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SENATE BILL 7

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO DELINQUENCY; EXPANDING THE DEFINITIONS OF "SERIOUS
YOUTHFUL OFFENDER" AND "YOUTHFUL OFFENDER" IN THE DELINQUENCY
ACT; PROVIDING FOR TRANSPORT OF A SERIOUS YOUTHFUL OFFENDER TO
A DISTRICT COURT WHEN ORDERED AND FOR THAT OFFENDER TO BE
SEGREGATED FROM ADULTS; REMOVING THE REQUIREMENT THAT A
DETENTION RISK ASSESSMENT BE COMPLETED BEFORE A CHILD IS PLACED
IN DETENTION; PROVIDING THAT A DETAINED CHILD BE TRANSFERRED TO
AN ADULT FACILITY IF THE CHILD REACHES EIGHTEEN YEARS OF AGE;
PROVIDING THAT A SERIOUS YOUTHFUL OFFENDER FOURTEEN YEARS OF
AGE OR OLDER MAY WAIVE THE SERIOUS YOUTHFUL OFFENDER'S RIGHT TO
AN AMENABILITY HEARING; PROVIDING THE CHILDREN, YOUTH AND
FAMILIES DEPARTMENT AND THE CORRECTIONS DEPARTMENT WITH
DISCRETION TO PREPARE CERTAIN PREDISPOSITION REPORTS; REMOVING
LIMITATIONS ON THE TYPES OF COMMITMENT A COURT MAY ORDER;
PROVIDING THAT A COURT MAY NOT WEIGH ONE AMENABILITY FACTOR

.232164.1

1 MORE HEAVILY THAN ANOTHER FOR SENTENCING PURPOSES; PROVIDING A
2 COURT WITH DISCRETION TO EXTEND A JUDGMENT UP TO THE DATE A
3 CHILD REACHES TWENTY-FIVE YEARS OF AGE; ELIMINATING THE
4 CHILDREN, YOUTH AND FAMILIES DEPARTMENT'S EXCLUSIVE
5 JURISDICTION AND AUTHORITY TO RELEASE AN ADJUDICATED DELINQUENT
6 CHILD; PROVIDING THAT THE STANDARD OF PROOF IN A PROBATION
7 REVOCATION PROCEEDING IS PREPONDERANCE OF THE EVIDENCE;
8 AUTHORIZING A PARTY TO REFERENCE SEALED JUVENILE RECORDS FOR
9 THE PURPOSES OF A HEARING REGARDING PRETRIAL DETENTION,
10 CONDITIONS OF RELEASE OR SENTENCING; REPEALING SECTION
11 32A-2-32.1 NMSA 1978 (BEING LAWS 2007, CHAPTER 96, SECTION 1);
12 MAKING CONFORMING AMENDMENTS.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 32A-2-2 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 31, as amended) is amended to read:

17 "32A-2-2. PURPOSE OF ACT.--The purpose of the Delinquency
18 Act is:

19 A. consistent with the protection of the public
20 interest, to remove from children committing delinquent acts
21 the adult consequences of criminal behavior, but to still hold
22 children committing delinquent acts accountable for their
23 actions to the extent of the child's age, education, mental and
24 physical condition, background and all other relevant factors,
25 and to provide a program of supervision, care and

.232164.1

1 rehabilitation, including rehabilitative restitution by the
2 child to the victims of the child's delinquent act to the
3 extent that the child is reasonably able to do so;

4 B. to provide effective deterrents to acts of
5 juvenile delinquency, if deterrents are appropriate, including
6 an emphasis on community-based alternatives;

7 C. to strengthen families and to successfully
8 reintegrate children into homes and communities;

9 D. to foster and encourage collaboration between
10 government agencies and communities with regard to juvenile
11 justice policies and procedures;

12 E. to develop juvenile justice policies and
13 procedures that are supported by data;

14 F. to develop objective risk assessment instruments
15 to be used for admission to juvenile detention centers;

16 G. to encourage efficient processing of cases;

17 H. to develop community-based alternatives to
18 detention, if alternatives are appropriate;

19 I. to eliminate or reduce disparities based upon
20 race or gender;

21 J. to improve conditions of confinement in juvenile
22 detention centers; and

23 K. to achieve reductions in the number of warrants
24 issued, the number of probation violations and the number of
25 youth awaiting placements."

.232164.1

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

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

4 A. "delinquent act" means an act committed by a
5 child that would be designated as a crime under the law if
6 committed by an adult, not including a violation of Section
7 30-9-2 NMSA 1978, including the following offenses:

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

10 (a) driving while under the influence of
11 intoxicating liquor or drugs;

12 (b) failure to stop in the event of an
13 accident causing ~~[death]~~ personal injury or damage to property;

14 (c) unlawful taking of a vehicle or
15 motor vehicle;

16 (d) receiving or transferring of a
17 stolen vehicle or motor vehicle;

18 ~~[(e) homicide by vehicle;~~
19 ~~(f)]~~ (e) injuring or tampering with a
20 vehicle;

21 ~~[(g)]~~ (f) altering or changing of an
22 engine number or other vehicle identification numbers;

23 ~~[(h)]~~ (g) altering or forging of a
24 driver's license or permit or any making of a fictitious
25 license or permit;

