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HOUSE BILL 181

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Patricio Ruiloba and Monica Youngblood and Gay G. Kernan

AN ACT

RELATING TO JUVENILE JUSTICE; CREATING THE JUVENILE JUSTICE  
SUBCOMMITTEE TO THE JUVENILE JUSTICE ADVISORY COMMITTEE AND  
PROVIDING DUTIES; REQUIRING RULEMAKING; REQUIRING ADOPTION OF  
VALIDATED ASSESSMENT AND SCREENING TOOLS; REVISING DEFINITIONS  
AND PROCEDURES IN THE DELINQUENCY ACT; REVISING DUTIES OF THE  
CHILDREN, YOUTH AND FAMILIES DEPARTMENT; REVISING PROVISIONS  
RELATED TO THE JUVENILE CONTINUUM GRANT FUND AND THE JUVENILE  
COMMUNITY CORRECTIONS GRANT FUND.

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

**SECTION 1.** Section 9-2A-14.1 NMSA 1978 (being Laws 2007,  
Chapter 351, Section 1) is amended to read:

"9-2A-14.1. JUVENILE CONTINUUM GRANT FUND--CREATED--  
PURPOSE--ADMINISTRATION--RULES--GRANT APPLICATIONS.--

A. The "juvenile continuum grant fund" is created

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1 as a nonreverting fund in the state treasury. The fund shall  
2 be administered by the [~~children, youth and families~~]  
3 department and shall consist of appropriations, gifts, grants,  
4 donations and bequests made to the fund.

5 B. Money in the juvenile continuum grant fund is  
6 subject to appropriation by the legislature to the [~~children,~~  
7 ~~youth and families~~] department for awarding grants:

8 (1) to juvenile justice continuums for the  
9 provision of cost-effective services and temporary, nonsecure  
10 alternatives to detention for juveniles who are:

11 (a) arrested [~~or~~];

12 (b) referred to juvenile probation [~~and~~  
13 ~~parole or~~] services;

14 (c) at [~~a~~] risk of [~~such referral~~] being  
15 referred to juvenile probation services; or

16 (d) under the supervision of juvenile  
17 probation services; and

18 (2) for programs or services as provided in  
19 Subsection F of this section.

20 C. A local or tribal government may apply for a  
21 grant from the juvenile continuum grant fund for:

22 (1) a juvenile justice continuum within [~~its~~]  
23 the government's jurisdiction [~~The amount of the grant~~  
24 ~~application shall not exceed sixty percent of the annual cost~~  
25 ~~of the continuum~~]; or

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1                   (2) beginning in fiscal year 2022, a program  
2 or service provided within the government's jurisdiction, if  
3 the jurisdiction is not served by a continuum board.

4                   D. A local [match] or tribal government that  
5 receives a grant shall provide matching funds in the amount of  
6 [forty] thirty percent of the amount of the grant, and the  
7 matching funds may consist of money, land, equipment or in-kind  
8 services.

9                   E. The juvenile justice advisory committee shall  
10 review all applications for grants and submit those  
11 applications recommended for final approval to the secretary.

12                   F. Beginning in fiscal year 2022, the department  
13 may use any balance remaining in the juvenile continuum grant  
14 fund at the end of the immediately preceding fiscal year to  
15 award grants to a local or tribal government that is not served  
16 by a continuum board. The grants shall be made for programs or  
17 services for juveniles considered to be at moderate or high  
18 risk of reoffending, based on the results of risk assessments  
19 performed in accordance with the Delinquency Act.

20                   ~~[D.]~~ G. The [children, youth and families]  
21 department shall adopt rules [on] regarding grants from the  
22 juvenile continuum grant fund, including:

- 23                               (1) definitions;  
24                               (2) qualifications for grants [and specify];  
25                               (3) the format, procedure and deadlines for

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1 grant applications [~~The juvenile justice advisory committee~~  
2 ~~shall review all grant applications and submit those~~  
3 ~~applications recommended for final approval to the secretary of~~  
4 ~~children, youth and families~~];

5 (4) a requirement that, beginning July 1,  
6 2020, at least fifty percent of a grant be used be to provide  
7 services for juveniles described in Subparagraphs (a) and (b)  
8 of this paragraph; provided that a continuum that serves a  
9 community that does not include a sufficient number of  
10 juveniles that meet this requirement, as shown in a data  
11 analysis, may request a waiver from this requirement in a grant  
12 application:

13 (a) juveniles who are placed on  
14 probation and who are considered to be at moderate or high risk  
15 of reoffending, based on the results of risk assessments  
16 performed in accordance with the Delinquency Act; or

17 (b) juveniles who are committed to the  
18 custody of the department, have been released from a facility  
19 for the care and rehabilitation of an adjudicated delinquent  
20 child and who are considered to be at moderate or high risk of  
21 reoffending, based on the results of risk assessments performed  
22 in accordance with the Delinquency Act;

23 (5) a requirement that a grant recipient and  
24 an entity that contracts with a grant recipient to provide  
25 services using grant money meet the uniform performance

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1 measures established in accordance with Section 9-2A-16 NMSA  
2 1978;

3 (6) a requirement that a contract between a  
4 grant recipient and another entity to provide services using  
5 grant money provide consequences for a contractor that fails to  
6 meet the uniform performance measures established in accordance  
7 with Section 9-2A-16 NMSA 1978; and

8 (7) with respect to a program or service that  
9 is in a community not served by a continuum board and that  
10 receives grant money:

11 (a) outcome measures for the program or  
12 service; and

13 (b) a requirement that on or before  
14 December 15 of each year, the program or service submit to the  
15 department an evaluation of the program or service using the  
16 outcome measures established by the department.

17 H. The department shall adopt, after review by the  
18 juvenile justice advisory committee, policies for:

19 (1) the review of contractor performance under  
20 a contract with a grant recipient;

21 (2) corrective action plans for a continuum,  
22 service, program or contractor that receives grant money and  
23 that fails to meet the uniform performance measures established  
24 in accordance with Section 9-2A-16 NMSA 1978; and

25 (3) determining whether a continuum, service,

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1 program or contractor is eligible to receive grant money in the  
2 future based on past performance.

