 expiration of the disposition, whichever occurs later. The
24 department shall notify the children's court attorney, the
25 child's attorney and the referring law enforcement agency

1 that the child's records are subject to sealing.

2 H. A child who is determined by the court not to
3 be a delinquent offender shall have the child's files and
4 records in the instant proceeding automatically sealed by the
5 court upon motion by the children's court attorney at the
6 conclusion of the proceedings.

7 I. After sealing, the department may store and use
8 a person's records for research and reporting purposes,
9 subject to the confidentiality provisions of Section 32A-2-32
10 NMSA 1978 and other applicable federal and state laws."

11 Section 27. Section 32A-2-29 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 58, as amended) is amended to read:

13 "32A-2-29. MOTOR VEHICLE CODE VIOLATIONS.--

14 A. The municipal, magistrate or metropolitan court
15 shall have original exclusive jurisdiction over all Motor
16 Vehicle Code or municipal traffic code violations when the
17 person alleged to have committed the violation is a child,
18 with the exception of those violations contained in Paragraph
19 (1) of Subsection A of Section 32A-2-3 NMSA 1978 and all
20 traffic offenses alleged to have been committed by the child
21 arising out of the same occurrence pursuant to Subsection B
22 of this section.

23 B. If the court acquires jurisdiction over a child
24 pursuant to Section 32A-2-3 NMSA 1978, it shall have
25 exclusive jurisdiction over all traffic offenses alleged to

1 have been committed by the child arising out of the same
2 occurrence.

3 C. Disposition as to any delinquent offenses shall
4 be pursuant to the Delinquency Act.

5 D. Disposition as to a Motor Vehicle Code or
6 municipal traffic code violation in which jurisdiction is
7 acquired as set forth in Subsection B of this section shall
8 be pursuant to the respective Motor Vehicle Code or municipal
9 traffic code in the children's court's discretion and to the
10 extent that it neither conflicts with nor is inconsistent
11 with the dispositional provisions of the Children's Code.

12 E. All traffic offenses that the child is found to
13 have committed by the municipal, magistrate or metropolitan
14 court or for which the child is adjudicated delinquent by the
15 children's court shall be subject to the reporting
16 requirements and the suspension and revocation provisions of
17 the Motor Vehicle Code and shall not be subject to the
18 confidentiality provisions of the Delinquency Act.

19 F. Only the children's court may incarcerate a
20 child who has been found guilty of any Motor Vehicle Code or
21 municipal traffic code violations."

22 Section 28. Section 32A-2-32 NMSA 1978 (being Laws
23 1993, Chapter 77, Section 61, as amended) is amended to read:

24 "32A-2-32. CONFIDENTIALITY--RECORDS.--

25 A. All records pertaining to the child, including

1 all related social records, behavioral health screenings,
2 diagnostic evaluations, psychiatric reports, medical reports,
3 social studies reports, records from local detention
4 facilities, client-identifying records from facilities for
5 the care and rehabilitation of delinquent children,
6 pre-parole or supervised release reports and supervision
7 histories obtained by the juvenile probation office, parole
8 officers and the juvenile public safety advisory board or in
9 possession of the department, are confidential and shall not
10 be disclosed directly or indirectly to the public.

11 B. The disclosure of all mental health and
12 developmental disability records shall be made pursuant to
13 the Children's Mental Health and Developmental Disabilities
14 Act.

15 C. The records described in Subsection A of this
16 section, other than mental health and developmental
17 disability records, shall be disclosed only to any of the
18 following, provided that the agency, person or institution
19 receiving information shall not re-release the information
20 without proper consent or as otherwise provided by law:

21 (1) court personnel;

22 (2) the child's court appointed special
23 advocates;

24 (3) the child's attorney or guardian ad
25 litem representing the child in any matter;

- 1 (4) department personnel;
- 2 (5) corrections department personnel;
- 3 (6) law enforcement officials when the
4 request is related to the investigation of a crime;
- 5 (7) district attorneys or children's court
6 attorneys;
- 7 (8) a state government social services
8 agency in any state;
- 9 (9) those persons or entities of a child's
10 Indian tribe specifically authorized to inspect such records
11 pursuant to the federal Indian Child Welfare Act of 1978 or
12 any regulations promulgated under that act;
- 13 (10) tribal juvenile justice system and
14 social service representatives;
- 15 (11) a foster parent, if the records are
16 those of a child currently placed with that foster parent or
17 of a child being considered for placement with that foster
18 parent, when the disclosure of the information is necessary
19 for the child's treatment or care and shall include only that
20 information necessary to provide for treatment and care of
21 the child;
- 22 (12) school personnel involved with the
23 child if the records concern the child's educational needs,
24 but shall only include that information necessary to provide
25 for the child's educational planning and needs;

1 (13) a health care or mental health
2 professional involved in the evaluation or treatment of the
3 child, the child's parents, guardians or custodian or other
4 family members;

5 (14) representatives of the protection and
6 advocacy system;

7 (15) the child's parent, guardian or legal
8 custodian when the disclosure of the information is necessary
9 for the child's treatment or care and shall include only that
10 information necessary to provide for the treatment or care of
11 the child;

12 (16) any other person or entity, by order of
13 the court, having a legitimate interest in the case or the
14 work of the court who agrees not to otherwise release the
15 records; and

16 (17) the child, if fourteen years of age or
17 older.

18 D. If disclosure of otherwise confidential records
19 is made to the child or any other person or entity pursuant
20 to a valid release of information signed by the child, all
21 victim or witness identifying information shall be redacted
22 or otherwise deleted.

23 E. Whoever intentionally and unlawfully releases
24 any information or records closed to the public pursuant to
25 this section or releases or makes other unlawful use of

1 records in violation of this section is guilty of a petty
2 misdemeanor.

3 F. The department shall promulgate rules for
4 implementing disclosure of records pursuant to this section
5 and in compliance with state and federal law and the
6 Children's Court Rules."

7 Section 29. Section 32A-3B-8 NMSA 1978 (being Laws
8 1993, Chapter 77, Section 80, as amended) is amended to read:

9 "32A-3B-8. BASIC RIGHTS.--

10 A. A child subject to the provisions of the
11 Children's Code is entitled to the same basic rights as an
12 adult, except as otherwise provided in the Children's Code.

13 B. In proceedings on a petition alleging a family
14 in need of court-ordered services, the court may appoint
15 counsel if appointment of counsel would serve the interests
16 of justice.

17 C. In proceedings on a petition alleging a family
18 in need of court-ordered services, the court shall appoint a
19 guardian ad litem for a child under the age of fourteen and
20 the court shall appoint an attorney for a child fourteen
21 years of age or older at the inception of the proceedings.

22 An officer or employee of an agency vested with legal custody
23 of the child shall not be appointed as a guardian ad litem or
24 attorney for the child. Only an attorney with appreciable
25 training or experience shall be appointed as guardian ad

1 litem of or attorney for the child.

2 D. When a child reaches fourteen years of age, the
3 child's guardian ad litem shall continue as the child's
4 attorney; provided that the court shall appoint a different
5 attorney for the child if:

6 (1) the child requests a different attorney;

7 (2) the guardian ad litem requests to be
8 removed; or

9 (3) the court determines that the
10 appointment of a different attorney is appropriate.

11 E. Whenever it is reasonable and appropriate, the
12 court shall appoint a guardian ad litem or attorney who is
13 knowledgeable about the child's cultural background.

14 F. A person afforded rights pursuant to the
15 provisions of the Children's Code shall be advised of those
16 rights at that person's first appearance before the court on
17 a petition filed under the Children's Code.

18 G. A child of an alleged or adjudicated family in
19 need of court-ordered services shall not be fingerprinted or
20 photographed for identification purposes, unless pursuant to
21 a court order."

22 Section 30. Section 32A-3B-12 NMSA 1978 (being Laws
23 1993, Chapter 77, Section 84) is amended to read:

24 "32A-3B-12. ADJUDICATORY HEARING--TIME LIMITATIONS.--

25 A. An adjudicatory hearing for an alleged family

1 in need of court-ordered services shall be commenced within
2 sixty days after the date of service on the respondent.

3 B. The children's court attorney shall represent
4 the state at the adjudicatory hearing.

5 C. If the adjudicatory hearing is not commenced
6 within the time limits specified in this section or within
7 the period of any extension of those time limits, the
8 petition shall be dismissed with prejudice."

9 Section 31. Section 32A-3B-16 NMSA 1978 (being Laws
10 1993, Chapter 77, Section 88) is amended to read:

11 "32A-3B-16. DISPOSITIONAL JUDGMENT.--

12 A. At the conclusion of the dispositional hearing,
13 the court shall set forth its findings on the following
14 issues in the dispositional judgment:

15 (1) the ability of the parent and child to
16 share a residence;

17 (2) the interaction and interrelationship of
18 the child with the child's parent, siblings and any other
19 person who may significantly affect the child's best
20 interest;

21 (3) the child's adjustment to home, school
22 and community;

23 (4) whether the child's educational needs
24 are being met;

25 (5) the mental and physical health of all

1 individuals involved;

2 (6) the wishes of the child as to the
3 child's custodian;

4 (7) the wishes of the child's parent,
5 guardian or custodian as to the child's custody;

6 (8) whether there exists a relative of the
7 child or any other individual who, after study by the
8 department, is found to be qualified to receive and care for
9 the child;

10 (9) the availability of services recommended
11 in the treatment plan;

12 (10) the department's efforts to work with
13 the parent and child in the home and a description of the
14 in-home treatment programs that the department has considered
15 and rejected;

16 (11) whether the placement preferences set
17 forth in the federal Indian Child Welfare Act of 1978 or the
18 placement preferences of the child's Indian tribe have been
19 incorporated into the plan. When placement preferences have
20 not been incorporated into the plan, an explanation shall be
21 clearly stated and supported;

22 (12) when the child is an Indian child,
23 whether the plan provides for maintaining the Indian child's
24 cultural ties; and

25 (13) when the child is an undocumented

1 immigrant child, whether the family services plan included
2 referral to nongovernmental agencies that may be able to
3 assist the child, and family when appropriate, in addressing
4 immigration status.

5 B. When there is an adjudication regarding a
6 family in need of court-ordered services, the court shall
7 enter judgment and make any of the following dispositions:

8 (1) permit the child to remain with the
9 child's parent, guardian or custodian, subject to conditions
10 and limitations the court may prescribe;

11 (2) place the child under the protective
12 supervision of the department;

13 (3) transfer legal custody of the child to:

14 (a) the department;

15 (b) an agency responsible for the care
16 of neglected or abused children; or

17 (c) the child's noncustodial parent, if
18 that is found to be in the child's best interests; or

19 (4) if the evidence indicates that the
20 child's educational needs are not being met, the local
21 education agency may be joined as a party and directed to
22 assess the child's needs within forty-five days, attempt to
23 meet the child's educational needs and document its efforts
24 to meet the child's educational needs.

25 C. Unless a child of an adjudicated family in need SB 248
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1 of court-ordered services is also found to be a delinquent
2 child, the child shall not be confined in an institution
3 established for the long-term care and rehabilitation of
4 delinquent children or in a facility for the detention of
5 alleged delinquent children.

6 D. When the child is an Indian child, the child's
7 cultural needs shall be considered during dispositional
8 judgment and, when reasonable, access to cultural practices
9 and traditional treatment shall be provided to the Indian
10 child."

11 Section 32. Section 32A-3B-18 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 90) is amended to read:

13 "32A-3B-18. DISPOSITIONAL JUDGMENTS--TIME LIMITATIONS--
14 MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDER.--

15 A. A judgment vesting legal custody of a child in
16 an agency shall remain in force for an indeterminate period
17 not exceeding two years from the date entered.

18 B. A judgment vesting legal custody of a child in
19 an individual, other than the child's parent, shall remain in
20 force for two years from the date entered unless terminated
21 sooner by court order.

22 C. A judgment vesting legal custody of a child in
23 the child's parent or a permanent guardian shall remain in
24 force for an indeterminate period from the date entered until
25 terminated by court order or until the child is emancipated

1 or reaches the age of majority.

2 D. At any time prior to expiration, a judgment
3 vesting legal custody or granting protective supervision may
4 be modified, revoked or extended on motion by a party,
5 including the child by and through the child's guardian ad
6 litem or attorney.

7 E. Prior to the expiration of a judgment
8 transferring legal custody to an agency, the court may extend
9 the judgment for additional periods of one year if it finds
10 that the extension is necessary to safeguard the welfare of
11 the child or the public interest.

12 F. When a child reaches eighteen years of age, all
13 family in need of court-ordered services orders affecting the
14 child then in force automatically terminate. The termination
15 of the orders shall not disqualify a child from eligibility
16 for transitional services."