.232164.1

1 [~~(i)~~] (h) reckless driving;
2 [~~(j)~~] (i) driving with a suspended or
3 revoked license; or
4 [~~(k)~~] (j) an offense punishable as a
5 felony;

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

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

23 (4) a violation of the Controlled Substances
24 Act;

25 (5) escape from the custody of a law

1 enforcement officer or a juvenile probation or parole officer
2 or from any placement made by the department by a child who has
3 been adjudicated a delinquent child;

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

6 (7) a violation of an order of protection
7 issued pursuant to the provisions of the Family Violence
8 Protection Act; or

9 (8) trafficking cannabis as provided in
10 Section 26-2C-28 NMSA 1978;

11 B. "delinquent child" means a child who has
12 committed a delinquent act;

13 C. "delinquent offender" means a delinquent child
14 who is subject to juvenile sanctions only and who is not a
15 youthful offender or a serious youthful offender;

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

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

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

24 G. "restitution" means financial reimbursement by
25 the child to the victim or community service imposed by the

.232164.1

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

14 H. "serious youthful offender" is not a delinquent
15 child and means ~~[an individual fifteen]~~ a child fourteen to
16 eighteen years of age who is charged with ~~[and indicted or~~
17 ~~bound over for trial for first degree murder. A "serious~~
18 ~~youthful offender" is not a delinquent child as defined~~
19 ~~pursuant to the provisions of this section]~~ at least one of the
20 following crimes:

21 (1) murder in the first degree or murder in
22 the second degree, as provided in Section 30-2-1 NMSA 1978;

23 (2) voluntary manslaughter, as provided in
24 Section 30-2-3 NMSA 1978;

25 (3) robbery while armed with a deadly weapon,

1 as provided in Section 30-16-2 NMSA 1978; or

2 (4) shooting at a dwelling or occupied
3 building that results in great bodily harm to another person or
4 shooting at or from a motor vehicle that results in great
5 bodily harm to another person, as provided in Section 30-3-8
6 NMSA 1978;

7 I. "supervised release" means the release of a
8 juvenile, whose term of commitment has not expired, from a
9 facility for the care and rehabilitation of adjudicated
10 delinquent children, with specified conditions to protect
11 public safety and promote successful transition and
12 reintegration into the community. A juvenile on supervised
13 release is subject to monitoring by the department until the
14 term of commitment has expired and may be returned to custody
15 for violating conditions of release; and

16 J. "youthful offender" means a delinquent child
17 subject to adult or juvenile sanctions who is ~~[(1)]~~ fourteen to
18 eighteen years of age ~~[at the time of the offense and who is~~
19 ~~adjudicated for at least one of the following offenses:]~~

20 ~~(a) second degree murder, as provided in~~
21 ~~Section 30-2-1 NMSA 1978]~~ and is:

22 (1) charged with at least one of the following
23 offenses:

24 ~~[(b)]~~ (a) assault with intent to commit
25 a violent felony, as provided in Section 30-3-3 NMSA 1978;

1 [~~(e)~~] (b) kidnapping, as provided in
2 Section 30-4-1 NMSA 1978;

3 [~~(d)~~] (c) aggravated battery, as
4 provided in Subsection C of Section 30-3-5 NMSA 1978;

5 [~~(e)~~] (d) aggravated battery against a
6 household member, as provided in Subsection C of Section
7 30-3-16 NMSA 1978;

8 [~~(f)~~] (e) aggravated battery upon a
9 peace officer, as provided in Subsection C of Section 30-22-25
10 NMSA 1978;

11 [~~(g)~~] (f) shooting at a dwelling or
12 occupied building that does not result in great bodily harm to
13 another person or shooting at or from a motor vehicle that does
14 not result in great bodily harm to another person, as provided
15 in Section 30-3-8 NMSA 1978;

16 [~~(h)~~] (g) dangerous use of explosives,
17 as provided in Section 30-7-5 NMSA 1978;

18 [~~(i)~~] (h) criminal sexual penetration,
19 as provided in Section 30-9-11 NMSA 1978;

20 [~~(j)~~] (i) robbery, as provided in
21 Section 30-16-2 NMSA 1978;

22 [~~(k)~~] (j) aggravated burglary, as
23 provided in Section 30-16-4 NMSA 1978;

24 [~~(l)~~] (k) aggravated arson, as provided
25 in Section 30-17-6 NMSA 1978; [~~or~~

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

(m) homicide by vehicle, as provided in
Section 66-8-101 NMSA 1978;

(n) involuntary manslaughter, as
provided in Section 30-2-3 NMSA 1978;

(o) failing to stop a vehicle when the vehicle is involved in an accident that results in injury or death, as provided in Section 66-7-201 NMSA 1978; or

(p) an offense enumerated in
Subparagraphs (a) through (n) of Paragraph (4) of Subsection N
of Section 33-2-34 NMSA 1978 that is not a serious youthful
offender offense and that was committed with a firearm. As
used in this subparagraph, "firearm" means a weapon that will,
is designed to or may readily be converted to expel a
projectile by the action of an explosion or the frame or
receiver of such weapon; or

(2) ~~[fourteen to eighteen years of age at the time of the offense, who is]~~ adjudicated for ~~[any]~~ a felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense; provided that:

(a) the felony adjudications relied upon
as prior adjudications shall not have arisen out of the same

.232164.1

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1 transaction or occurrence or series of events related in time
2 and location; and

3 (b) successful completion of a consent
4 [~~decrees is~~] decree shall not be considered a prior
5 adjudication for the purposes of this paragraph [~~or~~

6 ~~(3) fourteen years of age and who is~~
7 ~~adjudicated for first degree murder, as provided in Section~~
8 ~~30-2-1 NMSA 1978]."~~

9 SECTION 3. Section 32A-2-4.1 NMSA 1978 (being Laws 2009,
10 Chapter 239, Section 12) is amended to read:

11 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
12 HOLDING FACILITIES--REPORTS.--

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

20 B. An adult jail or lockup used as a temporary
21 holding facility for alleged delinquent offenders shall file an
22 annual report regarding its compliance with federal
23 requirements. The juvenile justice advisory committee and the
24 department shall determine the format of the annual reports.

25 C. A serious youthful offender shall be transported

1 to a district court when the serious youthful offender's
2 appearance is ordered by the district court; provided, however,
3 that the serious youthful offender shall be physically
4 segregated from adult offenders and segregated by sight and
5 sound from adult offenders to the fullest extent possible."

6 SECTION 4. Section 32A-2-11 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 40, as amended) is amended to read:

8 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

9 A. ~~[Unless]~~ Except as otherwise ordered by the
10 court pursuant to the provisions of the Delinquency Act, a
11 child taken into custody for an alleged delinquent act shall
12 not be placed in detention unless ~~[a detention risk assessment~~
13 ~~instrument is completed and]~~ a determination is made that the
14 child:

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

17 (2) poses a substantial risk of harm to
18 others; or

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

21 B. The criteria for detention provided for in this
22 section shall ~~[govern]~~ apply to the decisions of all persons
23 responsible for determining whether detention is appropriate
24 prior to a detention hearing. ~~[based upon review of the~~
25 ~~detention risk assessment instrument.~~

1 ~~C. The department shall develop and implement a~~
2 ~~detention risk assessment instrument. The department shall~~
3 ~~collect and analyze data regarding the application of the~~
4 ~~detention risk assessment instrument. On January 1, 2004, the~~
5 ~~department shall provide the legislature with a written report~~
6 ~~with respect to its collection and analysis of data regarding~~
7 ~~the application of the detention risk assessment instrument]"~~

8 SECTION 5. Section 32A-2-12 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 41, as amended) is amended to read:

10 "32A-2-12. PLACEMENT OR DETENTION.--

11 A. A child alleged to be a delinquent child may be
12 placed or detained, pending a court hearing, in any of the
13 following places:

14 (1) a licensed foster home or a home otherwise
15 authorized under the law to provide foster or group care;

16 (2) a facility operated by a licensed child
17 welfare services agency;

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

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

25 (5) any other suitable place, other than a

1 facility for the long-term care and rehabilitation of
2 delinquent children to which children adjudicated as delinquent
3 may be confined pursuant to Section 32A-2-19 NMSA 1978,
4 designated by the court [~~and~~] that meets the standards for
5 detention facilities pursuant to the Children's Code and
6 federal law; or

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

9 B. A child alleged to be a youthful offender may be
10 detained pending a court hearing in any of the following
11 places:

12 (1) a detention facility, licensed by the
13 department, for children alleged to be delinquent children; or

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

21 C. A child adjudicated as a youthful offender who
22 is violent toward staff or other residents in a detention
23 facility may be transferred and detained, pending a court
24 hearing, in a county jail. In the event that a child is
25 detained in a jail, the director of the jail shall presume that

1 the child is vulnerable to victimization by inmates within the
2 adult population because of the child's age and shall take
3 measures to provide protection to the child. However,
4 provision of protective measures shall not result in
5 diminishing a child's civil rights to less than those existing
6 for an incarcerated adult.

7 D. A child who has previously been incarcerated as
8 an adult ~~[or a person eighteen years of age or older]~~ shall not
9 be detained in a juvenile detention facility or a facility for
10 the long-term care and rehabilitation of delinquent children
11 but may be detained in a county jail. A child ~~[shall not]~~ who
12 reaches eighteen years of age while in a juvenile detention
13 facility shall be transferred to a county jail ~~[solely on the~~
14 ~~basis of attaining the age of eighteen while detained in a~~
15 ~~juvenile detention facility]~~. In the event that a child is
16 detained in a jail, the director of the jail shall presume that
17 the child is vulnerable to victimization by inmates within the
18 adult population because of the child's age, and shall take
19 measures to provide protection to the child. However,
20 provision of protective measures shall not result in
21 diminishing a child's civil rights to less than those existing
22 for an incarcerated adult.

23 E. A child alleged to be a serious youthful
24 offender may be detained pending a court hearing in any of the
25 following places, prior to arraignment in metropolitan,

1 magistrate or district court:

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

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

11 (3) a county jail, if a facility in Paragraph
12 (1) or (2) of this subsection is not appropriate. In the event
13 that a child is detained in a jail, the director of the jail
14 shall presume that the child is vulnerable to victimization by
15 inmates within the adult population because of the child's age
16 and shall take measures to provide protection to the child.
17 However, provision of protective measures shall not result in
18 diminishing a child's civil rights to less than those existing
19 for an incarcerated adult.