3 ~~[E-]~~ I. Disbursements from the juvenile continuum  
4 grant fund shall be made upon vouchers issued and signed by the  
5 secretary of children, youth and families or the secretary's  
6 designee upon warrants drawn by the secretary of finance and  
7 administration.

8 ~~[F-]~~ J. As used in this section, [~~a~~] "juvenile  
9 justice continuum" [~~is~~] or "continuum" means a system of  
10 services and sanctions for juveniles who are arrested [~~or~~],  
11 referred to juvenile probation [~~and parole or~~] services, are at  
12 risk of [~~such referral~~] being referred to juvenile probation  
13 services or are under the supervision of juvenile probation  
14 services and consists of a formal partnership among one or more  
15 units of local or tribal governments, the children's court, the  
16 district attorney, the public defender, local law enforcement  
17 agencies, the public schools and other entities such as private  
18 nonprofit organizations, the business community and religious  
19 organizations. A juvenile justice continuum shall be  
20 established through a memorandum of understanding and a  
21 continuum board."

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

24 "9-2A-16. FUNCTIONS OF JUVENILE JUSTICE ADVISORY  
25 COMMITTEE, JUVENILE JUSTICE SUBCOMMITTEE AND DEPARTMENT.--

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

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

9                   (2) approval or disapproval of applications or  
10 amendments submitted by eligible entities pursuant to that act;

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

15                   (4) in conjunction with the department,  
16 receive and review annual reports from adult jails and lockups  
17 regarding compliance with federal requirements that apply when  
18 a juvenile is temporarily held in an adult jail or lockup. The  
19 juvenile justice advisory committee and the department shall  
20 determine the format of the annual reports;

21                   (5) assistance to the governor, the  
22 legislature and entities created or funded pursuant to that act  
23 in developing new or improved approaches, policies or  
24 legislation designed to improve juvenile justice in New Mexico;  
25 and

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

3 B. All budgetary, evaluation, monitoring and grants  
4 administration functions required pursuant to the federal  
5 Juvenile Justice and Delinquency Prevention Act of 1974 shall  
6 be carried out by the department.

7 C. A juvenile justice subcommittee of the juvenile  
8 justice advisory committee shall be established on or before  
9 July 31, 2018. The subcommittee shall consist of members of  
10 the juvenile justice advisory committee and any additional  
11 members appointed by the department. The subcommittee shall:

12 (1) on or before January 1, 2019, recommend to  
13 the department a validated risk assessment tool that uses a  
14 currently accepted standard of assessment to determine the  
15 disposition and level, length and type of supervision and  
16 services most appropriate for a delinquent child;

17 (2) on or before January 1, 2019, recommend to  
18 the department a validated mental health screening tool that  
19 uses a currently accepted standard of assessment to determine  
20 the potential of an existing behavioral health issue;

21 (3) on or before January 1, 2019, recommend to  
22 the department a validated risk screening tool that uses a  
23 currently accepted standard of assessment to determine if a  
24 child who is the subject of a complaint alleging delinquency is  
25 eligible for participation in diversion;

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1                   (4) establish uniform performance measures for  
2 recipients of grants from the juvenile community corrections  
3 grant fund and the juvenile continuum grant fund; and

4                   (5) develop a plan by which the department,  
5 beginning December 15, 2020, shall collect and report annually  
6 to the legislature and the governor on performance measures  
7 established in accordance with this section and on program and  
8 service outcome measures reported to the department in  
9 accordance with department rules.

10                   D. By January 1, 2020, the department shall adopt  
11 and implement a validated risk assessment tool, a validated  
12 mental health screening tool and a validated risk screening  
13 tool based on the juvenile justice subcommittee's  
14 recommendations."

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

17                   "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

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

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

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

25                   (b) failure to stop in the event of an

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1 accident causing death, personal injury or damage to property;

2 (c) unlawful taking of a vehicle or  
3 motor vehicle;

4 (d) receiving or transferring of a  
5 stolen vehicle or motor vehicle;

6 (e) homicide by vehicle;

7 (f) injuring or tampering with a  
8 vehicle;

9 (g) altering or changing of an engine  
10 number or other vehicle identification numbers;

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

14 (i) reckless driving;

15 (j) driving with a suspended or revoked  
16 license; or

17 (k) an offense punishable as a felony;

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

24 (a) means an establishment where meals  
25 are prepared and served primarily for on-premises consumption

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1 and that has a dining room, a kitchen and the employees  
2 necessary for preparing, cooking and serving meals  
3 [~~"Restaurant"~~]; and

4 (b) does not include an establishment,  
5 as defined in regulations promulgated by the director of the  
6 special investigations [~~division~~] unit of the department of  
7 public safety, that serves only hamburgers, sandwiches, salads  
8 [~~and~~] or other fast foods;

9 (3) a violation of Section 30-29-2 NMSA 1978,  
10 regarding the illegal use of a glue, aerosol spray product or  
11 other chemical substance;

12 (4) a violation of the Controlled Substances  
13 Act;

14 (5) escape from the custody of a law  
15 enforcement officer or a juvenile probation [~~or parole~~] officer  
16 or from any placement made by the department by a child who has  
17 been adjudicated a delinquent child;

18 (6) a violation of Section 30-15-1.1 NMSA 1978  
19 regarding unauthorized graffiti on personal or real property;  
20 or

21 (7) a violation of an order of protection  
22 issued pursuant to the provisions of the Family Violence  
23 Protection Act;

24 B. "delinquent child" means a child ten years of  
25 age or older who has committed a delinquent act;

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1 C. "delinquent offender" means a delinquent child  
2 who is subject to juvenile sanctions only and who is not a  
3 youthful offender or a serious youthful offender;

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

8 E. "diversion" means a program, service or  
9 intervention strategy that:

10 (1) may include requirements or conditions  
11 that a child must meet to successfully complete diversion; and

12 (2) serves as an alternative to the filing of  
13 a formal petition in connection with an allegation of  
14 delinquency against the child;