17 Section 33. Section 32A-4-2 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 96, as amended) is amended to read:

19 "32A-4-2. DEFINITIONS.--As used in the Abuse and
20 Neglect Act:

21 A. "abandonment" includes instances when the
22 parent, without justifiable cause:

23 (1) left the child without provision for the
24 child's identification for a period of fourteen days; or

25 (2) left the child with others, including

1 the other parent or an agency, without provision for support
2 and without communication for a period of:

3 (a) three months if the child was under
4 six years of age at the commencement of the three-month
5 period; or

6 (b) six months if the child was over
7 six years of age at the commencement of the six-month period;

8 B. "abused child" means a child:

9 (1) who has suffered or who is at risk of
10 suffering serious harm because of the action or inaction of
11 the child's parent, guardian or custodian;

12 (2) who has suffered physical abuse,
13 emotional abuse or psychological abuse inflicted or caused by
14 the child's parent, guardian or custodian;

15 (3) who has suffered sexual abuse or sexual
16 exploitation inflicted by the child's parent, guardian or
17 custodian;

18 (4) whose parent, guardian or custodian has
19 knowingly, intentionally or negligently placed the child in a
20 situation that may endanger the child's life or health; or

21 (5) whose parent, guardian or custodian has
22 knowingly or intentionally tortured, cruelly confined or
23 cruelly punished the child;

24 C. "aggravated circumstances" includes those
25 circumstances in which the parent, guardian or custodian has:

1 (1) attempted, conspired to cause or caused
2 great bodily harm to the child or great bodily harm or death
3 to the child's sibling;

4 (2) attempted, conspired to cause or caused
5 great bodily harm or death to another parent, guardian or
6 custodian of the child;

7 (3) attempted, conspired to subject or has
8 subjected the child to torture, chronic abuse or sexual
9 abuse; or

10 (4) had parental rights over a sibling of
11 the child terminated involuntarily;

12 D. "great bodily harm" means an injury to a person
13 that creates a high probability of death, that causes serious
14 disfigurement or that results in permanent or protracted loss
15 or impairment of the function of a member or organ of the
16 body;

17 E. "neglected child" means a child:

18 (1) who has been abandoned by the child's
19 parent, guardian or custodian;

20 (2) who is without proper parental care and
21 control or subsistence, education, medical or other care or
22 control necessary for the child's well-being because of the
23 faults or habits of the child's parent, guardian or custodian
24 or the failure or refusal of the parent, guardian or
25 custodian, when able to do so, to provide them;

1 (3) who has been physically or sexually
2 abused, when the child's parent, guardian or custodian knew
3 or should have known of the abuse and failed to take
4 reasonable steps to protect the child from further harm;

5 (4) whose parent, guardian or custodian is
6 unable to discharge that person's responsibilities to and for
7 the child because of incarceration, hospitalization or
8 physical or mental disorder or incapacity; or

9 (5) who has been placed for care or adoption
10 in violation of the law; provided that nothing in the
11 Children's Code shall be construed to imply that a child who
12 is being provided with treatment by spiritual means alone
13 through prayer, in accordance with the tenets and practices
14 of a recognized church or religious denomination, by a duly
15 accredited practitioner thereof is for that reason alone a
16 neglected child within the meaning of the Children's Code;
17 and further provided that no child shall be denied the
18 protection afforded to all children under the Children's
19 Code;

20 F. "physical abuse" includes but is not limited to
21 any case in which the child exhibits evidence of skin
22 bruising, bleeding, malnutrition, failure to thrive, burns,
23 fracture of any bone, subdural hematoma, soft tissue swelling
24 or death and:

25 (1) there is not a justifiable explanation

1 for the condition or death;

2 (2) the explanation given for the condition
3 is at variance with the degree or nature of the condition;

4 (3) the explanation given for the death is
5 at variance with the nature of the death; or

6 (4) circumstances indicate that the
7 condition or death may not be the product of an accidental
8 occurrence;

9 G. "sexual abuse" includes but is not limited to
10 criminal sexual contact, incest or criminal sexual
11 penetration, as those acts are defined by state law;

12 H. "sexual exploitation" includes but is not
13 limited to:

14 (1) allowing, permitting or encouraging a
15 child to engage in prostitution;

16 (2) allowing, permitting, encouraging or
17 engaging a child in obscene or pornographic photographing; or

18 (3) filming or depicting a child for obscene
19 or pornographic commercial purposes, as those acts are
20 defined by state law; and

21 I. "transition plan" means an individualized
22 written plan for a child, based on the unique needs of the
23 child, that outlines all appropriate services to be provided
24 to the child to increase independent living skills. The plan
25 shall also include responsibilities of the child, and any

1 other party as appropriate, to enable the child to be
2 self-sufficient upon emancipation."

3 Section 34. Section 32A-4-5 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 99, as amended) is amended to read:

5 "32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY
6 OF REPORTING PERSON--INVESTIGATION OF REPORT.--

7 A. In any proceeding alleging neglect or abuse
8 under the Children's Code resulting from a report required by
9 Section 32A-4-3 NMSA 1978 or in any proceeding in which that
10 report or any of its contents are sought to be introduced in
11 evidence, the report or its contents or any other facts
12 related thereto or to the condition of the child who is the
13 subject of the report shall not be excluded on the ground
14 that the matter is or may be the subject of a
15 physician-patient privilege or similar privilege or rule
16 against disclosure.

17 B. Anyone reporting an instance of alleged child
18 neglect or abuse or participating in a judicial proceeding
19 brought as a result of a report required by Section 32A-4-3
20 NMSA 1978 is presumed to be acting in good faith and shall be
21 immune from liability, civil or criminal, that might
22 otherwise be incurred or imposed by the law, unless the
23 person acted in bad faith or with malicious purpose.

24 C. After properly verifying the identity of the
25 public official, any school personnel or other person who has

1 the duty to report child abuse pursuant to Section 32A-4-3
2 NMSA 1978 shall permit a member of a law enforcement agency,
3 including tribal police officers, an employee of the district
4 attorney's office, an investigative interviewer for a program
5 described in Subsection E of this section or an employee of
6 the department, to interview a child with respect to a report
7 without the permission of the child's parent or guardian.

8 Any person permitting an interview pursuant to this
9 subsection is presumed to be acting in good faith and shall
10 be immune from liability, civil or criminal, that might
11 otherwise be incurred or imposed by law, unless the person
12 acted in bad faith or with malicious purpose.

13 D. An investigation may be conducted by law
14 enforcement, the district attorney's office, a program
15 described in Subsection E of this section and the department.
16 Interviews shall be conducted in a manner and place that
17 protects the child and family from unnecessary trauma and
18 embarrassment. The investigating entity shall conduct the
19 investigation in a manner that will protect the privacy of
20 the child and the family, with the paramount consideration
21 being the safety of the child. All interactions with child
22 victims and child witnesses shall be conducted in a
23 child-sensitive manner, taking into consideration the special
24 needs of the child and the child's abilities, age and
25 intellectual maturity. The interviews shall be conducted in a

1 place where the child feels secure and in a language that the
2 child uses and understands.

3 E. If a community has a program for child abuse
4 investigation that includes an investigation interview of the
5 alleged victim or child witness, the investigation may be
6 conducted at a site designated by the community program. The
7 child abuse victim or child witness shall, when possible, be
8 interviewed in an environment where the alleged abuse
9 perpetrator will not be present.

10 F. Prior to interviewing a child, the department
11 shall notify the parent or guardian of the child who is being
12 interviewed, unless the department determines that
13 notification would adversely affect the safety of the child
14 about whom the report has been made or compromise the
15 investigation."

16 Section 35. Section 32A-4-6 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 100, as amended) is amended to read:

18 "32A-4-6. TAKING INTO CUSTODY--PENALTY.--

19 A. A child may be held or taken into custody:

20 (1) by a law enforcement officer when the
21 officer has evidence giving rise to reasonable grounds to
22 believe that the child is abused or neglected and that there
23 is an immediate threat to the child's safety; provided that
24 the law enforcement officer contacts the department to enable
25 the department to conduct an on-site safety assessment to

1 determine whether it is appropriate to take the child into
2 immediate custody, except that a child may be taken into
3 custody by a law enforcement officer without a protective
4 services assessment being conducted if:

5 (a) the child's parent, guardian or
6 custodian has attempted, conspired to cause or caused great
7 bodily harm to the child or great bodily harm or death to the
8 child's sibling;

9 (b) the child's parent, guardian or
10 custodian has attempted, conspired to cause or caused great
11 bodily harm or death to another parent, guardian or custodian
12 of the child;

13 (c) the child has been abandoned;

14 (d) the child is in need of emergency
15 medical care;

16 (e) the department is not available to
17 conduct a safety assessment in a timely manner; or

18 (f) the child is in imminent risk of
19 abuse; or

20 (2) by medical personnel when there are
21 reasonable grounds to believe that the child has been injured
22 as a result of abuse or neglect and that the child may be at
23 risk of further injury if returned to the child's parent,
24 guardian or custodian. The medical personnel shall hold the
25 child until a law enforcement officer is available to take

1 custody of the child pursuant to Paragraph (1) of Subsection
2 A of this section.

3 B. When a child is taken into custody by law
4 enforcement, the department is not compelled to place the
5 child in an out-of-home placement and may release the child
6 to the child's parent, guardian or custodian.

7 C. When a child is taken into custody, the
8 department shall make reasonable efforts to determine whether
9 the child is an Indian child.

10 D. If a child taken into custody is an Indian
11 child and is alleged to be neglected or abused, the
12 department shall give notice to the agent of the Indian
13 child's tribe in accordance with the federal Indian Child
14 Welfare Act of 1978.

15 E. Any person who intentionally interferes with
16 protection of a child, as provided by Subsection A of this
17 section, is guilty of a petty misdemeanor."

18 Section 36. Section 32A-4-7 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 101, as amended) is amended to read:

20 "32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

21 A. A person taking a child into custody shall,
22 with all reasonable speed:

23 (1) release the child to the child's parent,
24 guardian or custodian and issue verbal counsel or warning as
25 may be appropriate; or

1 (2) deliver the child to the department or,
2 in the case of a child who is believed to be suffering from a
3 serious physical or mental condition or illness that requires
4 prompt treatment or diagnosis, deliver the child to a medical
5 facility. If a law enforcement officer delivers a child to a
6 medical facility, the officer shall immediately notify the
7 department that the child has been placed in the department's
8 legal custody.

9 B. When an alleged neglected or abused child is
10 delivered to the department, a department caseworker shall
11 review the need for placing the child in custody and shall
12 release the child from custody unless custody is appropriate
13 or has been ordered by the court. When a child is delivered
14 to a medical facility, a department caseworker shall review
15 the need for retention of custody within a reasonable time
16 after delivery of the child to the facility and shall release
17 the child from custody unless custody is appropriate or has
18 been ordered by the court.

19 C. If a child is placed in the legal custody of
20 the department and is not released to the child's parent,
21 guardian or custodian, the department shall give written
22 notice thereof as soon as possible, and in no case later than
23 twenty-four hours, to the child's parent, guardian or
24 custodian together with a statement of the reason for taking
25 the child into custody.

1 D. Reasonable efforts shall be made to prevent or
2 eliminate the need for removing the child from the child's
3 home, with the paramount concern being the child's health and
4 safety. In all cases when a child is taken into custody, the
5 child shall be released to the child's parent, guardian or
6 custodian, unless the department files a petition within two
7 days from the date that the child was taken into custody.

8 E. The department may release the child at any
9 time within the two-day period after the child was taken into
10 custody if it is determined by the department that release is
11 appropriate or if release has been ordered by the court."

12 Section 37. Section 32A-4-14 NMSA 1978 (being Laws
13 1993, Chapter 77, Section 108, as amended) is amended to
14 read:

15 "32A-4-14. CHANGE IN PLACEMENT.--

16 A. When the child's placement is changed,
17 including a return to the child's home, written notice of the
18 factual grounds supporting the change in placement shall be
19 sent to the child's guardian ad litem or attorney, all
20 parties, the child's CASA, the child's foster parents and the
21 court ten days prior to the placement change, unless an
22 emergency situation requires moving the child prior to
23 sending notice.

24 B. When the child, by and through the child's
25 guardian ad litem or attorney, files a motion and requests a

1 court hearing to contest the proposed change, the department
2 shall not change the child's placement pending the results of
3 the court hearing, unless an emergency requires changing the
4 child's placement prior to the hearing.