20 F. When a person who is eighteen years of age or
21 older is taken into custody and transported to an adult
22 facility on a juvenile warrant or an adult warrant or other
23 adult charges and an outstanding juvenile warrant exists,
24 notice shall be given to the children's court attorney and the
25 juvenile probation and parole office in the jurisdiction where

1 the juvenile warrant was issued within one day of the person
2 being taken into custody. The juvenile probation and parole
3 office shall give notice that the person has been taken into
4 custody to the children's court judge and the attorney who
5 represented the person in the juvenile proceeding.

6 G. In addition to the judicial review required by
7 Paragraph (3) of Subsection A of this section, a child detained
8 in an out-of-home placement pursuant to this section may
9 request judicial review of the appropriateness of the
10 placement."

11 SECTION 6. Section 32A-2-14 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 43, as amended) is amended to read:

13 "32A-2-14. BASIC RIGHTS.--

14 A. In addition to the rights provided by the
15 Delinquency Act, a child subject to the provisions of the
16 Delinquency Act is entitled to the same basic rights as an
17 adult, ~~[except as otherwise provided in the Children's Code,~~
18 ~~including rights provided by the Delinquency Act]~~ except as
19 otherwise provided in the Children's Code.

20 B. If after due notice to the parent, guardian or
21 custodian and after a hearing determining indigency, the
22 parent, guardian or custodian is declared indigent by the
23 court, the public defender shall represent the child. If the
24 court finds that the parent, guardian or custodian is
25 financially able to pay for an attorney but is unwilling to do

1 so, the court shall order the parent, guardian or custodian to
2 reimburse the state for public defender representation.

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

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

14 E. In determining whether the child knowingly,
15 intelligently and voluntarily waived the child's rights, the
16 court shall consider the following factors:

17 (1) the age and education of the respondent;
18 (2) whether the respondent is in custody;
19 (3) the manner in which the respondent was
20 advised of the respondent's rights;

21 (4) the length of questioning and
22 circumstances under which the respondent was questioned;

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

25 (6) the time of day and the treatment of the

1 respondent at the time of being questioned;

2 (7) the mental and physical condition of the
3 respondent at the time of being questioned; and

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

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

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

18 H. The child and the parent, guardian or custodian
19 of the child shall be advised by the court or its
20 representative that the child shall be represented by counsel
21 at all stages of the proceedings on a delinquency petition,
22 including all post-dispositional court proceedings. If counsel
23 is not retained for the child or if it does not appear that
24 counsel will be retained, counsel shall be appointed for the
25 child.

.232164.1

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

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

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

21 L. A person afforded rights under the Delinquency
22 Act shall be advised of those rights at that person's first
23 appearance before the court on a petition under that act.

24 M. A serious youthful offender who is detained
25 prior to trial in ~~[an adult]~~ a facility has a right to ~~[bail]~~ a

1 hearing to consider or address conditions of release as
2 provided [~~under SCRA 1986, Rule 5-401~~] by supreme court rule.

3 A child held in a juvenile facility designated as a place of
4 detention prior to adjudication [~~does not have a right to bail~~
5 ~~but~~] may be released pursuant to the provisions of the
6 Delinquency Act.

7 N. A child fourteen years of age or older who is
8 adjudicated as a youthful offender may waive the child's right
9 to an amenability hearing and instead be sentenced as an adult.
10 The waiver of the child shall be made knowingly, intelligently
11 and voluntarily.

12 [~~N.~~] O. The provisions of the Delinquency Act shall
13 not be interpreted to limit the right of a child to petition a
14 court for a writ of habeas corpus."

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

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

19 A. After a petition has been filed and either a
20 finding with respect to the allegations of the petition has
21 been made or a notice of intent to admit the allegations of the
22 petition has been filed, the court may direct that a
23 predisposition study and report to the court be made in writing
24 by the department or an appropriate agency designated by the
25 court concerning the child, the family of the child, the

1 environment of the child and any other matters relevant to the
2 need for treatment or to appropriate disposition of the case.

3 If directed by the court, the following predisposition reports
4 shall be provided to the parties and the court five days before
5 actual disposition or sentencing:

6 (1) the adult probation and parole division of
7 the corrections department shall prepare a predisposition
8 report for a serious youthful offender;

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

12 (3) the department shall prepare a
13 predisposition report for a youthful offender concerning the
14 youthful offender's amenability to treatment; and if:

15 (a) the court determines that a juvenile
16 disposition is appropriate, the department shall prepare a
17 subsequent predisposition report; or

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

23 (4) the department shall prepare a
24 predisposition report for a delinquent offender upon the
25 court's request.

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

13 C. The court, after a hearing, may order
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 or custodian
17 whose ability to care for or supervise a child is an issue
18 before the court.