15 [~~E.~~] F. "felony" means an act that would be a  
16 felony if committed by an adult;

17 [~~F.~~] G. "mental health screening" means an  
18 evaluation performed using the validated mental health  
19 screening tool adopted by the department in accordance with  
20 Section 9-2A-16 NMSA 1978 that uses a currently accepted  
21 standard of assessment to determine the potential of a child's  
22 existing behavioral health issue;

23 H. "misdemeanor" means an act that would be a  
24 misdemeanor or petty misdemeanor if committed by an adult;

25 [~~G.~~] I. "restitution" means financial reimbursement

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1 by the child to the victim or community service imposed by the  
2 court and is limited to easily ascertainable damages for injury  
3 to or loss of property, actual expenses incurred for medical,  
4 psychiatric and psychological treatment for injury to a person  
5 and lost wages resulting from physical injury, which are a  
6 direct and proximate result of a delinquent act. "Restitution"  
7 does not include reimbursement for damages for mental anguish,  
8 pain and suffering or other intangible losses. As used in this  
9 subsection, "victim" means a person who is injured or suffers  
10 damage of any kind by an act that is the subject of a complaint  
11 or referral to law enforcement officers or juvenile probation  
12 authorities. Nothing contained in this definition limits or  
13 replaces the provisions of Subsections A and B of Section  
14 32A-2-27 NMSA 1978;

15 J. "risk assessment":

16 (1) means an evaluation performed using the  
17 validated risk assessment tool adopted by the department in  
18 accordance with Section 9-2A-16 NMSA 1978 that uses a currently  
19 accepted standard of assessment to determine the appropriate  
20 disposition of a child's case and the appropriate level, length  
21 and type of supervision and services for a child; and

22 (2) does not mean a "detention risk assessment  
23 instrument";

24 K. "risk screening" means an evaluation performed  
25 using the validated risk screening tool adopted by the

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1 department in accordance with Section 9-2A-16 NMSA 1978 that  
2 uses a currently accepted standard of assessment to determine  
3 whether a child who is the subject of a complaint alleging  
4 delinquency is eligible for diversion;

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

10 M. "status offense" means any offense or violation  
11 not defined as a "delinquent act" in Subsection A of this  
12 section;

13 [H.] N. "supervised release" means the release of a  
14 juvenile, whose term of commitment has not expired, from a  
15 facility for the care and rehabilitation of adjudicated  
16 delinquent children, with specified conditions to protect  
17 public safety and promote successful transition and  
18 reintegration into the community. A juvenile on supervised  
19 release is subject to monitoring by the department until the  
20 term of commitment has expired and may be returned to custody  
21 for violating conditions of release; ~~and~~

22 O. "technical violation" means an act that violates  
23 the terms or conditions imposed as part of a child's juvenile  
24 probation or supervised release but that does not constitute a  
25 new delinquent act; and

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1                   [~~F~~] P. "youthful offender" means a delinquent  
2 child subject to adult or juvenile sanctions who is:

3                   (1) fourteen to eighteen years of age at the  
4 time of the offense and who is adjudicated for at least one of  
5 the following offenses:

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

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

10                              (c) kidnapping, as provided in Section  
11 30-4-1 NMSA 1978;

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

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

17                              (f) aggravated battery upon a peace  
18 officer, as provided in Subsection C of Section 30-22-25 NMSA  
19 1978;

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

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

25                              (i) criminal sexual penetration, as

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1 provided in Section 30-9-11 NMSA 1978;

2 (j) robbery, as provided in Section  
3 30-16-2 NMSA 1978;

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

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

8 (m) abuse of a child that results in  
9 great bodily harm or death to the child, as provided in Section  
10 30-6-1 NMSA 1978;

11 (2) fourteen to eighteen years of age at the  
12 time of the offense, who is adjudicated for any felony offense  
13 and who has had three prior, separate felony adjudications  
14 within a three-year time period immediately preceding the  
15 instant offense. The felony adjudications relied upon as prior  
16 adjudications shall not have arisen out of the same transaction  
17 or occurrence or series of events related in time and location.  
18 Successful completion of consent decrees [~~are~~] is not  
19 considered a prior adjudication for the purposes of this  
20 paragraph; or

21 (3) fourteen years of age and who is  
22 adjudicated for first degree murder, as provided in Section  
23 30-2-1 NMSA 1978."

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

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1 "32A-2-5. JUVENILE PROBATION [~~AND PAROLE~~] SERVICES--  
2 ESTABLISHMENT--JUVENILE PROBATION [~~AND PAROLE~~] OFFICERS--POWERS  
3 AND DUTIES.--

4 A. Juvenile probation [~~and parole~~] services shall  
5 be provided by the department.

6 B. [~~To carry out the objectives and provisions of~~  
7 ~~the Delinquency Act, but subject to its limitations~~] The  
8 department [~~has the power and duty to~~] shall:

9 (1) receive and examine complaints and  
10 allegations that a child is a delinquent child for the purpose  
11 of considering [~~beginning~~] whether to start a proceeding  
12 pursuant to the [~~provisions of the~~] Delinquency Act;

13 (2) as appropriate, make case referrals for  
14 services [~~as appear appropriate or desirable~~];

15 (3) conduct a risk assessment for each child  
16 who is the subject of a complaint alleging delinquency and of a  
17 related petition, and provide the results of the assessment and  
18 an according recommended level and length of supervision to the  
19 parties of a case and to the court, in accordance with Section  
20 32A-2-17 NMSA 1978;

21 [~~(3)~~] (4) make reports and recommendations to  
22 the court on the results of predisposition studies, screenings  
23 and assessments [~~and submit reports and recommendations to the~~  
24 ~~court~~];

25 (5) conduct a mental health screening, and

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1 provide for a subsequent full mental health and substance use  
2 assessment if warranted based on the screening results, for  
3 each child adjudicated delinquent and provide the results of  
4 the screening and of the full assessment, if applicable, to the  
5 parties of a case and to the court, in accordance with Section  
6 32A-2-17 NMSA 1978;

7 [(4)] (6) supervise and assist a child placed  
8 on probation or supervised release or under supervision by  
9 court order or by the department;