5 C. When a child's placement is changed without
6 prior notice as provided for in Subsection A of this section,
7 written notice shall be sent to the child's guardian ad litem
8 or attorney, all parties, the child's CASA, the child's
9 foster parents and the court within three days after the
10 placement change.

11 D. Written notice is not required for removal of a
12 child from temporary emergency care, emergency foster care or
13 respite care. The department shall provide oral notification
14 of the removal to the child's guardian ad litem or attorney.

15 E. Notice need not be given to the parties, other
16 than the child, or to the court when placement is changed at
17 the request of the child's foster parents or substitute care
18 provider. Notice shall be given to the child's guardian ad
19 litem or attorney."

20 Section 38. Section 32A-4-18 NMSA 1978 (being Laws
21 1993, Chapter 77, Section 112, as amended) is amended to
22 read:

23 "32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--
24 PROBABLE CAUSE.--

25 A. When a child alleged to be neglected or abused

1 has been placed in the legal custody of the department or the
2 department has petitioned the court for temporary custody, a
3 custody hearing shall be held within ten days from the date
4 the petition is filed to determine if the child should remain
5 in or be placed in the department's custody pending
6 adjudication. Upon written request of the respondent, the
7 hearing may be held earlier, but in no event shall the
8 hearing be held sooner than two days after the date the
9 petition was filed.

10 B. The parent, guardian or custodian of the child
11 alleged to be abused or neglected shall be given reasonable
12 notice of the time and place of the custody hearing.

13 C. At the custody hearing, the court shall return
14 legal custody of the child to the child's parent, guardian or
15 custodian unless probable cause exists to believe that:

16 (1) the child is suffering from an illness
17 or injury, and the parent, guardian or custodian is not
18 providing adequate care for the child;

19 (2) the child is in immediate danger from
20 the child's surroundings, and removal from those surroundings
21 is necessary for the child's safety or well-being;

22 (3) the child will be subject to injury by
23 others if not placed in the custody of the department;

24 (4) there has been an abandonment of the
25 child by the child's parent, guardian or custodian; or

1 (5) the parent, guardian or custodian is not
2 able or willing to provide adequate supervision and care for
3 the child.

4 D. At the conclusion of the custody hearing, if
5 the court determines that probable cause exists pursuant to
6 Subsection C of this section, the court may:

7 (1) return legal custody of the child to the
8 child's parent, guardian or custodian upon such conditions as
9 will reasonably ensure the safety and well-being of the
10 child, including protective supervision by the department; or

11 (2) award legal custody of the child to the
12 department.

13 E. Reasonable efforts shall be made to preserve
14 and reunify the family, with the paramount concern being the
15 child's health and safety.

16 F. At the conclusion of the custody hearing, if
17 the court determines that probable cause does not exist
18 pursuant to Subsection C of this section, the court shall:

19 (1) retain jurisdiction and, unless the
20 court permits otherwise, order that the respondent and child
21 remain in the jurisdiction of the court pending the
22 adjudication;

23 (2) return legal custody of the child to the
24 child's parent, guardian or custodian with conditions to
25 provide for the safety and well-being of the child; and

1 (3) order that the child's parent, guardian
2 or custodian allow the child necessary contact with the
3 child's guardian ad litem or attorney.

4 G. At the conclusion of the custody hearing, the
5 court may order the respondent or the child alleged to be
6 neglected or abused, or both, to undergo appropriate
7 diagnostic examinations or evaluations. If the court
8 determines that probable cause does not exist, the court may
9 order the respondent or the child alleged to be neglected or
10 abused, or both, to undergo appropriate diagnostic
11 examinations or evaluations as necessary to protect the
12 child's best interests, based upon the allegations in the
13 petition and the evidence presented at the custody hearing.
14 Copies of any diagnostic or evaluation reports ordered by the
15 court shall be provided to the parties at least five days
16 before the adjudicatory hearing is scheduled. The reports
17 shall not be sent to the court.

18 H. The Rules of Evidence shall not apply to
19 custody hearings.

20 I. Nothing in this section shall be construed to
21 abridge the rights of Indian children pursuant to the federal
22 Indian Child Welfare Act of 1978."

23 Section 39. Section 32A-4-19 NMSA 1978 (being Laws
24 1993, Chapter 77, Section 113, as amended) is amended to
25 read:

1 "32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

2 A. The adjudicatory hearing in a neglect or abuse
3 proceeding shall be commenced within sixty days after the
4 date of service on the respondent.

5 B. Prior to the adjudicatory hearing, all parties
6 to the hearing shall attend a mandatory meeting and attempt
7 to settle issues attendant to the adjudicatory hearing and
8 develop a proposed treatment plan that serves the child's
9 best interest.

10 C. The children's court attorney shall represent
11 the state at the adjudicatory hearing.

12 D. When the adjudicatory hearing on any petition
13 is not commenced within the time period specified in
14 Subsection A of this section or within the period of any
15 extension granted, the petition shall be dismissed with
16 prejudice."

17 Section 40. Section 32A-4-20 NMSA 1978 (being Laws
18 1993, Chapter 77, Section 114, as amended) is amended to
19 read:

20 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
21 DISPOSITIONAL MATTERS--PENALTY.--

22 A. The proceedings shall be recorded by
23 stenographic notes or by electronic, mechanical or other
24 appropriate means.

25 B. All abuse and neglect hearings shall be closed

1 to the general public.

2 C. Only the parties, their counsel, witnesses and
3 other persons approved by the court may be present at a
4 closed hearing. The foster parent, preadoptive parent or
5 relative providing care for the child shall be given notice
6 and an opportunity to be heard at the dispositional phase.
7 Those other persons the court finds to have a proper interest
8 in the case or in the work of the court may be admitted by
9 the court to closed hearings on the condition that they
10 refrain from divulging any information that would identify
11 the child or family involved in the proceedings.

12 D. Accredited representatives of the news media
13 shall be allowed to be present at closed hearings, subject to
14 the condition that they refrain from divulging information
15 that would identify any child involved in the proceedings or
16 the parent, guardian or custodian of that child and subject
17 to enabling regulations as the court finds necessary for the
18 maintenance of order and decorum and for the furtherance of
19 the purposes of the Children's Code. A child who is the
20 subject of an abuse and neglect proceeding and is present at
21 a hearing may object to the presence of the media. The court
22 may exclude the media if it finds that the presence of the
23 media is contrary to the best interests of the child.

24 E. If the court finds that it is in the best
25 interest of a child under fourteen years of age, the child

1 may be excluded from a hearing under the Abuse and Neglect
2 Act. A child fourteen years of age or older may be excluded
3 from a hearing only if the court makes a finding that there
4 is a compelling reason to exclude the child and states the
5 factual basis for the finding.

6 F. Those persons or parties granted admission to a
7 closed hearing who intentionally divulge information in
8 violation of this section are guilty of a petty misdemeanor.

9 G. The court shall determine if the allegations of
10 the petition are admitted or denied. If the allegations are
11 denied, the court shall proceed to hear evidence on the
12 petition. The court, after hearing all of the evidence
13 bearing on the allegations of neglect or abuse, shall make
14 and record its findings on whether the child is a neglected
15 child, an abused child or both. If the petition alleges that
16 the parent, guardian or custodian has subjected the child to
17 aggravated circumstances, then the court shall also make and
18 record its findings on whether the aggravated circumstances
19 have been proven.

20 H. If the court finds on the basis of a valid
21 admission of the allegations of the petition or on the basis
22 of clear and convincing evidence, competent, material and
23 relevant in nature, that the child is neglected or abused,
24 the court may proceed immediately or at a postponed hearing
25 to make disposition of the case. If the court does not find

1 that the child is neglected or abused, the court shall
2 dismiss the petition and may refer the family to the
3 department for appropriate services.

4 I. In that part of the hearings held under the
5 Children's Code on dispositional issues, all relevant and
6 material evidence helpful in determining the questions
7 presented, including oral and written reports, may be
8 received by the court and may be relied upon to the extent of
9 its probative value even though not competent had it been
10 offered during the part of the hearings on adjudicatory
11 issues.

12 J. On the court's motion or that of a party, the
13 court may continue the hearing on the petition for a period
14 not to exceed thirty days to receive reports and other
15 evidence in connection with disposition. The court shall
16 continue the hearing pending the receipt of the
17 predisposition study and report if that document has not been
18 prepared and received. During any continuances under this
19 subsection, the court shall make an appropriate order for
20 legal custody."

21 Section 41. Section 32A-4-21 NMSA 1978 (being Laws
22 1993, Chapter 77, Section 115, as amended) is amended to
23 read:

24 "32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
25 REPORTS AND EXAMINATIONS.--

1 A. Prior to holding a dispositional hearing, the
2 court shall direct that a predisposition study and report be
3 submitted in writing to the court by the department.

4 B. The predisposition study required pursuant to
5 Subsection A of this section shall contain the following
6 information:

7 (1) a statement of the specific reasons for
8 intervention by the department or for placing the child in
9 the department's custody and a statement of the parent's
10 ability to care for the child in the parent's home without
11 causing harm to the child;

12 (2) a statement of how an intervention plan
13 is designed to achieve placement of the child in the least
14 restrictive setting available, consistent with the best
15 interests and special needs of the child, including a
16 statement of the likely harm the child may suffer as a result
17 of being removed from the parent's home, including emotional
18 harm that may result due to separation from the child's
19 parents, and a statement of how the intervention plan is
20 designed to place the child in close proximity to the
21 parent's home without causing harm to the child due to
22 separation from parents, siblings or any other person who may
23 significantly affect the child's best interest;

24 (3) the wishes of the child as to the
25 child's custodian;

1 (4) whether the child has a family member
2 who, subsequent to study by the department, is determined to
3 be qualified to care for the child;

4 (5) a description of services offered to the
5 child, the child's family and the child's foster care family
6 and a summary of reasonable efforts made to prevent removal
7 of the child from the child's family or reasonable efforts
8 made to reunite the child with the child's family;

9 (6) a description of the home or facility in
10 which the child is placed and the appropriateness of the
11 child's placement;

12 (7) the results of any diagnostic
13 examination or evaluation ordered at the custody hearing;

14 (8) a statement of the child's medical and
15 educational background;

16 (9) if the child is an Indian child, whether
17 the placement preferences set forth in the federal Indian
18 Child Welfare Act of 1978 or the placement preferences of the
19 child's Indian tribe were followed and whether the child's
20 treatment plan provides for maintaining the child's cultural
21 ties;

22 (10) a treatment plan that sets forth steps
23 to ensure that the child's physical, medical, psychological
24 and educational needs are met and that sets forth services to
25 be provided to the child and the child's parents to

1 facilitate permanent placement of the child in the parent's
2 home;

3 (11) for children sixteen years of age and
4 older, a plan for developing the specific skills the child
5 requires for successful transition into independent living as
6 an adult, regardless of whether the child is returned to the
7 child's parent's home; and

8 (12) a treatment plan that sets forth steps
9 to ensure that the child's educational needs are met and, for
10 a child fourteen years of age or older, a treatment plan that
11 specifically sets forth the child's educational and
12 post-secondary goals; and

13 (13) a description of the child's foster
14 care placement and whether it is appropriate in terms of the
15 educational setting and proximity to the school the child was
16 enrolled in at the time of the placement, including plans for
17 travel for the child to remain in the school in which the
18 child was enrolled at the time of placement, if reasonable
19 and in the child's best interest.

20 C. A copy of the predisposition report shall be
21 provided by the department to counsel for all parties five
22 days before the dispositional hearing.

23 D. If the child is an adjudicated abused child,
24 any temporary custody orders shall remain in effect until the
25 court has received and considered the predispositional study

1 at the dispositional hearing."