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

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

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

9 SECTION 8. Section 32A-2-18 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 47, as amended) is amended to read:

11 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--
12 NONADMISSIBILITY.--

13 A. The court shall enter a judgment setting forth
14 the court's findings and disposition in the proceeding. A
15 judgment in proceedings on a petition under the Delinquency Act
16 resulting in a juvenile disposition shall not be deemed a
17 conviction of crime nor shall it impose any civil disabilities
18 ordinarily resulting from conviction of a crime nor shall it
19 operate to disqualify the child in any civil service
20 application or appointment. The juvenile disposition of a
21 child and any evidence given in a hearing in court shall not be
22 admissible as evidence against the child in any case or
23 proceeding in any other tribunal whether before or after
24 reaching the age of majority, except in sentencing proceedings
25 [~~after conviction of a felony and then only for the purpose of~~

1 ~~a presentence study and report]~~ or a hearing held pursuant to
2 Article 2, Section 13 of the constitution of New Mexico or in
3 accordance with supreme court rule to consider or address
4 conditions of release.

5 B. If a judgment resulting from a youthful offender
6 or serious youthful offender proceeding under the Delinquency
7 Act results in an adult sentence, a record of the judgment
8 shall be admissible in any other case or proceeding in any
9 other court involving the youthful offender or serious youthful
10 offender.

11 C. If a judgment on a proceeding under the
12 Delinquency Act results in an adult sentence, the determination
13 of guilt at trial becomes a conviction for purposes of the
14 Criminal Code."

15 SECTION 9. Section 32A-2-19 NMSA 1978 (being Laws 1993,
16 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 interests;

25 (2) the child's adjustment to the child's

1 home, school and community;

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

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

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

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

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

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

17 B. If a child is found to be delinquent, the court
18 may enter its judgment making any of the following dispositions
19 for the supervision, care and rehabilitation of the child:

20 (1) transfer legal custody to the department
21 or an agency responsible for the care and rehabilitation of
22 delinquent children, which shall receive the child at a
23 facility designated by the secretary of the department as a
24 juvenile reception facility. The department shall thereafter
25 determine the appropriate placement, supervision and

.232164.1

1 rehabilitation program for the child. The judge may include
2 recommendations for placement of the child. Commitments are
3 subject to limitations and modifications set forth in Section
4 32A-2-23 NMSA 1978. The court has discretion to consider the
5 child's unique circumstances and history when imposing
6 probation or commitment and may impose probation or commitment
7 for any period up to the date the child reaches twenty-five
8 years of age; [~~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 no more~~
19 ~~than two years in a facility for the care and rehabilitation of~~
20 ~~adjudicated delinquent children. No more than twenty-one~~
21 ~~months shall be served at the facility and no less than ninety~~
22 ~~days shall be served on supervised release, unless: 1)~~
23 ~~supervised release is revoked pursuant to Section 32A-2-25 NMSA~~
24 ~~1978; or 2) the commitment is extended pursuant to Section~~
25 ~~32A-2-23 NMSA 1978;~~

1 ~~(c) if the child is a delinquent~~
2 ~~offender who committed one of the criminal offenses set forth~~
3 ~~in Subsection J of Section 32A-2-3 NMSA 1978, a commitment to~~
4 ~~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)]~~ (2) 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]~~ thirty days within a three hundred sixty-five
13 day time period; or if a child is found to be delinquent solely
14 on the basis of Paragraph (3) of Subsection A of Section
15 32A-2-3 NMSA 1978, the court shall only enter a judgment
16 placing the child on probation or ordering restitution or both;
17 or

18 ~~[(4)]~~ (3) if a child is found to be delinquent
19 solely on the basis of Paragraph (2), (3) or (4) of Subsection
20 A of Section 32A-2-3 NMSA 1978, the court may make any
21 disposition provided by this section and may enter its judgment
22 placing the child on probation and, as a condition of
23 probation, transfer custody of the child to the department for
24 a period not to exceed six months without further order of the
25 court; provided that this transfer shall not be made unless the

1 court first determines that the department is able to provide
2 or contract for adequate and appropriate treatment for the
3 child and that the treatment is likely to be beneficial.

4 C. ~~[When]~~ If the child is an Indian child, the
5 Indian child's cultural needs shall be considered in the
6 dispositional judgment and reasonable access to cultural
7 practices and traditional treatment shall be provided.

8 D. A child found to be delinquent shall not be
9 committed or transferred to a penal institution or other
10 facility used for the execution of sentences of persons
11 convicted of crimes, unless the child reaches eighteen years of
12 age.

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

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

22 G. In addition to any other disposition pursuant to
23 Subsection B of this section, the court may make an abuse or
24 neglect report for investigation and proceedings as provided
25 for in the Abuse and Neglect Act. The report may be made to a

1 local law enforcement agency, the department or a tribal law
2 enforcement or social service agency for an Indian child
3 residing in Indian country.

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

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

12 SECTION 10. Section 32A-2-20 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 49, as amended) is amended to read:

14 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER AND SERIOUS
15 YOUTHFUL OFFENDER.--

16 A. The court has the discretion to invoke either an
17 adult sentence or juvenile sanctions on a youthful offender.
18 The children's court attorney shall file a notice of intent to
19 invoke an adult sentence within ten working days of the filing
20 of the petition; provided that the court may extend the time
21 for filing of the notice of intent to invoke an adult sentence,
22 for good cause shown, prior to the adjudicatory hearing. A
23 preliminary hearing by the court or a hearing before a grand
24 jury shall be held, within ten days after the filing of the
25 intent to invoke an adult sentence, to determine whether

1 probable cause exists to support the allegations contained in
2 the petition.