10 [(5)] (7) give notice to any individual who  
11 has been the subject of a petition filed pursuant to the  
12 provisions of the Delinquency Act of the sealing of that  
13 individual's records in accordance with that act;

14 [(6)] (8) informally dispose of up to three  
15 referrals for misdemeanor [~~charges brought against~~] offenses  
16 made for a child within two years;

17 [(7)] (9) give notice to the children's court  
18 attorney of the receipt of any felony complaint and of any  
19 recommended adjustment of [~~such~~] that felony complaint;

20 [(8)] (10) identify an Indian child for the  
21 purpose of contacting the Indian child's tribe in delinquency  
22 cases; and

23 [(9)] (11) contact an Indian child's tribe to  
24 consult and exchange information for the purpose of preparing a  
25 predisposition report when commitment or placement of an Indian

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1 child is contemplated or has been ordered and indicate in the  
2 report the name of the person contacted in the Indian child's  
3 tribe and the results of the contact.

4 C. A juvenile probation [~~and parole~~] officer does  
5 not have the powers of a law enforcement officer. A juvenile  
6 probation [~~and parole~~] officer may take into physical custody  
7 and place in detention, subject to application of a detention  
8 risk assessment instrument, a child who is under supervision as  
9 a delinquent child or a child who is under supervision as a  
10 youthful offender when there is reasonable cause to believe  
11 [~~that the child has violated the conditions of the child's~~  
12 ~~probation~~] either that the child poses a substantial risk of  
13 harm to the child's self or others or that the child may leave  
14 the jurisdiction of the court. Taking a child into custody  
15 under this subsection is subject to and shall proceed in  
16 accordance with the provisions of the Delinquency Act relating  
17 to custody and detention procedures and criteria."

18 SECTION 5. Section 32A-2-7 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 36, as amended) is amended to read:

20 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--  
21 DIVERSION--NOTICE--TIME WAIVER.--

22 A. Complaints alleging delinquency shall be  
23 referred to juvenile probation services, [~~which~~] and probation  
24 services shall conduct a preliminary inquiry to determine the  
25 best interests of the child and of the public with regard to

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1 any action to be taken.

2 B. During the preliminary inquiry [~~on a delinquency~~  
3 ~~complaint~~]:

4 (1) the matter may be referred to another  
5 appropriate agency and conferences may be conducted for the  
6 purpose of effecting adjustments or agreements that will  
7 obviate the [~~necessity for filing~~] need to file a petition; and

8 (2) juvenile probation services may conduct a  
9 risk screening to inform decisions about whether participation  
10 in diversion or community-based services would be appropriate  
11 for the child.

12 C. At the commencement of the preliminary inquiry,  
13 the parties shall be advised of their basic rights pursuant to  
14 Section 32A-2-14 NMSA 1978, and [~~no party may~~] a party shall  
15 not be compelled to appear at any conference, to produce any  
16 papers or to visit any place. The child shall be informed of  
17 the child's right to remain silent. The preliminary inquiry  
18 shall be completed within the time limits set forth in the  
19 Children's Court Rules.

20 [~~G.~~] D. Prior to a preliminary inquiry being  
21 conducted with a child who is detained, the child's parent,  
22 guardian or custodian or the child's attorney shall be given  
23 reasonable notice by the juvenile probation [~~and parole~~]  
24 officer and an opportunity to be present at the preliminary  
25 inquiry. If a child is not detained, the preliminary inquiry

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1 shall be conducted within thirty days of receipt of the  
2 referral from law enforcement. The thirty-day time period may  
3 be extended upon a determination by the department that an  
4 extension is necessary to conduct a thorough preliminary  
5 inquiry and that the extension is not prejudicial to the best  
6 interests of the child.

7 ~~[D-]~~ E. When a child is in detention or custody and  
8 the children's court attorney does not file a petition within  
9 the time limits authorized by the Children's Court Rules, the  
10 child shall be released immediately. If a child is not  
11 detained and a determination is made to file a petition, the  
12 petition shall be filed within sixty days of completion of the  
13 preliminary inquiry, unless a motion is granted to extend the  
14 time limit for good cause shown. If a child is not in custody  
15 or detention, a petition shall not be dismissed for failure to  
16 comply with the time limit set forth in this subsection unless  
17 there is a showing of prejudice to the child.

18 ~~[E-]~~ F. After completion of the preliminary inquiry  
19 on a delinquency complaint involving a misdemeanor, juvenile  
20 probation services:

21 (1) may:

22 (a) notify the children's court attorney  
23 and recommend an appropriate disposition for the case;

24 (b) conclude that no further action on  
25 the case will be taken; or

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1                   (c) refer the case to appropriate  
2 diversion or community-based services; and

3                   (2) if the child has been referred for three  
4 or more prior misdemeanors within two years of the instant  
5 offense [~~probation services~~]:

6                   (a) shall notify the children's court  
7 attorney and provide the attorney with the results of the  
8 child's risk screening; and

9                   (b) may recommend the child's  
10 participation in preprosecution diversion or an appropriate  
11 disposition for the case.

12                   [~~F. probation services shall notify the children's~~  
13 ~~court attorney of the receipt of]~~

14                   G. With respect to any complaint [involving]  
15 received that involves an act that constitutes a felony under  
16 the applicable criminal law, [probation services shall also]  
17 juvenile probation services:

18                   (1) shall:

19                   (a) notify the children's court attorney  
20 of the receipt of the complaint;

21                   (b) provide the attorney with the  
22 results of the child's risk screening; and

23                   (c) recommend a disposition to the  
24 children's court attorney; and

25                   (2) may recommend participation in

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1 preprosecution diversion.

2           [~~G-~~] H. The child, through counsel, and the  
3 children's court attorney may agree, without judicial approval,  
4 to a waiver of time limitations imposed after a petition is  
5 filed. A time waiver defers adjudication of the charges. The  
6 children's court attorney may place restrictions on a child's  
7 behavior as a condition of a time waiver. If the child  
8 completes the agreed upon conditions and no new charges are  
9 filed against the child, the pending petition shall be  
10 dismissed. If the children's court attorney files a new  
11 petition against the child, the children's court attorney may  
12 proceed on both the original petition and the new charges. The  
13 department shall become a party if juvenile probation services  
14 are requested as a condition of the time waiver.