2 Section 42. Section 32A-4-22 NMSA 1978 (being Laws
3 1993, Chapter 77, Section 116, as amended) is amended to
4 read:

5 "32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR
6 NEGLECTED CHILD.--

7 A. If not held in conjunction with the
8 adjudicatory hearing, the dispositional hearing shall be
9 commenced within thirty days after the conclusion of the
10 adjudicatory hearing. At the conclusion of the dispositional
11 hearing, the court shall make and include in the
12 dispositional judgment its findings on the following:

13 (1) the interaction and interrelationship of
14 the child with the child's parent, siblings and any other
15 person who may significantly affect the child's best
16 interest;

17 (2) the child's adjustment to the child's
18 home, school and community;

19 (3) the mental and physical health of all
20 individuals involved;

21 (4) the wishes of the child as to the
22 child's placement;

23 (5) the wishes of the child's parent,
24 guardian or custodian as to the child's custody;

25 (6) whether there exists a relative of the

1 child or other individual who, after study by the department,
2 is found to be qualified to receive and care for the child;

3 (7) the availability of services recommended
4 in the treatment plan prepared as a part of the
5 predisposition study in accordance with the provisions of
6 Section 32A-4-21 NMSA 1978;

7 (8) the ability of the parent to care for
8 the child in the home so that no harm will result to the
9 child;

10 (9) whether reasonable efforts were used by
11 the department to prevent removal of the child from the home
12 prior to placement in substitute care and whether reasonable
13 efforts were used to attempt reunification of the child with
14 the natural parent;

15 (10) whether reasonable efforts were made by
16 the department to place siblings in custody together, unless
17 such joint placement would be contrary to the safety or
18 well-being of any of the siblings in custody, and whether any
19 siblings not jointly placed have been provided reasonable
20 visitation or other ongoing interaction, unless visitation or
21 other ongoing interaction would be contrary to the safety or
22 well-being of any of the siblings; and

23 (11) if the child is an Indian child,
24 whether the placement preferences set forth in the federal
25 Indian Child Welfare Act of 1978 or the placement preferences

1 of the child's Indian tribe have been followed and whether
2 the Indian child's treatment plan provides for maintaining
3 the Indian child's cultural ties. When placement preferences
4 have not been followed, good cause for noncompliance shall be
5 clearly stated and supported.

6 B. If a child is found to be neglected or abused,
7 the court may enter its judgment making any of the following
8 dispositions to protect the welfare of the child:

9 (1) permit the child to remain with the
10 child's parent, guardian or custodian, subject to those
11 conditions and limitations the court may prescribe;

12 (2) place the child under protective
13 supervision of the department; or

14 (3) transfer legal custody of the child to
15 any of the following:

16 (a) the noncustodial parent, if it is
17 found to be in the child's best interest;

18 (b) an agency responsible for the care
19 of neglected or abused children; or

20 (c) a child-placement agency willing
21 and able to assume responsibility for the education, care and
22 maintenance of the child and licensed or otherwise authorized
23 by law to receive and provide care for the child.

24 C. If a child is found to be neglected or abused,
25 in its dispositional judgment the court shall also order the

1 department to implement and the child's parent, guardian or
2 custodian to cooperate with any treatment plan approved by
3 the court. Reasonable efforts shall be made to preserve and
4 reunify the family, with the paramount concern being the
5 child's health and safety. The court may determine that
6 reasonable efforts are not required to be made when the court
7 finds that:

8 (1) the efforts would be futile; or

9 (2) the parent, guardian or custodian has
10 subjected the child to aggravated circumstances.

11 D. Any parent, guardian or custodian of a child
12 who is placed in the legal custody of the department or other
13 person pursuant to Subsection B of this section shall have
14 reasonable rights of visitation with the child as determined
15 by the court, unless the court finds that the best interests
16 of the child preclude any visitation.

17 E. The court may order reasonable visitation
18 between a child placed in the custody of the department and
19 the child's siblings or any other person who may
20 significantly affect the child's best interest, if the court
21 finds the visitation to be in the child's best interest.

22 F. Unless a child found to be neglected or abused
23 is also found to be delinquent, the child shall not be
24 confined in an institution established for the long-term care
25 and rehabilitation of delinquent children.

1 G. When the court vests legal custody in an
2 agency, institution or department, the court shall transmit
3 with the dispositional judgment copies of the clinical
4 reports, the predisposition study and report and any other
5 information it has pertinent to the care and treatment of the
6 child.

7 H. Prior to a child being placed in the custody or
8 protective supervision of the department, the department
9 shall be provided with reasonable oral or written
10 notification and an opportunity to be heard. At any hearing
11 held pursuant to this subsection, the department may appear
12 as a party.

13 I. When a child is placed in the custody of the
14 department, the department shall investigate whether the
15 child is eligible for enrollment as a member of an Indian
16 tribe and, if so, the department shall pursue the enrollment
17 on the child's behalf.

18 J. When the court determines pursuant to
19 Subsection C of this section that no reasonable efforts at
20 reunification are required, the court shall conduct, within
21 thirty days, a permanency hearing as described in Section
22 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to
23 implement and finalize the permanency plan in a timely
24 manner."

25 Section 43. A new Section 32A-4-23.1 NMSA 1978 is

1 enacted to read:

2 "32A-4-23.1. DISPOSITION OF AN UNDOCUMENTED IMMIGRANT
3 CHILD IN A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.--

4 A. Whenever the court adjudicates that a child is
5 abused or neglected, the department shall determine the
6 child's immigration status. At the first judicial review,
7 the department shall report the child's immigration status to
8 the court. Services to children alleged to have been abused,
9 neglected or abandoned must be provided without regard to the
10 immigration status of the child except where immigration
11 status is explicitly set forth as a statutory or regulatory
12 condition of coverage or eligibility.

13 B. If the child is an undocumented immigrant, the
14 department shall include in the treatment plan a
15 recommendation as to whether the permanency plan for the
16 child includes reuniting the child with the child's parents
17 and whether it is in the child's best interest to be returned
18 to the child's country of origin. If the permanency plan
19 does not include reunification and the department does not
20 recommend that the child be returned to the country of
21 origin, the department shall determine whether the child may
22 be eligible for special immigrant juvenile status under
23 federal law.

24 C. If the child is eligible for special immigrant
25 juvenile status, the department shall move the court for a

1 special immigrant juvenile status order containing the
2 necessary findings to establish that the child meets the
3 criteria for federal special immigrant juvenile status. The
4 department's motion shall include a statement of the express
5 wishes of the child, as expressed by the child or the child's
6 guardian ad litem or attorney.

7 D. After consultation with the child and the
8 child's guardian ad litem or attorney, the department shall
9 determine whether the child's best interests would be served
10 by the filing of a petition for special immigrant juvenile
11 status and application for adjustment of status and if in the
12 child's best interest, within sixty days after an entry of
13 the special immigrant juvenile status order, the department
14 shall file a petition for special immigrant juvenile status
15 and an application for adjustment of status on behalf of the
16 child.

17 E. If a petition and application have been filed
18 and the petition and application have not been granted by the
19 time the child reaches eighteen years of age, the court may
20 retain jurisdiction over the case for the sole purpose of
21 ensuring that the child continues to satisfy the requirements
22 for classification as a special immigrant juvenile.

23 F. Review hearings for the child shall be set
24 solely for the purpose of confirming that the child continues
25 to satisfy such requirements and determining the status of

1 the petition and application.

2 G. The court's jurisdiction terminates upon the
3 final decision of the federal authorities.

4 H. Retention of jurisdiction in this instance does
5 not affect the transition services available to the child.

6 I. The court may not retain jurisdiction of the
7 case after the immigrant child's twenty-first birthday.

8 J. In a judicial review report provided to the
9 court for a child for whom the court has granted the special
10 immigrant juvenile status order described in Subsection C of
11 this section, the court shall be advised of the status of the
12 petition and application process concerning the child."

13 Section 44. Section 32A-4-24 NMSA 1978 (being Laws
14 1993, Chapter 77, Section 118) is amended to read:

15 "32A-4-24. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
16 MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDERS.--

17 A. A judgment vesting legal custody of a child in
18 an agency shall remain in force for an indeterminate period
19 not exceeding two years from the date entered.

20 B. A judgment vesting legal custody of a child in
21 an individual, other than the child's parent or permanent
22 guardian, shall remain in force for two years from the date
23 entered, unless sooner terminated by court order.

24 C. A judgment vesting legal custody of a child in
25 the child's parent or a permanent guardian shall remain in

1 force for an indeterminate period from the date entered until
2 terminated by court order or until the child is emancipated
3 or reaches the age of majority.

4 D. At any time prior to expiration, a judgment
5 vesting legal custody or granting protective supervision may
6 be modified, revoked or extended on motion by any party,
7 including the child by and through the child's guardian ad
8 litem.

9 E. Prior to the expiration of a judgment
10 transferring legal custody to an agency, the court may extend
11 the judgment for additional periods of one year if it finds
12 that the extension is necessary to safeguard the welfare of
13 the child or the public interest.

14 F. When a child reaches eighteen years of age, all
15 neglect and abuse orders affecting the child then in force
16 automatically terminate except as provided in Section
17 32A-4-23.1 NMSA 1978 and Subsection D of Section 32A-4-25.3
18 NMSA 1978. The termination of the orders shall not
19 disqualify a child from eligibility for transitional
20 services."

21 Section 45. Section 32A-4-25 NMSA 1978 (being Laws
22 1993, Chapter 77, Section 119, as amended) is amended to
23 read:

24 "32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL
25 JUDGMENTS.--

1 A. The initial judicial review shall be held
2 within sixty days of the disposition. At the initial review,
3 the parties shall demonstrate to the court efforts made to
4 implement the treatment plan approved by the court in its
5 dispositional order. The court shall determine the extent to
6 which the treatment plan has been implemented and make
7 supplemental orders as necessary to ensure compliance with
8 the treatment plan and the safety of the child. Prior to the
9 initial judicial review, the department shall submit a copy
10 of the adjudicatory order, the dispositional order and notice
11 of the initial judicial review to the local substitute care
12 review board for that judicial district created under the
13 Citizen Substitute Care Review Act. A representative of the
14 local substitute care review board shall be permitted to
15 attend and comment to the court.

16 B. Subsequent periodic reviews of dispositional
17 orders shall be held within six months of the conclusion of
18 the permanency hearing or, if a motion has been filed for
19 termination of parental rights or permanent guardianship,
20 within six months of the decision on that motion and every
21 six months thereafter. Prior to the review, the department
22 shall submit a progress report to the local substitute care
23 review board for that judicial district created under the
24 Citizen Substitute Care Review Act. Prior to any judicial
25 review by the court pursuant to this section, the local

1 substitute care review board may review the dispositional
2 order or the continuation of the order and the department's
3 progress report and report its findings and recommendations
4 to the court. The review may be carried out by either of the
5 following:

6 (1) a judicial review hearing conducted by
7 the court; or

8 (2) a judicial review hearing conducted by a
9 special master appointed by the court; provided, however,
10 that the court approve any findings made by the special
11 master.

12 C. The children's court attorney shall give notice
13 to all parties, including the child by and through the
14 child's guardian ad litem or attorney, the child's CASA, a
15 contractor administering the local substitute care review
16 board and the child's foster parent or substitute care
17 provider of the time, place and purpose of any judicial
18 review hearing held pursuant to Subsection A or B of this
19 section.

20 D. At any judicial review hearing held pursuant to
21 Subsection B of this section, the department, the child's
22 guardian ad litem or attorney and all parties given notice
23 pursuant to Subsection C of this section shall have the
24 opportunity to present evidence and to cross-examine
25 witnesses. At the hearing, the department shall show that it

1 has made reasonable effort to implement any treatment plan
2 approved by the court in its dispositional order and shall
3 present a treatment plan consistent with the purposes of the
4 Children's Code for any period of extension of the
5 dispositional order. The respondent shall demonstrate to the
6 court that efforts to comply with the treatment plan approved
7 by the court in its dispositional order and efforts to
8 maintain contact with the child were diligent and made in
9 good faith. The court shall determine the extent of
10 compliance with the treatment plan and whether progress is
11 being made toward establishing a stable and permanent
12 placement for the child.

13 E. The Rules of Evidence shall not apply to
14 hearings held pursuant to this section. The court may admit
15 testimony by any person given notice of the hearing who has
16 information about the status of the child or the status of
17 the treatment plan.

18 F. At the conclusion of any hearing held pursuant
19 to this section, the court shall make findings of fact and
20 conclusions of law.

21 G. When the child is an Indian child, the court
22 shall determine during review of a dispositional order
23 whether the placement preferences set forth in the federal
24 Indian Child Welfare Act of 1978 or the placement preferences
25 of the child's Indian tribe were followed and whether the

1 child's treatment plan provides for maintaining the child's
2 cultural ties. When placement preferences have not been
3 followed, good cause for noncompliance shall be clearly
4 stated and supported.