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

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

9 (2) the child is not eligible for commitment
10 to an institution for children with developmental disabilities
11 or mental disorders.

12 C. In making the findings set forth in Subsection B
13 of this section, the judge shall consider the following factors
14 in totality:

15 (1) the seriousness of the alleged offense;

16 (2) whether the alleged offense was committed
17 in an aggressive, violent, premeditated or willful manner;

18 (3) whether a firearm was used to commit the
19 alleged offense;

20 (4) whether the alleged offense was against
21 persons or against property [~~greater weight being given to~~
22 ~~offenses against persons, especially if personal injury~~
23 ~~resulted~~];

24 (5) the maturity of the child as determined by
25 consideration of the child's home, environmental situation,

1 social and emotional health, pattern of living, brain
2 development, trauma history and disability;

3 (6) the record and previous history of the
4 child;

5 (7) the prospects for adequate protection of
6 the public and the likelihood of reasonable rehabilitation of
7 the child by the use of procedures, services and facilities
8 currently available; and

9 (8) any other relevant factor; provided that
10 factor is stated on the record.

11 D. If a child has previously been sentenced as an
12 adult pursuant to the provisions of this section, there shall
13 be a rebuttable presumption that the child is not amenable to
14 treatment or rehabilitation as a child in available facilities.

15 E. If the court invokes an adult sentence, the
16 court may sentence the child to less than, but shall not
17 exceed, the mandatory adult sentence. A youthful offender
18 given an adult sentence shall be treated as an adult offender
19 and shall be transferred to the legal custody of an agency
20 responsible for incarceration of persons sentenced to adult
21 sentences. This transfer terminates the jurisdiction of the
22 court over the child with respect to the delinquent acts
23 alleged in the petition. A child given an adult sentence shall
24 not be sentenced to life imprisonment without the possibility
25 of release or parole.

.232164.1

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

7 G. A child fourteen years of age or older who was
8 charged [~~with first degree murder~~] as a serious youthful
9 offender but [~~not convicted of first degree murder and~~] was
10 found to have committed a youthful offender offense as set
11 forth in Subsection J of Section 32A-2-3 NMSA 1978 is subject
12 to the dispositions set forth in this section.

13 H. A child fourteen years of age or older who was
14 charged [~~with first degree murder~~] as a serious youthful
15 offender but was found to have committed a delinquent act that
16 is neither [~~first degree murder~~] a serious youthful offender
17 offense as set forth in Subsection H of Section 32A-2-3 NMSA
18 1978 nor a youthful offender offense as set forth in Subsection
19 J of Section 32A-2-3 NMSA 1978 shall be adjudicated as a
20 delinquent and is subject to the dispositions set forth in
21 Section 32A-2-19 NMSA 1978; provided that the case shall be
22 transferred to the children's court for disposition."

23 SECTION 11. Section 32A-2-22 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 51, as amended) is amended to read:

25 "32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT

1 JUDGMENT--CONSENT DECREE--DISPOSITION.--

2 A. At any time after the filing of a delinquency
3 petition and before the entry of a judgment, the court may, on
4 motion of the children's court attorney or that of counsel for
5 the child, suspend the proceedings and continue the child under
6 supervision in the child's own home under terms and conditions
7 negotiated with probation services and agreed to by ~~[all the~~
8 ~~parties affected]~~ the state and the child's defense attorney
9 and approved by the court. The court's order continuing the
10 child under supervision under this section shall be known as a
11 "consent decree". An admission of some or all of the
12 allegations stated in the delinquency petition shall not be
13 required for a consent decree order.

14 B. If the child objects to a consent decree, the
15 court shall proceed to findings, adjudication and disposition
16 of the case. If the child does not object but an objection is
17 made by the children's court attorney after consultation with
18 probation services, the court shall, after considering the
19 objections and the reasons given, proceed to determine whether
20 it is appropriate to enter a consent decree and may, in its
21 discretion, enter the consent decree.

22 C. A consent decree shall remain in force for six
23 months unless the child is discharged sooner by probation
24 services. Prior to the expiration of the six-month period and
25 upon the application of probation services or any other agency

1 supervising the child under a consent decree, the court may
2 extend the decree for an additional six months in the absence
3 of objection to extension by the child. If the child objects
4 to the extension, the court shall hold a hearing and make a
5 determination on the issue of extension; provided that a
6 consent decree shall not be available to a child charged as a
7 youthful offender or serious youthful offender.

8 D. If either prior to discharge by probation
9 services or expiration of the consent decree the child
10 allegedly fails to fulfill the terms of the decree, the
11 children's court attorney may file a petition to revoke the
12 consent decree. Proceedings on the petition shall be conducted
13 in the same manner as proceedings on petitions to revoke
14 probation. If the child is found to have violated the terms of
15 the consent decree, the court may:

16 (1) extend the period of the consent decree;
17 or

18 (2) make any other disposition that would have
19 been appropriate in the original proceeding.