15           I. The department shall collect data on the  
16 performance measures developed in accordance with Section  
17 9-2A-16 NMSA 1978, for diversion that receives state funding."

18           **SECTION 6.** Section 32A-2-11 NMSA 1978 (being Laws 1993,  
19 Chapter 77, Section 40, as amended) is amended to read:

20           "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

21           A. Unless ordered by the court pursuant to the  
22 provisions of the Delinquency Act, a child taken into custody  
23 for an alleged delinquent act shall not be placed in detention  
24 unless a detention risk assessment instrument is completed and  
25 a determination is made that the child:

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1 (1) poses a substantial risk of harm to  
2 [~~himself~~] the child's self;

3 (2) poses a substantial risk of harm to  
4 others; or

5 (3) has demonstrated that [~~he~~] the child may  
6 leave the jurisdiction of the court.

7 B. A child shall not be placed in detention solely  
8 based on a technical violation, unless a written determination  
9 is made by the court that:

10 (1) the technical violation is based on the  
11 child absconding from supervision;

12 (2) the child has been referred to a specialty  
13 court;

14 (3) the child poses a substantial risk of harm  
15 to the child's self;

16 (4) the child poses a substantial risk of harm  
17 to others;

18 (5) the child has demonstrated that the child  
19 may leave the jurisdiction of the court; or

20 (6) no alternatives to detention are available  
21 or appropriate.

22 [~~B-~~] C. The criteria for detention in this section  
23 shall govern the decisions of all persons responsible for  
24 determining whether detention is appropriate prior to a child's  
25 detention hearing, based upon a review of the detention risk

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1 assessment instrument.

2 [~~G.~~] D. The department shall:

3 (1) develop and implement a detention risk  
4 assessment instrument [~~The department shall~~]; and

5 (2) collect and analyze data regarding the  
6 application of the detention risk assessment instrument. [~~On~~  
7 ~~January 1, 2004, the department shall provide the legislature~~  
8 ~~with a written report with respect to its collection and~~  
9 ~~analysis of data regarding the application of the detention~~  
10 ~~risk assessment instrument.]"~~

11 SECTION 7. Section 32A-2-17 NMSA 1978 (being Laws 1993,  
12 Chapter 77, Section 46, as amended) is amended to read:

13 "32A-2-17. RISK ASSESSMENTS--MENTAL HEALTH SCREENING--  
14 PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

15 A. After a petition has been filed and [~~either a~~  
16 ~~finding with respect to the allegations of the petition has~~  
17 ~~been made or a notice of intent to admit the allegations of the~~  
18 ~~petition has been filed, the court may direct that a~~  
19 ~~predisposition study and report to the court be made in writing~~  
20 ~~by the department or an appropriate agency designated by the~~  
21 ~~court concerning the child, the family of the child, the~~  
22 ~~environment of the child and any other matters relevant to the~~  
23 ~~need for treatment or to appropriate disposition of the case.~~  
24 ~~The following predisposition reports shall be provided to the~~  
25 ~~parties and the court five days before actual disposition or~~

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1 ~~sentencing:~~

2 ~~(1) the adult probation and parole division of~~  
3 ~~the corrections department shall prepare a predisposition~~  
4 ~~report for a serious youthful offender;~~

5 ~~(2) the department shall prepare a~~  
6 ~~predisposition report for a serious youthful offender who is~~  
7 ~~convicted of an offense other than first degree murder;~~

8 ~~(3) the department shall prepare a~~  
9 ~~predisposition report for a youthful offender concerning the~~  
10 ~~youthful offender's amenability to treatment and if:~~

11 ~~(a) the court determines that a juvenile~~  
12 ~~disposition is appropriate, the department shall prepare a~~  
13 ~~subsequent predisposition report; or~~

14 ~~(b) the court makes the findings~~  
15 ~~necessary to impose an adult sentence pursuant to Section~~  
16 ~~32A-2-20 NMSA 1978, the adult probation and parole division of~~  
17 ~~the corrections department shall prepare a subsequent~~  
18 ~~predisposition report; and~~

19 ~~(4) the department shall prepare a~~  
20 ~~predisposition report for a delinquent offender, upon the~~  
21 ~~court's request.~~

22 ~~B. Where there are indications that the child may~~  
23 ~~have a mental disorder or developmental disability, the court,~~  
24 ~~on motion by the children's court attorney or that of counsel~~  
25 ~~for the child, may order the child to be examined at a suitable~~

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1 ~~place by a physician or psychiatrist, a licensed psychologist,~~  
2 ~~a licensed professional clinical counselor or a licensed~~  
3 ~~independent social worker prior to a hearing on the merits of~~  
4 ~~the petition]~~ prior to the adjudication of a case involving a  
5 child alleged delinquent, the department shall conduct a risk  
6 assessment of the child. Before the adjudicatory hearing,  
7 probation services shall provide to the parties of a case and  
8 to the court the results of the risk assessment, an  
9 identification of the child's risk of reoffending and an  
10 according recommended level, length and type of supervision and  
11 services for the child.

12 B. Any admission, confession or incriminating  
13 information obtained from a child in the course of conducting a  
14 risk assessment shall not be admitted into evidence in a case  
15 against the child, except as rebuttal or impeachment evidence,  
16 and shall not be used as a basis for introducing related  
17 evidence in any future adjudication hearing or criminal  
18 proceeding in which the child is accused. An admission,  
19 confession or incriminating information may be considered by  
20 the court at disposition of the case.

21 C. Prior to the disposition of a case in which a  
22 child is adjudicated delinquent, the department shall conduct a  
23 mental health screening of the child and a subsequent full  
24 mental health and substance use assessment, if warranted based  
25 on the mental health screening results. Juvenile probation

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1 services shall provide to the parties of the case and to the  
2 court the results of the screening and the assessment, if  
3 applicable, prior to disposition.