5 H. Based on its findings at a judicial review
6 hearing held pursuant to Subsection B of this section, the
7 court shall order one of the following dispositions:

8 (1) dismiss the action and return the child
9 to the child's parent without supervision if the court finds
10 that conditions in the home that led to abuse have been
11 corrected and it is now safe for the return of the abused
12 child;

13 (2) permit the child to remain with the
14 child's parent, guardian or custodian subject to those
15 conditions and limitations the court may prescribe, including
16 protective supervision of the child by the department;

17 (3) return the child to the child's parent
18 and place the child under the protective supervision of the
19 department;

20 (4) transfer or continue legal custody of
21 the child to:

22 (a) the noncustodial parent, if that is
23 found to be in the child's best interests;

24 (b) a relative or other individual who,
25 after study by the department or other agency designated by

1 the court, is found by the court to be qualified to receive
2 and care for the child and is appointed as a permanent
3 guardian of the child; or

4 (c) the department, subject to the
5 provisions of Paragraph (6) of this subsection;

6 (5) continue the child in the legal custody
7 of the department with or without any required parental
8 involvement in a treatment plan. Reasonable efforts shall be
9 made to preserve and reunify the family, with the paramount
10 concern being the child's health and safety unless the court
11 finds that such efforts are not required. The court may
12 determine that reasonable efforts are not required to be made
13 when the court finds that:

14 (a) the efforts would be futile; or

15 (b) the parent, guardian or custodian
16 has subjected the child to aggravated circumstances;

17 (6) make additional orders regarding the
18 treatment plan or placement of the child to protect the
19 child's best interests if the court determines the department
20 has failed in implementing any material provision of the
21 treatment plan or abused its discretion in the placement or
22 proposed placement of the child; or

23 (7) if during a judicial review the court
24 finds that the child's parent, guardian or custodian has not
25 complied with the court-ordered treatment plan, the court may

1 order:

2 (a) the child's parent, guardian or
3 custodian to show cause why the parent, guardian or custodian
4 should not be held in contempt of court; or

5 (b) a hearing on the merits of
6 terminating parental rights.

7 I. Dispositional orders entered pursuant to this
8 section shall remain in force for a period of six months,
9 except for orders that provide for transfer of the child to
10 the child's noncustodial parent or to a permanent guardian.

11 J. The report of the local substitute care review
12 board submitted to the court pursuant to Subsection B of this
13 section shall become a part of the child's permanent court
14 record.

15 K. When the court determines, pursuant to
16 Paragraph (5) of Subsection H of this section, that no
17 reasonable efforts at reunification are required, the court
18 shall conduct, within thirty days, a permanency hearing as
19 described in Section 32A-4-25.1 NMSA 1978. Reasonable
20 efforts shall be made to place the child in a timely manner
21 in accordance with the permanency plan and to complete
22 whatever steps are necessary to finalize the permanent
23 placement of the child."

24 Section 46. Section 32A-4-25.1 NMSA 1978 (being Laws
25 1997, Chapter 34, Section 8, as amended) is amended to read:

1 "32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW
2 HEARINGS.--

3 A. A permanency hearing shall be commenced within
4 six months of the initial judicial review of a child's
5 dispositional order or within twelve months of a child
6 entering foster care pursuant to Subsection D of this
7 section, whichever occurs first. Prior to the initial
8 permanency hearing, all parties to the hearing shall attend a
9 mandatory meeting and attempt to settle issues attendant to
10 the permanency hearing and develop a proposed treatment plan
11 that serves the child's best interest. Prior to the initial
12 permanency hearing, the department shall submit a progress
13 report regarding the child to the local substitute care
14 review board for that judicial district. The local
15 substitute care review board may review the child's
16 dispositional order, any continuation of that order and the
17 department's progress report and report its findings and
18 recommendations to the court.

19 B. At the permanency hearing, all parties shall
20 have the opportunity to present evidence and to cross-examine
21 witnesses. At the conclusion of the permanency hearing, the
22 court shall order one of the following permanency plans for
23 the child:

- 24 (1) reunification;
25 (2) placement for adoption after the

1 parents' rights have been relinquished or terminated or after
2 a motion has been filed to terminate parental rights;

3 (3) placement with a person who will be the
4 child's permanent guardian;

5 (4) placement in the legal custody of the
6 department with the child placed in the home of a fit and
7 willing relative; or

8 (5) placement in the legal custody of the
9 department under a planned permanent living arrangement,
10 provided that there is substantial evidence that none of the
11 above plans is appropriate for the child.

12 C. If the court adopts a permanency plan of
13 reunification, the court shall adopt a plan for transitioning
14 the child home and schedule a permanency review hearing
15 within three months. If the child is reunified, the
16 subsequent hearing may be vacated.

17 D. If the court adopts a permanency plan other
18 than reunification, the court shall determine whether the
19 department has made reasonable efforts to identify and locate
20 all grandparents and other relatives. The court shall also
21 determine whether the department has made reasonable efforts
22 to conduct home studies on any appropriate relative
23 expressing an interest in providing permanency for the child.
24 The court must ensure the consideration has been given to the
25 child's familial identity and connections. If the court

1 finds that reasonable efforts have not been made to identify
2 or locate grandparents and other relatives or to conduct home
3 studies on appropriate and willing relatives, the court shall
4 schedule a permanency review within sixty days to determine
5 whether an appropriate relative placement has been made. If
6 a relative placement is made, the subsequent hearing may be
7 vacated.

8 E. At the permanency review hearing, all parties
9 and the child's guardian ad litem or attorney shall have the
10 opportunity to present evidence and cross-examine witnesses.
11 Based on the evidence, the court shall:

12 (1) change the plan from reunification to
13 one of the alternative plans provided in Subsection B of this
14 section;

15 (2) dismiss the case and return custody of
16 the child to the child's parent, guardian or custodian; or

17 (3) return the child to the custody of the
18 child's parent, guardian or custodian, subject to any
19 conditions or limitations as the court may prescribe,
20 including protective supervision of the child by the
21 department and continuation of the treatment plan for not
22 more than six months, after which the case shall be
23 dismissed. The department may seek removal of a child from
24 the home by obtaining an order in the pending case or by
25 seeking emergency removal under Section 32A-4-6 NMSA 1978

1 during the period of protective supervision if the child's
2 best interest requires such action. When a child is removed
3 in this situation, a permanency hearing shall be scheduled
4 within thirty days of the child coming back into the
5 department's legal custody.

6 F. The court shall hold a permanency hearing and
7 adopt a permanency plan for a child within twelve months of
8 the child entering foster care. For purposes of this
9 section, a child shall be considered to have entered foster
10 care on the earlier of:

11 (1) the date of the first judicial finding
12 that the child has been abused or neglected; or

13 (2) sixty days after the date on which the
14 child was removed from the home.

15 G. The court shall hold permanency hearings every
16 twelve months when a child is in the legal custody of the
17 department.

18 H. The children's court attorney shall give notice
19 to all parties, including the child by and through the
20 child's guardian ad litem or attorney, the child's CASA, a
21 contractor administering the local substitute care review
22 board and the child's foster parent or substitute care
23 provider of the time, place and purpose of any permanency
24 hearing or permanency review hearing held pursuant to this
25 section.

1 I. The rules of evidence shall not apply to
2 permanency hearings. The court may admit testimony by any
3 person given notice of the permanency hearing who has
4 information about the status of the child or the status of
5 the treatment plan. All testimony shall be subject to
6 cross-examination."

7 Section 47. A new Section 32A-4-25.2 NMSA 1978 is
8 enacted to read:

9 "32A-4-25.2. TRANSITION SERVICES.--

10 A. Prior to a child's reaching seventeen years of
11 age, the department shall meet with the child, the child's
12 attorney and others of the child's choosing, including
13 biological family members, to develop a transition plan. The
14 department shall assist the child in identifying and planning
15 to meet the child's needs after the child's eighteenth
16 birthday, including housing, education, employment or income,
17 health and mental health, local opportunities for mentors and
18 continuing support services.

19 B. The department shall present the child's
20 proposed transition plan to the court at the first hearing
21 scheduled after the child's seventeenth birthday.

22 C. The court shall order a transition plan for the
23 child. The transition plan approved by the court shall be
24 reviewed at every subsequent review and permanency hearing."

25 Section 48. A new Section 32A-4-25.3 NMSA 1978 is

1 enacted to read:

2 "32A-4-25.3. DISCHARGE HEARING.--

3 A. At the last review or permanency hearing held
4 prior to the child's eighteenth birthday, the court shall
5 review the transition plan and shall determine whether the
6 department has made reasonable efforts to implement the
7 requirements of Subsection B of this section.

8 B. The court shall determine:

9 (1) whether written information concerning
10 the child's family history, the whereabouts of any sibling if
11 appropriate and education and health records have been
12 provided to the child;

13 (2) whether the child's social security
14 card, certified birth certificate, state-issued
15 identification card, death certificate of a parent and proof
16 of citizenship or residence have been provided to the child;

17 (3) whether assistance in obtaining medicaid
18 has been provided to the child, unless the child is
19 ineligible for medicaid; and

20 (4) whether referral for a guardianship or
21 limited guardianship if the child is incapacitated has been
22 made.

23 C. If the court finds that the department has not
24 made reasonable efforts to meet all the requirements of
25 Subsection B of this section and that termination of

1 jurisdiction would be harmful to the young adult, the court
2 may continue to exercise its jurisdiction for a period not to
3 exceed one year from the child's eighteenth birthday. The
4 young adult must consent to continued jurisdiction of the
5 court. The court may dismiss the case at any time after the
6 child's eighteenth birthday for good cause."

7 Section 49. Section 32A-4-29 NMSA 1978 (being Laws
8 1993, Chapter 77, Section 123, as amended) is amended to
9 read:

10 "32A-4-29. TERMINATION PROCEDURE.--

11 A. A motion to terminate parental rights may be
12 filed at any stage of the abuse or neglect proceeding by a
13 party to the proceeding.

14 B. The motion for termination of parental rights
15 shall set forth:

16 (1) the date, place of birth and marital
17 status of the child, if known;

18 (2) the grounds for termination and the
19 facts and circumstances supporting the grounds for
20 termination;

21 (3) the names and addresses of the persons
22 or authorized agency or agency officer to whom legal custody
23 might be transferred;

24 (4) whether the child resides or has resided
25 with a foster parent who desires to adopt this child;

1 (5) whether the motion is in contemplation
2 of adoption;

3 (6) the relationship or legitimate interest
4 of the moving party to the child; and

5 (7) whether the child is subject to the
6 federal Indian Child Welfare Act of 1978 and, if so:

7 (a) the tribal affiliations of the
8 child's parents;

9 (b) the specific actions taken by the
10 moving party to notify the parents' tribes and the results of
11 the contacts, including the names, addresses, titles and
12 telephone numbers of the persons contacted. Copies of any
13 correspondence with the tribes shall be attached as exhibits
14 to the petition; and

15 (c) what specific efforts were made to
16 comply with the placement preferences set forth in the
17 federal Indian Child Welfare Act of 1978 or the placement
18 preferences of the appropriate Indian tribes.

19 C. Notice of the filing of the motion, accompanied
20 by a copy of the motion, shall be served by the moving party
21 on all other parties, the foster parent, preadoptive parent
22 or relative providing care for the child with whom the child
23 is residing, foster parents with whom the child has resided
24 for six months within the previous twelve months, the
25 custodian of the child, any person appointed to represent any

1 party and any other person the court orders. Service shall
2 be in accordance with the Children's Court Rules for the
3 service of motions, except that foster parents and attorneys
4 of record in this proceeding shall be served by certified
5 mail. The notice shall state specifically that the person
6 served shall file a written response to the motion within
7 twenty days if the person intends to contest the termination.
8 In any case involving a child subject to the federal Indian
9 Child Welfare Act of 1978, notice shall also be sent by
10 certified mail to the tribes of the child's parents and upon
11 any "Indian custodian" as that term is defined in 25 U.S.C.
12 Section 1903(6). Further notice shall not be required on a
13 parent who has been provided notice previously pursuant to
14 Section 32A-4-17 NMSA 1978 and who failed to make an
15 appearance.

16 D. When a motion to terminate parental rights is
17 filed, the moving party shall request a hearing on the
18 motion. The hearing date shall be at least thirty days, but
19 no more than sixty days, after service is effected upon the
20 parties entitled to service under this section. The moving
21 party shall also file a motion for court-ordered mediation
22 between the parent and any prospective adoptive parent to
23 discuss an open adoption agreement. If an open adoption
24 agreement is reached at any time before termination of
25 parental rights, it shall be made a part of the court record.

1 E. In any action for the termination of parental
2 rights brought by a party other than the department and
3 involving a child in the legal custody of the department, the
4 department may:

5 (1) litigate a motion for the termination of
6 parental rights that was initially filed by another party; or

7 (2) move that the motion for the termination
8 of parental rights be found premature and denied.