20 E. A child who is discharged by probation services
21 or who completes a period under supervision without
22 reinstatement of the original delinquency petition shall not
23 again be proceeded against in any court for the same offense
24 alleged in the petition or an offense based upon the same
25 conduct and the original petition shall be dismissed with

1 prejudice. Nothing in this subsection precludes a civil suit
2 against the child for damages arising from the child's conduct.

3 F. A judge who pursuant to this section elicits or
4 examines information or material about a child that would be
5 inadmissible in a hearing on the allegations of the petition
6 shall not, over the objection of the child, participate in any
7 subsequent proceedings on the delinquency if:

8 (1) a consent decree is denied and the
9 allegations in the petition remain to be decided in a hearing
10 where the child denies the allegations; or

11 (2) a consent decree is granted but the
12 delinquency petition is subsequently reinstated.

13 G. If a consent decree has been entered pursuant to
14 the filing of a delinquency petition based on Paragraph (2),
15 (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978 for a
16 child who is fifteen years of age or older, a condition of the
17 consent decree agreement may be the denial of the child's
18 driving privileges or the revocation of the child's driver's
19 license for a period of ninety days. For the second or
20 subsequent adjudication, the child's driving privileges may be
21 denied or the child's driver's license revoked for a period of
22 one year. Within twenty-four hours of the entry by the court
23 of a decree consenting to the revocation or denial of the
24 child's driver's license or driving privileges, the court shall
25 send the decree to the motor vehicle division of the taxation

1 and revenue department. Upon receipt of the decree from the
2 court consenting to the denial or revocation of the child's
3 driving privileges or driver's license, the director of the
4 motor vehicle division of the taxation and revenue department
5 shall revoke or deny the delinquent child's driver's license or
6 driving privileges. Nothing in this section shall prohibit the
7 delinquent child from applying for a limited driving privilege
8 pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock
9 license pursuant to the Ignition Interlock Licensing Act, and
10 nothing in this section precludes the delinquent child's
11 participation in an appropriate educational, counseling or
12 rehabilitation program."

13 SECTION 12. Section 32A-2-23 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 52, as amended) is amended to read:

15 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
16 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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

25 B. A judgment of probation or protective

1 supervision shall remain in force for an indeterminate period
2 not to exceed the term of commitment from the date entered.

3 C. A child shall be released by an agency and
4 probation or supervision shall be terminated by juvenile
5 probation and parole services or the agency providing
6 supervision when it appears that the purpose of the order has
7 been achieved before the expiration of the period of the
8 judgment. A release or termination and the reasons therefor
9 shall be reported promptly to the court in writing by the
10 releasing authority.

11 ~~[D. Prior to the expiration of a short-term~~
12 ~~commitment of one year, as provided for in Section 32A-2-19~~
13 ~~NMSA 1978, the court may extend the judgment for up to one six-~~
14 ~~month period if the court finds that the extension is necessary~~
15 ~~to safeguard the welfare of the child or the public safety. If~~
16 ~~a short-term commitment is extended, the mandatory ninety-day~~
17 ~~supervised release, as required by Section 32A-2-19 NMSA 1978,~~
18 ~~shall be included in the extension. Notice and hearing are~~
19 ~~required for any extension of a juvenile's commitment.~~

20 E. ~~Prior to the expiration of a long-term~~
21 ~~commitment, as provided for in Section 32A-2-19 NMSA 1978, the~~
22 ~~court may extend the judgment for additional periods of one~~
23 ~~year until the child reaches the age of twenty-one if the court~~
24 ~~finds that the extension is necessary to safeguard the welfare~~
25 ~~of the child or the public safety. If a long-term commitment~~

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

5 F.] D. Prior to the expiration of a judgment of
6 probation or commitment, the court may exercise discretion and
7 extend the judgment, based on the child's unique circumstances
8 and history, for an additional period [~~of one year until~~] up to
9 the date the child reaches [~~the age of twenty-one~~] twenty-five
10 years of age if the court finds that the extension is necessary
11 to protect the community or to safeguard the welfare of the
12 child.

13 [G.] E. The court may dismiss a motion if it finds
14 after preliminary investigation that the motion is without
15 substance. If the court is of the opinion that the matter
16 should be reviewed, it may, upon notice to all necessary
17 parties, proceed to a hearing in the manner provided for
18 hearings on petitions alleging delinquency. The court may
19 terminate a judgment if it finds that the child is no longer in
20 need of care, supervision or rehabilitation or it may enter a
21 judgment extending or modifying the original judgment if it
22 finds that action necessary to safeguard the child or the
23 public interest.

24 [H.] F. A child may make a motion to modify a
25 children's court or adult disposition within thirty days of the

1 judge's decision. If the court is of the opinion that the
2 matter 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.

5 [F.] G. The department may seek a bench warrant
6 from the court when the child absconds from supervised
7 release."