4 D. An ~~[examination made]~~ assessment or screening of  
5 a child conducted prior to the adjudicatory hearing or as a  
6 part of the predisposition study and report shall be conducted  
7 on an outpatient basis, unless the court finds that placement  
8 in a hospital or other appropriate facility is necessary. If a  
9 mental health screening reveals that a child is in need of  
10 mental health services, the department shall, to the extent  
11 financially feasible, provide for a full mental health and  
12 substance use assessment of the child.

13 ~~[G.]~~ E. The court, after a hearing, may order the  
14 examination, by a physician or psychiatrist, a licensed  
15 psychologist or a licensed professional clinical counselor or a  
16 licensed independent social worker, of a parent, guardian or  
17 custodian whose ability to care for or supervise a child is an  
18 issue before the court.

19 ~~[D.]~~ F. The court may order that a child  
20 adjudicated ~~[as a]~~ delinquent ~~[child]~~ be administered a  
21 predispositional evaluation by a professional designated by the  
22 department for purposes of diagnosis, with direction that the  
23 court be given a report indicating what disposition appears  
24 most suitable when the interests of the child and the public  
25 are considered. The evaluation shall be completed within

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1 fifteen days of the court's order and the preference shall be  
2 for performing the evaluation in the child's community.

3 ~~[E-]~~ G. If a child is detained for purposes of  
4 performing a predispositional evaluation, ~~[it]~~ the evaluation  
5 shall be completed within fifteen days and in no event shall a  
6 child be detained for more than fifteen days within a three-  
7 hundred-sixty-five-day period for a predispositional  
8 evaluation, unless for good cause shown.

9 H. The court shall use the predisposition report,  
10 including the results of the assessments and screening  
11 performed in accordance with this section, to assist the court  
12 in determining the disposition of a child's case.

13 I. A predisposition report shall also be used by  
14 the department to inform a decision to place a child in a  
15 facility for the care and rehabilitation of adjudicated  
16 delinquent children and the education, counseling and treatment  
17 provided to the child while committed to the facility.

18 J. Every six months or when a significant change to  
19 a child's case is made:

20 (1) a facility for the care and rehabilitation  
21 of adjudicated delinquent children shall conduct a risk  
22 assessment of each child who is adjudicated delinquent and is:

23 (a) committed to a short- or long-term  
24 placement in that facility; or

25 (b) committed to the facility until the

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1 child reaches the age of twenty-one; and

2 (2) juvenile probation services shall conduct  
3 a risk assessment and mental health screening of each child who  
4 is adjudicated delinquent and is placed on probation."

5 SECTION 8. Section 32A-2-19 NMSA 1978 (being Laws 1993,  
6 Chapter 77, Section 48, as amended) is amended to read:

7 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT  
8 OFFENDER.--

9 A. At the conclusion of the dispositional hearing,  
10 the court [~~may~~] shall make and include in the dispositional  
11 judgment its findings [~~on the~~], including findings on the  
12 results of assessments and screenings of the child conducted in  
13 accordance with Section 32A-2-17 NMSA 1978.

14 B. The court may make and include in the  
15 dispositional judgment its findings on the following:

16 (1) the interaction and interrelationship of  
17 the child with the child's parents and siblings and any other  
18 person who may significantly affect the child's best interests;

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

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

25 (4) the wishes of the child as to the child's

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1       custodian;

2                       (5) the wishes of the child's parents as to  
3 the child's custody;

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

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

9                       (8) the ability of the parents to care for the  
10 child in the home.

11                      [~~B-~~] C. If a child is found to be delinquent, the  
12 court may impose a fine not to exceed the fine that could be  
13 imposed if the child were an adult and may [~~enter its judgment~~  
14 ~~making~~] make any of the following dispositions for the  
15 supervision, care and rehabilitation of the child:

16                      (1) transfer legal custody to the department,  
17 [~~an agency responsible for the care and rehabilitation of~~  
18 ~~delinquent children~~] which shall receive the child at a  
19 facility designated by the [~~secretary of the~~] department as a  
20 juvenile reception facility. If a child is committed to the  
21 custody of a facility for the care and rehabilitation of  
22 delinquent children, the court shall make a finding that an  
23 appropriate alternative service or program in the community  
24 does not exist or was previously used by the child without  
25 success and that the child poses a risk to the community based

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1 on the child's risk assessment the seriousness of the act  
2 committed by the child, and the child's history of delinquency  
3 and any other relevant factors. The department shall  
4 thereafter determine the appropriate placement, supervision and  
5 rehabilitation program for the child. The judge may include  
6 recommendations for placement of the child. Commitments are  
7 subject to limitations and modifications set forth in Section  
8 32A-2-23 NMSA 1978. The types of 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 served  
12 at the facility and no less than ninety days shall be served on  
13 supervised release, unless: 1) a petition to extend the  
14 commitment has been filed prior to the commencement of  
15 supervised release; 2) the commitment has been extended  
16 pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised  
17 release is revoked pursuant to Section 32A-2-25 NMSA 1978;

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

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

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

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

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

19 (4) if a child is found to be delinquent  
20 solely on the basis of Paragraph (2), (3) or (4) of Subsection  
21 A of Section 32A-2-3 NMSA 1978, the court may make any  
22 disposition provided by this section and may [~~enter its~~  
23 ~~judgment placing~~] place the child on probation and, as a  
24 condition of probation, transfer custody of the child to the  
25 department for a period not to exceed six months without

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1 further order of the court; provided that this transfer shall  
2 not be made unless the court first determines that the  
3 department is able to provide or contract for adequate and  
4 appropriate treatment for the child and that the treatment is  
5 likely to be beneficial.

6 [~~G-~~] D. When the child is an Indian child, the  
7 Indian child's cultural needs shall be considered in the  
8 dispositional judgment and reasonable access to cultural  
9 practices and traditional treatment shall be provided.

10 [~~D-~~] E. A child found to be delinquent shall not be  
11 committed or transferred to a penal institution or other  
12 facility used for the execution of sentences of persons  
13 convicted of crimes.