9 F. When a motion to terminate parental rights is
10 filed, the department shall perform concurrent planning.

11 G. When a child has been in foster care for not
12 less than fifteen of the previous twenty-two months, the
13 department shall file a motion to terminate parental rights,
14 unless:

15 (1) a parent has made substantial progress
16 toward eliminating the problem that caused the child's
17 placement in foster care; it is likely that the child will be
18 able to safely return to the parent's home within three
19 months; and the child's return to the parent's home will be
20 in the child's best interests;

21 (2) the child has a close and positive
22 relationship with a parent and a permanent plan that does not
23 include termination of parental rights will provide the most
24 secure and appropriate placement for the child;

25 (3) the child is fourteen years of age or

1 older, is firmly opposed to termination of parental rights
2 and is likely to disrupt an attempt to place the child with
3 an adoptive family;

4 (4) a parent is terminally ill, but in
5 remission, and does not want parental rights to be
6 terminated; provided that the parent has designated a
7 guardian for the child;

8 (5) the child is not capable of functioning
9 if placed in a family setting. In such a case, the court
10 shall reevaluate the status of the child every ninety days
11 unless there is a final court determination that the child
12 cannot be placed in a family setting;

13 (6) grounds do not exist for termination of
14 parental rights;

15 (7) the child is an unaccompanied, refugee
16 minor and the situation regarding the child involves
17 international legal issues or compelling foreign policy
18 issues;

19 (8) adoption is not an appropriate plan for
20 the child; or

21 (9) the parent's incarceration or
22 participation in a court-ordered residential substance abuse
23 treatment program constitutes the primary factor in the
24 child's placement in substitute care and termination of
25 parental rights is not in the child's best interest.

1 H. For purposes of this section, a child shall be
2 considered to have entered foster care on the earlier of:

3 (1) the date of the first judicial finding
4 that the child has been abused or neglected; or

5 (2) the date that is sixty days after the
6 date on which the child was removed from the home.

7 I. The grounds for any attempted termination
8 shall be proved by clear and convincing evidence. In any
9 proceeding involving a child subject to the federal Indian
10 Child Welfare Act of 1978, the grounds for any attempted
11 termination shall be proved beyond a reasonable doubt and
12 shall meet the requirements set forth in 25 U.S.C. Section
13 1912(f).

14 J. When the court terminates parental rights, it
15 shall appoint a custodian for the child and fix
16 responsibility for the child's support.

17 K. In any termination proceeding involving a child
18 subject to the federal Indian Child Welfare Act of 1978, the
19 court shall in any termination order make specific findings
20 that the requirements of that act have been met.

21 L. A judgment of the court terminating parental
22 rights divests the parent of all legal rights and privileges
23 and dispenses with both the necessity for the consent to or
24 receipt of notice of any subsequent adoption proceeding
25 concerning the child. A judgment of the court terminating

1 parental rights shall not affect the child's rights of
2 inheritance from and through the child's biological
3 parents.

4 M. When the court denies a motion to terminate
5 parental rights, the court shall issue appropriate orders
6 immediately. The court shall direct the parties to file a
7 stipulated order and interim plan or a request for hearing
8 within thirty days of the date of the hearing denying the
9 termination of parental rights."

10 Section 50. Section 32A-4-32 NMSA 1978 (being Laws
11 1993, Chapter 77, Section 126, as amended) is amended to
12 read:

13 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

14 A. A motion for permanent guardianship may be
15 filed by any party.

16 B. A motion for permanent guardianship shall set
17 forth:

18 (1) the date, place of birth and marital
19 status of the child, if known;

20 (2) the facts and circumstances supporting
21 the grounds for permanent guardianship;

22 (3) the name and address of the prospective
23 guardian and a statement that the person agrees to accept the
24 duties and responsibilities of guardianship;

25 (4) the basis for the court's jurisdiction;

1 (5) the relationship of the child to the
2 petitioner and the prospective guardian; and

3 (6) whether the child is subject to the
4 federal Indian Child Welfare Act of 1978 and, if so:

5 (a) the tribal affiliations of the
6 child's parents;

7 (b) the specific actions taken by the
8 petitioner to notify the parents' tribe and the results of
9 the contacts, including the names, addresses, titles and
10 telephone numbers of the persons contacted. Copies of any
11 correspondence with the tribes shall be attached as exhibits
12 to the petition; and

13 (c) what specific efforts were made to
14 comply with the placement preferences set forth in the
15 federal Indian Child Welfare Act of 1978 or the placement
16 preferences of the appropriate Indian tribes.

17 C. If the motion is not filed by the prospective
18 guardian, the motion shall be verified by the prospective
19 guardian.

20 D. Notice of the filing of the motion, accompanied
21 by a copy of the motion, shall be served by the moving party
22 on any parent who has not previously been made a party to the
23 proceeding, the parents of the child, foster parents with
24 whom the child is residing, the foster parent, preadoptive
25 parent or relative providing care for the child with whom the

1 child has resided for six months, the child's custodian, the
2 department, any person appointed to represent any party,
3 including the child's guardian ad litem, and any other person
4 the court orders provided with notice. Service shall be in
5 accordance with the Children's Court Rules for the service of
6 motions. In a case involving a child subject to the federal
7 Indian Child Welfare Act of 1978, notice shall also be sent
8 by certified mail to the Indian tribes of the child's parents
9 and to any "Indian custodian" as that term is defined in 25
10 U.S.C. Section 1903(6). Further notice shall not be required
11 to a parent who has been provided notice previously pursuant
12 to Section 32A-4-17 NMSA 1978 and who failed to make an
13 appearance.

14 E. The grounds for permanent guardianship shall be
15 proved by clear and convincing evidence. The grounds for
16 permanent guardianship shall be proved beyond a reasonable
17 doubt and meet the requirements of 25 U.S.C. Section 1912(f)
18 in any proceeding involving a child subject to the federal
19 Indian Child Welfare Act of 1978.

20 F. A judgment of the court vesting permanent
21 guardianship with an individual divests the biological or
22 adoptive parent of legal custody or guardianship of the
23 child, but is not a termination of the parent's rights. A
24 child's inheritance rights from and through the child's
25 biological or adoptive parents are not affected by this

1 proceeding.

2 G. Upon a finding that grounds exist for a
3 permanent guardianship, the court may incorporate into the
4 final order provisions for visitation with the natural
5 parents, siblings or other relatives of the child and any
6 other provision necessary to rehabilitate the child or
7 provide for the child's continuing safety and well-being.

8 H. The court shall retain jurisdiction to enforce
9 its judgment of permanent guardianship.

10 I. Any party may make a motion for revocation of
11 the order granting guardianship when there is a significant
12 change of circumstances, including:

13 (1) the child's parent is able and willing
14 to properly care for the child; or

15 (2) the child's guardian is unable to
16 properly care for the child.

17 J. The court shall appoint a guardian ad litem for
18 the child in all proceedings for the revocation of permanent
19 guardianship if the child is under the age of fourteen. The
20 court shall appoint an attorney for the child in all
21 proceedings for the revocation of permanent guardianship if
22 the child is fourteen years of age or older at the inception
23 of the proceedings.

24 K. The court may revoke the order granting
25 guardianship when a significant change of circumstances has

1 been proven by clear and convincing evidence and it is in the
2 child's best interests to revoke the order granting
3 guardianship."

4 Section 51. Section 32A-4-33 NMSA 1978 (being Laws
5 1993, Chapter 77, Section 127, as amended) is amended to
6 read:

7 "32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

8 A. All records or information concerning a party
9 to a neglect or abuse proceeding, including social records,
10 diagnostic evaluations, psychiatric or psychological reports,
11 videotapes, transcripts and audio recordings of a child's
12 statement of abuse or medical reports incident to or obtained
13 as a result of a neglect or abuse proceeding or that were
14 produced or obtained during an investigation in anticipation
15 of or incident to a neglect or abuse proceeding shall be
16 confidential and closed to the public.

17 B. The records described in Subsection A of this
18 section shall be disclosed only to the parties and:

- 19 (1) court personnel;
- 20 (2) court-appointed special advocates;
- 21 (3) the child's guardian ad litem;
- 22 (4) the attorney representing the child in
23 an abuse or neglect action, a delinquency action or any other
24 action under the Children's Code;

- 25 (5) department personnel;

1 (6) any local substitute care review board
2 or any agency contracted to implement local substitute care
3 review boards;

4 (7) law enforcement officials, except when
5 use immunity is granted pursuant to Section 32A-4-11 NMSA
6 1978;

7 (8) district attorneys, except when use
8 immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

9 (9) any state government social services
10 agency in any state or when, in the opinion of the department
11 it is in the best interest of the child, a governmental
12 social services agency of another country;

13 (10) those persons or entities of an Indian
14 tribe specifically authorized to inspect the records pursuant
15 to the federal Indian Child Welfare Act of 1978 or any
16 regulations promulgated thereunder;

17 (11) a foster parent, if the records are
18 those of a child currently placed with that foster parent or
19 of a child being considered for placement with that foster
20 parent and the records concern the social, medical,
21 psychological or educational needs of the child;

22 (12) school personnel involved with the
23 child if the records concern the child's social or
24 educational needs;

25 (13) health care or mental health

1 professionals involved in the evaluation or treatment of the
2 child, the child's parents, guardian, custodian or other
3 family members;

4 (14) protection and advocacy representatives
5 pursuant to the federal Developmental Disabilities Assistance
6 and Bill of Rights Act and the federal Protection and
7 Advocacy for Mentally Ill Individuals Amendments Act of 1991;

8 (15) children's safehouse organizations
9 conducting investigatory interviews of children on behalf of
10 a law enforcement agency or the department; and

11 (16) any other person or entity, by order of
12 the court, having a legitimate interest in the case or the
13 work of the court.

14 C. A parent, guardian or legal custodian whose
15 child has been the subject of an investigation of abuse or
16 neglect where no petition has been filed shall have the right
17 to inspect any medical report, psychological evaluation, law
18 enforcement reports or other investigative or diagnostic
19 evaluation; provided that any identifying information related
20 to the reporting party or any other party providing
21 information shall be deleted. The parent, guardian or legal
22 custodian shall also have the right to the results of the
23 investigation and the right to petition the court for full
24 access to all department records and information except those
25 records and information the department finds would be likely

1 to endanger the life or safety of any person providing
2 information to the department.

3 D. Whoever intentionally and unlawfully releases
4 any information or records closed to the public pursuant to
5 the Abuse and Neglect Act or releases or makes other unlawful
6 use of records in violation of that act is guilty of a petty
7 misdemeanor and shall be sentenced pursuant to the provisions
8 of Section 31-19-1 NMSA 1978.

9 E. The department shall promulgate rules for
10 implementing disclosure of records pursuant to this section
11 and in compliance with state and federal law and the
12 Children's Court Rules."

13 Section 52. A new Section 32A-4-33.1 NMSA 1978 is
14 enacted to read:

15 "32A-4-33.1. RECORDS RELEASE WHEN A CHILD DIES.--

16 A. After learning that a child fatality has
17 occurred and that there is reasonable suspicion that the
18 fatality was caused by abuse or neglect, the department
19 shall, upon written request to the secretary of the
20 department, release the following information, if in the
21 department's possession, within five business days:

22 (1) the age and gender of the child;

23 (2) the date of death;

24 (3) whether the child was in foster care or
25 in the home of the child's parent or guardian at the time of

1 death; and

2 (4) whether an investigation is being
3 conducted by the department.

4 B. If an investigation is being conducted by the
5 department, then a request for further information beyond
6 that listed in Subsection A of this section shall be answered
7 with a statement that a report is under investigation.

8 C. Upon completion of a child abuse or neglect
9 investigation into a child's death, if it is determined that
10 abuse or neglect caused the child's death, the following
11 documents shall be released upon request:

12 (1) a summary of the department's
13 investigation;

14 (2) a law enforcement investigation report,
15 if in the department's possession; and

16 (3) a medical examiner's report, if in the
17 department's possession.

18 D. Prior to releasing any document pursuant to
19 Subsection C of this section, the department shall consult
20 with the district attorney and shall redact:

21 (1) information that would, in the opinion
22 of the district attorney, jeopardize a criminal investigation
23 or proceeding;

24 (2) identifying information related to a
25 reporting party or any other party providing information; and

1 (3) information that is privileged,
2 confidential or not subject to disclosure pursuant to any
3 other state or federal law.

4 E. Once documents pursuant to this section have
5 been released by the department, the department may comment
6 on the case within the scope of the release.

7 F. Information released by the department
8 consistent with the requirements of this section does not
9 require prior notice to any other individual.

10 G. Nothing in this section shall be construed as
11 requiring the department to obtain documents not in the abuse
12 and neglect case file.

13 H. A person disclosing abuse and neglect case file
14 information as required by this section shall not be subject
15 to suit in civil or criminal proceedings for complying with
16 the requirements of this section."