8 SECTION 13. Section 32A-2-23.1 NMSA 1978 (being Laws
9 2009, Chapter 239, Section 23) is amended to read:

10 "32A-2-23.1. RELEASE ELIGIBILITY.--

11 ~~[A. The department shall have exclusive~~
12 ~~jurisdiction and authority to release an adjudicated delinquent~~
13 ~~child during the term of the child's commitment, consistent~~
14 ~~with the provisions of the Victims of Crime Act. In~~
15 ~~determining whether to release a child, the department shall~~
16 ~~give due consideration to public safety, the extent to which~~
17 ~~the child has been rehabilitated, the adequacy and suitability~~
18 ~~of the proposed release plan and the needs and best interests~~
19 ~~of the child, including the child's need for behavioral health~~
20 ~~or medical services that are not available in facilities for~~
21 ~~adjudicated delinquent children.~~

22 B.] A. The decision to grant or deny release shall
23 be made by the secretary of children, youth and families or the
24 secretary's designee. The department may impose such
25 conditions of release as it deems appropriate.

.232164.1

1 ~~[G. A child is eligible for release any time after~~
2 ~~the entry of a judgment transferring legal custody to the~~
3 ~~department, and the department may consider a reasonable~~
4 ~~request for release from the child at any time sixty days after~~
5 ~~the child has been committed.~~

6 ~~D.~~ B. In the event release for a child is denied
7 by the department after release is recommended for the child by
8 the juvenile public safety advisory board, or release is
9 approved by the department after the board has recommended that
10 the child not be released, within ten days the board may
11 request a review of the decision by the court of the judicial
12 district from which legal custody of the child was transferred,
13 and the department shall transmit the child's records to the
14 court. The court shall have jurisdiction to review the matter
15 without conducting a formal hearing and to issue an order that
16 either denies or grants release to the child. If the board
17 requests review under this section, the child shall not be
18 released until such time as the court has issued a decision.
19 If the board does not petition the district court for review of
20 the department's decision to grant or deny release within ten
21 days of the department's decision, the department's decision
22 shall be final, and the department shall release the child or
23 continue the commitment in accordance with the terms of its
24 decision.

25 ~~E.~~ C. The secretary of children, youth and

1 families or the secretary's designee may review the case of any
2 child upon the child's or the juvenile public safety advisory
3 board's reasonable request at any time after release is
4 denied."

5 SECTION 14. Section 32A-2-24 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 53, as amended) is amended to read:

7 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

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

20 B. The standard of proof in probation revocation
21 proceedings shall be ~~[evidence beyond a reasonable doubt]~~ a
22 preponderance of the evidence and the hearings shall be before
23 the court without a jury. In all other respects, proceedings
24 to revoke probation shall be governed by the procedures, rights
25 and duties applicable to proceedings on a delinquency petition.

.232164.1

1 If a child is found to have violated a term of the child's
2 probation, the court may extend the period of probation or make
3 any other judgment or disposition that would have been
4 appropriate in the original disposition of the case."

5 SECTION 15. Section 32A-2-26 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 55, as amended) is amended to read:

7 "32A-2-26. SEALING OF RECORDS.--

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

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

21 (2) the person has not, within the two years
22 immediately prior to filing the motion, been convicted of a
23 felony or of a misdemeanor involving moral turpitude or been
24 found delinquent by a court and no proceeding is pending
25 seeking such a conviction or finding; and

.232164.1

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

4 B. Reasonable notice of the motion shall be given
5 to:

6 (1) the children's court attorney;

7 (2) the authority granting the release;

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

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

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

20 D. Inspection of the files and records or the
21 release of information in the records included in the sealing
22 order may thereafter be permitted by the court only:

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

.232164.1

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

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

9 F. A court may set aside a sealing order for the
10 juvenile disposition of a youthful offender and any evidence
11 given in a hearing in court for a youthful offender for the
12 purpose of considering the setting of bail or other conditions
13 of release of a person charged with a felony whether charged as
14 an adult or a juvenile.

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

24 H. The department shall seal the child's files and
25 records when the child reaches the age of eighteen or at the

1 expiration of the disposition, whichever occurs later. The
2 department shall notify the children's court attorney, the
3 child's attorney and the referring law enforcement agency that
4 the child's records are subject to sealing.

5 I. Youthful offender records sealed pursuant to
6 Subsection H of this section may be unsealed by the court along
7 with any evidence given in a hearing in court for a youthful
8 offender for the purpose of considering the setting of bail or
9 other conditions of release of a person charged with a felony,
10 whether charged as an adult or juvenile.

11 J. A child who is determined by the court not to be
12 a delinquent offender shall have the child's files and records
13 in the instant proceeding automatically sealed by the court
14 upon motion by the children's court attorney at the conclusion
15 of the proceedings.

16 K. After sealing, the department may store and use
17 a person's records for research and reporting purposes, subject
18 to the confidentiality provisions of Section 32A-2-32 NMSA 1978
19 and other applicable federal and state laws.

20 L. Notwithstanding the provisions of Subsections A
21 through K of this section, only with prior notice to the court,
22 a party may reference a juvenile record and the contents of a
23 juvenile record for the purposes of a hearing held in
24 accordance with Article 2, Section 13 of the constitution of
25 New Mexico, a hearing held pursuant to supreme court rule to

1 consider or address conditions of release or a sentencing
2 hearing. A party may reference the existence of a juvenile
3 record in written pleadings but may not disclose the contents
4 of the juvenile record unless otherwise allowed by law."

5 SECTION 16. REPEAL.--Section 32A-2-32.1 NMSA 1978 (being
6 Laws 2007, Chapter 96, Section 1) is repealed.

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