14 [~~E-~~] F. Whenever the court vests legal custody in  
15 an agency, institution or department, it shall transmit with  
16 the dispositional judgment copies of the clinical reports,  
17 predisposition study and report and other information it has  
18 pertinent to the care and treatment of the child.

19 [~~F-~~] G. Prior to any child being placed in the  
20 custody of the department, the department shall be provided  
21 with reasonable oral or written notification and an opportunity  
22 to be heard.

23 [~~G-~~] H. In addition to any other disposition  
24 pursuant to Subsection [~~B~~] C of this section, the court may  
25 make an abuse or neglect report for investigation and

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1 proceedings as provided for in the Abuse and Neglect Act. The  
2 report may be made to a local law enforcement agency, the  
3 department or a tribal law enforcement or social service agency  
4 for an Indian child residing in Indian country.

5 ~~[H.]~~ I. In addition to any other disposition  
6 pursuant to this section or any other penalty provided by law,  
7 if a child who is fifteen years of age or older is adjudicated  
8 delinquent on the basis of Paragraph (2), (3) or (4) of  
9 Subsection A of Section 32A-2-3 NMSA 1978, the child's driving  
10 privileges may be denied or the child's driver's license may be  
11 revoked for a period of ninety days. For a second or a  
12 subsequent adjudication, the child's driving privileges may be  
13 denied or the child's driver's license revoked for a period of  
14 one year. Within twenty-four hours of the dispositional  
15 judgment, the court may send to the motor vehicle division of  
16 the taxation and revenue department the order adjudicating  
17 delinquency. Upon receipt of an order from the court  
18 adjudicating delinquency, the director of the motor vehicle  
19 division of the taxation and revenue department may revoke or  
20 deny the delinquent's driver's license or driving privileges.  
21 Nothing in this section may prohibit the delinquent from  
22 applying for a limited driving privilege pursuant to Section  
23 66-5-35 NMSA 1978 or an ignition interlock license pursuant to  
24 the Ignition Interlock Licensing Act, and nothing in this  
25 section precludes the delinquent's participation in an

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1 appropriate educational, counseling or rehabilitation program.

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

14 **SECTION 9.** Section 32A-2-23 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 52, as amended) is amended to read:

16 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--  
17 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

18 A. A judgment transferring legal custody of an  
19 adjudicated delinquent child to an agency responsible for the  
20 care and rehabilitation of delinquent children divests the  
21 court of jurisdiction at the time of transfer of custody,  
22 unless the transfer of legal custody is for a commitment not  
23 exceeding fifteen days pursuant to the provisions of Section  
24 32A-2-19 NMSA 1978, in which case the court retains  
25 jurisdiction.

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

4           C. A child shall be released by an agency and  
5 probation or supervision shall be terminated by juvenile  
6 probation [~~and parole~~] services or the agency providing  
7 supervision [~~when it appears that the purpose of the order has~~  
8 ~~been achieved before the expiration of the period of the~~  
9 ~~judgment.~~ A] based on the child's risk of reoffending, as  
10 determined by the child's risk assessment, the seriousness of  
11 the act for which the child was adjudicated delinquent and the  
12 child's progress in meeting treatment goals. The releasing  
13 entity shall promptly report a child's release or termination  
14 and the reasons therefor [~~shall be reported promptly~~] to the  
15 court in writing [~~by the releasing authority~~].

16           D. Prior to the expiration of a child's short-term  
17 commitment of one year, as provided for in Section 32A-2-19  
18 NMSA 1978, the court may extend the [~~judgment~~] commitment for  
19 up to one six-month period if, based on a child's risk of  
20 reoffending, as determined by a risk assessment, the  
21 seriousness of the act for which the child was adjudicated  
22 delinquent and the child's progress in meeting treatment goals,  
23 the court finds that the extension is necessary to safeguard  
24 the welfare of the child or [~~the~~] public safety. If a short-  
25 term commitment is extended, the mandatory ninety-day

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1 supervised release, as required by Section 32A-2-19 NMSA 1978,  
2 shall be included in the extension. Notice and hearing are  
3 required for any extension of a [~~juvenile's~~] child's  
4 commitment.

5 E. Prior to the expiration of a child's long-term  
6 commitment, as provided for in Section 32A-2-19 NMSA 1978, the  
7 court may extend the judgment for additional periods of up to  
8 one year until the child reaches the age of twenty-one if,  
9 based on a child's risk of reoffending, as determined by a risk  
10 assessment, the seriousness of the act for which the child was  
11 adjudicated delinquent and the child's progress in meeting  
12 treatment goals, the court finds that the extension is  
13 necessary to safeguard the welfare of the child or [~~the~~] public  
14 safety. If a long-term commitment is extended, the mandatory  
15 ninety-day supervised release, as required by Section 32A-2-19  
16 NMSA 1978, shall be included in the extension. Notice and  
17 hearing are required for any extension of a [~~juvenile's~~]  
18 child's commitment.

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

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

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

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

15 I. The department may seek a bench warrant from the  
16 court when ~~[the]~~ a child absconds from supervised release."

17 **SECTION 10.** Section 32A-2-23.1 NMSA 1978 (being Laws  
18 2009, Chapter 239, Section 23) is amended to read:

19 "32A-2-23.1. RELEASE ELIGIBILITY.--

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

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1 assessment, the seriousness of the act for which the child was  
2 adjudicated delinquent, the child's progress in meeting  
3 treatment goals, public safety, the extent to which the child  
4 has been rehabilitated, the adequacy and suitability of the  
5 proposed release plan and the needs and best interests of the  
6 child, including the child's need for behavioral health or  
7 medical services that are not available in facilities for  
8 adjudicated delinquent children.