17 Section 53. Section 32A-5-8 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 135, as amended) is amended to read:

19 "32A-5-8. CONFIDENTIALITY OF RECORDS.--

20 A. Unless the petitioner agrees to be contacted or
21 agrees to the release of the petitioner's identity to the
22 parent and the parent agrees to be contacted or agrees to the
23 release of the parent's identity to the petitioner, the
24 attorneys, the court, the agency and the department shall
25 maintain confidentiality regarding the names of the parties,

1 unless the information is already otherwise known. After the
2 petition is filed and prior to the entry of the decree, the
3 records in adoption proceedings shall be open to inspection
4 only by the attorney for the petitioner, the department or
5 the agency, any attorney appointed as a guardian ad litem or
6 attorney for the adoptee, any attorney retained by the
7 adoptee or other persons upon order of the court for good
8 cause shown.

9 B. All records, whether on file with the court, an
10 agency, the department, an attorney or other provider of
11 professional services in connection with an adoption, are
12 confidential and may be disclosed only pursuant to the
13 provisions of the Adoption Act. All information and
14 documentation provided for the purpose of full disclosure is
15 confidential. Documentation provided for the purpose of full
16 disclosure shall remain the property of the person making
17 full disclosure when a prospective adoptive parent decides
18 not to accept a placement. Immediately upon refusal of the
19 placement, the prospective adoptive parent shall return all
20 full disclosure documentation to the person providing full
21 disclosure. A prospective adoptive parent shall not disclose
22 any confidential information received during the full
23 disclosure process, except as necessary to make a placement
24 decision or to provide information to a child's guardian ad
25 litem or attorney or the court.

1 C. All hearings in adoption proceedings shall be
2 confidential and shall be held in closed court without
3 admittance of any person other than parties and their
4 counsel.

5 D. A person who intentionally and unlawfully
6 releases any information or records closed to the public
7 pursuant to the Adoption Act or releases or makes other
8 unlawful use of records in violation of that act is guilty of
9 a petty misdemeanor and shall be sentenced pursuant to the
10 provisions of Section 31-19-1 NMSA 1978.

11 E. Prior to the entry of the decree of adoption,
12 the parent consenting to the adoption or relinquishing
13 parental rights to an agency or the department shall execute
14 an affidavit stating whether the parent will permit contact
15 or the disclosure of the parent's identity to the adoptee or
16 the adoptee's prospective adoptive parents."

17 Section 54. Section 32A-5-16 NMSA 1978 (being Laws
18 1993, Chapter 77, Section 143, as amended) is amended to
19 read:

20 "32A-5-16. TERMINATION PROCEDURES.--

21 A. A proceeding to terminate parental rights may
22 be initiated in connection with or prior to an adoption
23 proceeding. Venue shall be in the court for the county in
24 which the child is physically present or in the county from
25 which the child was placed. The proceeding may be initiated

1 by any of the following:

2 (1) the department;
3 (2) an agency; or
4 (3) any other person having a legitimate
5 interest in the matter, including a petitioner for adoption,
6 the child's guardian, the child's guardian ad litem or
7 attorney in another action, a foster parent, a relative of
8 the child or the child.

9 B. A petition for termination of parental rights
10 shall be signed and verified by the petitioner, be filed with
11 the court and set forth:

12 (1) the date, place of birth and marital
13 status of the child, if known;

14 (2) the grounds for termination and the
15 facts and circumstances supporting the grounds for
16 termination;

17 (3) the names and addresses of the person,
18 authorized agency or agency officer to whom custody might be
19 transferred;

20 (4) the basis for the court's jurisdiction;

21 (5) that the petition is in contemplation of
22 adoption;

23 (6) the relationship or legitimate interest
24 of the applicant to the child; and

25 (7) whether the child is an Indian child

1 and, if so:

2 (a) the tribal affiliations of the
3 child's parents;

4 (b) the specific actions taken by the
5 moving party to notify the parents' tribe and the results of
6 the contacts, including the names, addresses, titles and
7 telephone numbers of the persons contacted. Copies of any
8 correspondence with the Indian tribe shall be attached as
9 exhibits to the petition; and

10 (c) what specific efforts were made to
11 comply with the placement preferences set forth in the
12 federal Indian Child Welfare Act of 1978 or the placement
13 preferences of the appropriate Indian tribes.

14 C. Notice of the filing of the petition,
15 accompanied by a copy of the petition, shall be served by the
16 petitioner on the parents of the child, the child's guardian,
17 the legal custodian of the child, the person with whom the
18 child is residing, the individuals with whom the child has
19 resided within the past six months and the department.

20 Service shall be in accordance with the Rules of Civil
21 Procedure for the District Courts for the service of process
22 in a civil action in this state, with the exception that the
23 department may be served by certified mail. The notice shall
24 state specifically that the person served shall file a
25 written response to the petition within twenty days if the

1 person intends to contest the termination. In any case
2 involving an Indian child, notice shall also be served on the
3 child's Indian tribe pursuant to the federal Indian Child
4 Welfare Act of 1978.

5 D. If the identification or whereabouts of a
6 parent is unknown, the petitioner shall file a motion for an
7 order granting service by publication or an order stating
8 that service by publication is not required. A motion for an
9 order granting service by publication shall be supported by
10 the affidavit of the petitioner, the agency or the
11 petitioner's attorney detailing the efforts made to locate
12 the parent. Upon being satisfied that reasonable efforts to
13 locate the parent have been made and that information as to
14 the identity or whereabouts of the parent is still
15 insufficient to effect service in accordance with SCRA, Rule
16 1-004, the court shall order service by publication or order
17 that publication is not required because the parent's consent
18 is not required pursuant to the provisions of Section
19 32A-5-19 NMSA 1978.

20 E. The court shall, upon request, appoint counsel
21 for an indigent parent who is unable to obtain counsel or if,
22 in the court's discretion, appointment of counsel for an
23 indigent parent is required in the interest of justice.
24 Payment for the appointed counsel shall be made by the
25 petitioner pursuant to the rate determined by the supreme

1 court of New Mexico for court-appointed attorneys.

2 F. The court shall appoint a guardian ad litem for
3 the child in all contested proceedings for termination of
4 parental rights. If the child is fourteen years of age or
5 older and in the custody of the department, the child's
6 attorney appointed pursuant to the Abuse and Neglect Act
7 shall represent the child in any proceedings for termination
8 of parental rights under this section.

9 G. Within thirty days after the filing of a
10 petition to terminate parental rights, the petitioner shall
11 request a hearing on the petition. The hearing date shall be
12 at least thirty days after service is effected upon the
13 parent of the child or completion of publication.

14 H. The grounds for any attempted termination shall
15 be proved by clear and convincing evidence. In any
16 proceeding involving an Indian child, the grounds for any
17 attempted termination shall be proved beyond a reasonable
18 doubt and meet the requirements set forth in the federal
19 Indian Child Welfare Act of 1978.

20 I. If the court terminates parental rights, it
21 shall appoint a custodian for the child. Upon entering an
22 order terminating the parental rights of a parent, the court
23 may commit the child to the custody of the department, the
24 petitioner or an agency willing to accept custody for the
25 purpose of placing the child for adoption. In any

1 termination proceeding involving an Indian child, the court
2 shall, in any termination order, make specific findings that
3 the requirements of the federal Indian Child Welfare Act of
4 1978 were met.

5 J. A judgment of the court terminating parental
6 rights divests the parent of all legal rights. Termination
7 of parental rights shall not affect the child's right of
8 inheritance through the former parent."

9 Section 55. Section 32A-5-24 NMSA 1978 (being Laws
10 1993, Chapter 77, Section 151, as amended) is amended to
11 read:

12 "32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

13 A. When a parent elects to relinquish parental
14 rights to the department, a petition to accept the
15 relinquishment shall be filed, unless an abuse or neglect
16 proceeding is pending. If an abuse or neglect proceeding is
17 pending, the relinquishment shall be heard in the context of
18 that proceeding.

19 B. In all hearings regarding relinquishment of
20 parental rights to the department, the child shall be
21 represented by a guardian ad litem. If the child is fourteen
22 years of age or older and in the custody of the department,
23 the child's attorney appointed pursuant to the Abuse and
24 Neglect Act shall represent the child in any proceeding for
25 termination of parental rights under this section.

1 C. If a proposed relinquishment of parental rights
2 is not in contemplation of adoption, the court shall not
3 allow the relinquishment of parental rights unless it finds
4 that good cause exists, that the department has made
5 reasonable efforts to preserve the family and that
6 relinquishment of parental rights is in the child's best
7 interest. Whenever a parent relinquishes the parent's rights
8 pursuant to this subsection, the parent shall remain
9 financially responsible for the child. The court may order
10 the parent to pay the reasonable costs of support and
11 maintenance of the child. The court may use the child
12 support guidelines set forth in Section 40-4-11.1 NMSA 1978
13 to calculate a reasonable payment.

14 D. When a parent relinquishes the parent's rights
15 under this section, the parent shall be notified that no
16 contact will be enforced by the court, regardless of any
17 informal agreement, unless the parties have agreed to an open
18 adoption pursuant to Section 32A-5-35 NMSA 1978. The consent
19 for relinquishment shall be in writing and shall state that
20 the parties understand that any informal agreement allowing
21 contact will not be enforced by the courts."

22 Section 56. Section 32A-5-33 NMSA 1978 (being Laws
23 1993, Chapter 77, Section 160) is amended to read:

24 "32A-5-33. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY
25 FOR THE ADOPTEE OR OTHER PARTY.--Upon the motion of any party

1 or upon the court's own motion, the court may appoint a
2 guardian ad litem for the adoptee or for any person found to
3 be incompetent or a child who is a party to the proceeding.
4 In any contested proceeding, the court shall appoint a
5 guardian ad litem for the adoptee. The court may appoint the
6 child's attorney appointed pursuant to the Abuse and Neglect
7 Act if the child is fourteen years of age or older and in the
8 custody of the department."

9 Section 57. Section 32A-5-35 NMSA 1978 (being Laws
10 1993, Chapter 77, Section 162, as amended) is amended to
11 read:

12 "32A-5-35. OPEN ADOPTIONS.--

13 A. The parents of the adoptee and the petitioner
14 may agree to contact between the parents and the petitioner
15 or contact between the adoptee and one or more of the parents
16 or contact between the adoptee and relatives of the parents.
17 An agreement shall, absent a finding to the contrary, be
18 presumed to be in the best interests of the child and shall
19 be included in the decree of adoption. The agreement may
20 also include contact between siblings and the adoptee based
21 on a finding that it is in the best interests of the adoptee
22 and the adoptee's siblings and a determination that the
23 siblings' parent, guardian or custodian has consented to the
24 agreement. The contact may include exchange of identifying
25 or nonidentifying information or visitation between the

1 parents or the parents' relatives or the adoptee's siblings
2 and the petitioner or visitation between the parents or the
3 parents' relatives or the adoptee's siblings and the adoptee.
4 An agreement entered into pursuant to this section shall be
5 considered an open adoption.

6 B. The court may appoint a guardian ad litem for
7 the adoptee. The court shall adopt a presumption in favor of
8 appointing a guardian ad litem for the adoptee when
9 visitation between the biological family and the adoptee is
10 included in an agreement; however, this requirement may be
11 waived by the court for good cause shown. When an adoptive
12 placement is made voluntarily through an agency or pursuant
13 to Section 32A-5-13 NMSA 1978, the court may, in its
14 discretion, appoint a guardian ad litem. If the child is
15 fourteen years of age or older, the court may appoint an
16 attorney for the child. In all adoptions other than those in
17 which the child is placed by the department, the court may
18 assess the parties for the cost of services rendered by the
19 guardian ad litem or the child's attorney. The duties of the
20 guardian ad litem or child's attorney end upon the filing of
21 the decree, unless otherwise ordered by the court.

22 C. In determining whether the agreement is in the
23 adoptee's best interests, the court shall consider the
24 adoptee's wishes, but the wishes of the adoptee shall not
25 control the court's findings as to the best interests of the

1 adoptee.

2 D. Every agreement entered into pursuant to
3 provisions of this section shall contain a clause stating
4 that the parties agree to the continuing jurisdiction of the
5 court and to the agreement and understand and intend that any
6 disagreement or litigation regarding the terms of the
7 agreement shall not affect the validity of the relinquishment
8 of parental rights, the adoption or the custody of the
9 adoptee.

10 E. The court shall retain jurisdiction after the
11 decree of adoption is entered, if the decree contains an
12 agreement for contact, for the purpose of hearing motions
13 brought to enforce or modify an agreement entered into
14 pursuant to the provisions of this section. The court shall
15 not grant a request to modify the agreement unless the moving
16 party establishes that there has been a change of
17 circumstances and the agreement is no longer in the adoptee's
18 best interests."