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

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

18 D. In the event release for a child is denied by  
19 the department after release is recommended for the child by  
20 the juvenile public safety advisory board, or release is  
21 approved by the department after the board has recommended that  
22 the child not be released, within ten days, the board may  
23 request a review of the decision by the court of the judicial  
24 district from which legal custody of the child was transferred,  
25 and the department shall transmit the child's records to the

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1 court. The court shall have jurisdiction to review the matter  
2 without conducting a formal hearing and to issue an order that  
3 either denies or grants release to the child. If the board  
4 requests review [~~under~~] in accordance with this section, the  
5 child shall not be released until such time as the court has  
6 issued a decision. If the board does not petition the district  
7 court for review of the department's decision to grant or deny  
8 release within ten days of the department's decision, the  
9 department's decision shall be final, and the department shall  
10 release the child or continue the commitment in accordance with  
11 the terms of its decision.

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

17 SECTION 11. Section 33-9A-3 NMSA 1978 (being Laws 1988,  
18 Chapter 101, Section 41, as amended) is amended to read:

19 "33-9A-3. JUVENILE COMMUNITY CORRECTIONS GRANT FUND  
20 CREATED--PURPOSE--ADMINISTRATION--REPORT.--

21 A. [~~There is created in the state treasury~~] The  
22 "juvenile community corrections grant fund" is created in the  
23 state treasury to be administered by the department. All  
24 balances in the fund are appropriated to the department to  
25 carry out the purposes of the fund, and [~~no~~] money in the fund

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1 shall not be transferred to another fund or be encumbered or  
2 disbursed in any manner except as provided in the Juvenile  
3 Community Corrections Act. Disbursements from the fund shall  
4 be made only upon warrant drawn by the secretary of finance and  
5 administration pursuant to vouchers signed by the secretary of  
6 [~~children, youth and families~~] the department.

7 B. Money in the fund shall be used by the  
8 department to:

9 (1) make grants to counties or municipalities  
10 or to contract for services with private organizations,  
11 individually or jointly, to provide community corrections  
12 programs and services for the diversion of children adjudicated  
13 [~~delinquents~~] delinquent and who are identified as being at  
14 moderate- or high-risk of reoffending based on a risk  
15 assessment pursuant to the Delinquency Act, to community-based  
16 settings. [~~No grant shall be made to~~] The department shall not  
17 contract for services with a private organization that is not a  
18 nonprofit organization without the approval of the secretary  
19 [~~The department may also use money in the fund to~~]; and

20 (2) operate or contract directly for [~~or~~  
21 ~~operate~~] the operation of juvenile community corrections  
22 programs.

23 C. No more than ten percent of the money in the  
24 fund shall be used by the department for administration and  
25 program monitoring by the department. No more than ten percent

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1 of any grant from the fund shall be used for administrative  
2 costs incurred by the grantee.

3 D. After notice and public hearing as required by  
4 law, the secretary shall adopt regulations that provide  
5 standards for qualifications for grants, priorities for  
6 awarding of grants and other standards regarding juvenile  
7 community corrections programs deemed necessary. The  
8 department shall review and approve or disapprove all  
9 applications submitted pursuant to the Juvenile Community  
10 Corrections Act for a grant of funds from the fund.

11 E. The department shall submit an annual report to  
12 the governor and legislature not later than December 15  
13 providing information on grant awards, program effectiveness  
14 and monitoring efforts and making recommendations as necessary  
15 to carry out the purpose of the fund.

16 F. The department may accept donations, payments,  
17 contributions, gifts or grants from whatever source for the  
18 benefit of the fund."

19 SECTION 12. Section 33-9A-5 NMSA 1978 (being Laws 1988,  
20 Chapter 101, Section 43, as amended) is amended to read:

21 "33-9A-5. SELECTION PANELS.--

22 A. The department shall establish a state panel  
23 [~~whose duties~~] which shall [~~be to immediately screen and~~]  
24 identify [~~delinquents~~] children adjudicated delinquent,  
25 sentenced to a juvenile correctional facility [~~of the~~

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1 ~~department]~~ and transferred to the legal custody of the  
2 department, except [~~individuals]~~ children who are sentenced or  
3 transferred from a judicial district that has established a  
4 local panel to exercise [~~these~~] the duties [~~pursuant to the~~  
5 ~~provisions of]~~ described in this section and who meet the  
6 following criteria:

7 (1) the child is assessed as being at  
8 moderate- or high-risk of reoffending, based on a risk  
9 assessment using the tool adopted in accordance with Section  
10 9-2A-16 NMSA 1978;

11 [~~(1)~~] (2) the offense involved is one for  
12 which community service or reasonable restitution may be made  
13 using a payment schedule compatible with the total amount of  
14 restitution to be paid and the time the [~~offender]~~ child is to  
15 participate in a program; and

16 [~~(2)~~] (3) the child is willing to enter into a  
17 contract that establishes objectives that [~~shall be achieved]~~  
18 the child is required to achieve before release from the  
19 program.

20 B. The department may establish criteria in  
21 addition to those established in Subsection A of this section  
22 for the screening of [~~delinquents]~~ children adjudicated  
23 delinquent who would benefit from participation in a program  
24 and who would not pose a threat to the community.

25 C. If the state panel determines that a child is

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1 suitable for placement in a program, a recommendation [~~to that~~  
2 ~~effect~~] for placement in a program and for modification of  
3 disposition of the child's case shall be presented as soon as  
4 possible to the sentencing judge or to the department, [~~which~~  
5 ~~may, notwithstanding any provision of law~~] and the judge or the  
6 department may accept, modify or reject the recommendation.

7 The determination shall be presented to the relevant county or  
8 municipality [~~or private nonprofit organization, as applicable~~]  
9 for approval or rejection.

10 D. A county or municipality or private nonprofit  
11 organization, individually or jointly, may establish a local  
12 panel to exercise the duties [~~and responsibilities~~] of the  
13 state panel [~~pursuant to the provisions of Subsection A of~~]  
14 described in this section and, using the same criteria as the  
15 state panel, [~~the local panel may~~] to screen and identify  
16 [~~delinquents~~] children adjudicated delinquent who would benefit  
17 from participation in a program. The composition of a local  
18 panel shall include, to the maximum extent possible,  
19 representatives of the judiciary, the administrative office of  
20 the district attorneys, the public defender department, the  
21 children, youth and families department, the county sheriff or  
22 the municipal police department, individuals representing local  
23 relevant programs and private citizens."

24 SECTION 13. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2018.

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