19 Section 58. A new Section 32A-7A-1 NMSA 1978 is enacted
20 to read:

21 "32A-7A-1. SHORT TITLE.--Chapter 32A, Article 7A NMSA
22 1978 may be cited as the "Juvenile Public Safety Advisory
23 Board Act"."

24 Section 59. A new Section 32A-7A-2 NMSA 1978 is enacted
25 to read:

1 "32A-7A-2. JUVENILE PUBLIC SAFETY ADVISORY BOARD--
2 TERMS--DIRECTOR.--

3 A. The "juvenile public safety advisory board" is
4 created, consisting of seven members appointed by the
5 governor. The board is administratively attached to the
6 department. The terms of members of the board shall be six
7 years.

8 B. A director shall be appointed by the governor
9 as the administrative officer of the juvenile public safety
10 advisory board. The director shall employ other staff as
11 necessary to carry out the duties of the board. Employees
12 shall be employed in classified positions and shall be
13 subject to the provisions of the Personnel Act."

14 Section 60. A new Section 32A-7A-3 NMSA 1978 is enacted
15 to read:

16 "32A-7A-3. BOARD--REMOVAL--VACANCIES.--A member of the
17 juvenile public safety advisory board may be removed by the
18 governor as provided in Article 5, Section 5 of the
19 constitution of New Mexico. Vacancies shall be filled by the
20 governor for the remainder of the unexpired term."

21 Section 61. A new Section 32A-7A-4 NMSA 1978 is enacted
22 to read:

23 "32A-7A-4. BOARD--QUALIFICATIONS.--Members of the
24 juvenile public safety advisory board shall be persons
25 qualified by education or professional training in such

1 fields as criminology, education, health, psychology,
2 psychiatry, law, social work or sociology for children and
3 youth. The membership shall be reasonably representative of
4 the various geographic regions of the state."

5 Section 62. A new Section 32A-7A-5 NMSA 1978 is enacted
6 to read:

7 "32A-7A-5. BOARD--CHAIR.--

8 A. The governor shall designate one member of the
9 juvenile public safety advisory board to serve as chair.

10 B. The chair may designate two members of the
11 board to serve as regional vice chairs."

12 Section 63. A new Section 32A-7A-6 NMSA 1978 is enacted
13 to read:

14 "32A-7A-6. BOARD--POWERS AND DUTIES.--

15 A. The juvenile public safety advisory board
16 shall:

17 (1) advise the department on release
18 decisions, including the criteria to be used to grant release
19 and participation in decisions to grant or deny release;

20 (2) meet with the secretary of children,
21 youth and families or the secretary's designee a minimum of
22 twice each year for the purpose of reviewing the activities
23 of the department;

24 (3) visit each facility for adjudicated
25 delinquent children operated by the department at least once

1 each year and on or before June 30 of each year, submit a
2 written report to the governor and the secretary regarding
3 conditions relating to the care and treatment of youth
4 assigned to the facilities and any other matters pertinent in
5 the judgment of the board;

6 (4) make recommendations to the secretary of
7 children, youth and families and the director of the juvenile
8 justice division of the department concerning programs and
9 facilities for adjudicated delinquent children; and

10 (5) adopt rules and regulations as may be
11 necessary for the effectual discharge of duties of the board.

12 B. Within forty days of a juvenile's arrival at a
13 facility, the juvenile public safety advisory board shall
14 conduct an initial assessment of the juvenile. At regularly
15 scheduled intervals thereafter, the board shall conduct
16 administrative reviews to assess the juvenile's progress or
17 lack thereof. After each administrative review, the board
18 shall prepare a report of the juvenile offender's progress
19 with recommendations as to readiness for release or
20 appropriateness of programming."

21 Section 64. A new Section 32A-7A-7 NMSA 1978 is enacted
22 to read:

23 "32A-7A-7. BOARD--COMPENSATION.--The members of the
24 juvenile public safety advisory board shall receive per diem
25 and mileage as provided for nonsalaried public officers in

1 the Per Diem and Mileage Act and shall receive no other
2 compensation, perquisite or allowance."

3 Section 65. A new Section 32A-7A-8 NMSA 1978 is enacted
4 to read:

5 "32A-7A-8. ACCESS.--The juvenile public safety advisory
6 board shall have access at reasonable times to any
7 adjudicated delinquent child and any records pertaining to
8 the child for whom the department is considering release or
9 who has requested release pursuant to procedures established
10 by the department. The agency or facility to which legal
11 custody was transferred shall also provide the board with
12 facilities for communicating with and interviewing children."

13 Section 66. Section 32A-18-1 NMSA 1978 (being Laws
14 1993, Chapter 77, Section 224, as amended) is amended to
15 read:

16 "32A-18-1. CULTURAL RECOGNITION.--

17 A. A person who serves as a judge, prosecutor,
18 child's attorney, guardian ad litem, treatment guardian,
19 court appointed attorney, court appointed special advocate,
20 foster parent, mental health commissioner or mental health
21 treatment service provider for a child subject to an abuse or
22 neglect petition, a family in need of services petition or a
23 mental health placement shall receive periodic training, to
24 the extent of available resources, to develop his knowledge
25 about children, the physical and psychological formation of

1 children and the impact of ethnicity on a child's needs.
2 Institutions that serve children and their families shall,
3 considering available resources, provide similar training to
4 institutional staff.

5 B. The training shall include study of:

- 6 (1) cross-cultural dynamics and sensitivity;
- 7 (2) child development;
- 8 (3) family composition and dynamics;
- 9 (4) parenting skills and practices;
- 10 (5) culturally appropriate treatment plans;

11 and

- 12 (6) alternative health practices."

13 Section 67. Section 33-9A-4 NMSA 1978 (being Laws 1988,
14 Chapter 101, Section 42, as amended) is amended to read:

15 "33-9A-4. APPLICATIONS--CRITERIA.--

16 A. Counties, municipalities or private
17 organizations, individually or jointly, may apply for grants
18 from the fund, including grants for counties or
19 municipalities to purchase contractual services from private
20 organizations; provided that:

21 (1) the application is for funding a program
22 with priority use being for delinquents selected pursuant to
23 the provisions of Section 33-9A-5 NMSA 1978;

24 (2) the applicant certifies that it is
25 willing and able to operate the program according to

1 standards provided by the department, which may include the
2 negotiation of a contract between the delinquent and program
3 staff with provisions such as deductions from employment
4 income for applicable victim restitution, family support,
5 room and board, savings and weekly allowance. In addition to
6 monetary restitution, to the extent practical, or if monetary
7 restitution is not applicable, the contract may include
8 provision for community service restitution for a specific
9 number of hours;

10 (3) the applicant demonstrates the support
11 of key components of the criminal justice system;

12 (4) the applicant, if a private
13 organization, demonstrates the support of the county and
14 municipality where the program will provide services;

15 (5) the applicant certifies that it will
16 utilize volunteer services as an integral portion of the
17 program to the maximum extent feasible; and

18 (6) no class A county alone or in
19 conjunction with any municipality within a class A county
20 shall receive more than forty-nine percent of any money
21 appropriated to the fund.

22 B. Notwithstanding the provisions of Subsection A
23 of this section, the department may utilize the fund to place
24 individuals eligible, or within twelve months of eligibility,
25 for parole in community-based settings. The department may,

1 in its discretion, require participation by a delinquent in a
2 program as a condition of supervised release.

3 C. The department may utilize not more than
4 twenty-five percent of the fund to contract directly for
5 community corrections programs or to establish programs
6 operated by the department; provided, however, that the
7 department may utilize up to an additional ten percent of the
8 fund to operate juvenile community corrections programs if,
9 after a reasonable effort to solicit proposals, there are no
10 satisfactory proposals from a community where it is
11 determined that a program is necessary or if it becomes
12 necessary to cancel a program as provided in the contract.

13 D. The department shall establish additional
14 guidelines for allocation of funds under the Juvenile
15 Community Corrections Act. An applicant shall retain the
16 authority to accept or reject the placement of any delinquent
17 in a program."

18 Section 68. Section 33-9A-5 NMSA 1978 (being Laws 1988,
19 Chapter 101, Section 43, as amended) is amended to read:

20 "33-9A-5. SELECTION PANELS.--

21 A. The department shall establish a state panel
22 whose duties shall be to immediately screen and identify
23 delinquents sentenced to a juvenile correctional facility of
24 the department and transferred to the legal custody of the
25 department, except individuals who are sentenced or

1 transferred from a judicial district that has established a
2 local panel to exercise these duties pursuant to the
3 provisions of this section and who meet the following
4 criteria:

5 (1) the offense involved is one for which
6 community service or reasonable restitution may be made using
7 a payment schedule compatible with the total amount of
8 restitution to be paid and the time the offender is to
9 participate in a program; and

10 (2) the child is willing to enter into a
11 contract that establishes objectives that shall be achieved
12 before release from the program.

13 B. The department may establish criteria in
14 addition to those established in Subsection A of this section
15 for the screening of delinquents who would benefit from
16 participation in a program and who would not pose a threat to
17 the community.

18 C. If the state panel determines that a child is
19 suitable for placement in a program, a recommendation to that
20 effect and for modification of disposition shall be presented
21 as soon as possible to the sentencing judge or the
22 department, which may, notwithstanding any provision of law,
23 accept, modify or reject the recommendation. The
24 determination shall be presented to the county, municipality
25 or private nonprofit organization, as applicable, for

1 approval or rejection.

2 D. A county, municipality or private nonprofit
3 organization, individually or jointly, may establish a local
4 panel to exercise the duties and responsibilities of the
5 state panel pursuant to the provisions of Subsection A of
6 this section and, using the same criteria as the state panel,
7 the local panel may screen and identify delinquents. The
8 composition of a local panel shall include, to the maximum
9 extent possible, representatives of the judiciary, the
10 administrative office of the district attorneys, the public
11 defender department, the children, youth and families
12 department, the county sheriff or the municipal police
13 department, individuals representing local programs and
14 private citizens."

15 Section 69. Section 66-5-11 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 233, as amended) is amended to read:

17 "66-5-11. APPLICATION OF MINORS.--

18 A. The application of any person under the age of
19 eighteen years for an instruction permit, provisional license
20 or driver's license shall be signed and verified by the
21 father, mother or guardian or, in the event there is no
22 parent or guardian, by another responsible adult who is
23 willing to assume the obligation imposed under this article
24 upon a person signing the application of a minor.

25 B. The application of a minor who is in the

1 custody of the state may be signed and verified by a
2 grandparent; a sibling over the age of eighteen years; an
3 aunt; an uncle; a foster parent with whom the minor resides;
4 or as authorized by the secretary of children, youth and
5 families, a child protective services worker or juvenile
6 probation officer; provided that the child protective
7 services worker or juvenile probation officer first notifies
8 a foster parent or other responsible party of the intent to
9 sign.

10 C. Any negligence or willful misconduct of a minor
11 under the age of eighteen years when driving a motor vehicle
12 upon a highway shall be imputed to the person who has signed
13 the application of the minor for a permit or license, which
14 person shall be jointly and severally liable with the minor
15 for damages caused by the negligence or willful misconduct
16 except as otherwise provided in Subsection D of this section.

17 D. In the event a minor deposits or there is
18 deposited upon the minor's behalf proof of financial
19 responsibility in respect to the operation of a motor vehicle
20 owned by the minor or, if not the owner of a motor vehicle,
21 with respect to the operation of any motor vehicle, in form
22 and in amounts as required under the motor vehicle financial
23 responsibility laws of this state, the division may accept
24 the application of the minor when signed by one parent or the
25 guardian of the minor, and, while such proof is maintained,

1 the parent or guardian is not subject to the liability
2 imposed under Subsection C of this section. Liability shall
3 not be imposed under this section or under the Mandatory
4 Financial Responsibility Act on the state or the secretary of
5 children, youth and families or on a juvenile probation
6 officer or child protective services worker for damages
7 caused by the negligence or willful misconduct of a minor
8 driver whose application for an instruction permit,
9 provisional license or driver's license was signed by the
10 child protective services worker or juvenile probation
11 officer with the authorization of the children, youth and
12 families department while the minor was in the custody of the
13 state."

14 Section 70. REPEAL.--Sections 9-2A-5 and 32A-7-1
15 through 32A-7-9 NMSA 1978 (being Laws 1992, Chapter 57,
16 Section 5 and Laws 1993, Chapter 77, Sections 194 through
17 202, as amended) are repealed.

18 Section 71. APPLICABILITY.--The provisions of this act
19 apply to all children who, on July 1, 2009, are on release or
20 are otherwise eligible to be placed on release as if the
21 Juvenile Public Safety Advisory Board Act had been in effect
22 at the time they were placed on release or became eligible to
23 be released.

24 Section 72. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2009.