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SENATE BILL 165

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO DELINQUENCY; AMENDING THE DELINQUENCY ACT; DEFINING
NEW TERMS; CHANGING THE DEFINITIONS FOR "SERIOUS YOUTHFUL
OFFENDER" AND "YOUTHFUL OFFENDER"; PROVIDING THAT A CHILDREN'S
COURT ATTORNEY MAY REFER A CHILD BACK TO JUVENILE PROBATION
SERVICES IF A PETITION IS NOT FILED AGAINST THE CHILD;
CLARIFYING THE REQUIREMENTS FOR DETAINING A CHILD BEFORE
ADJUDICATION; REQUIRING VALIDATION OF AND REPORTING ON A
DETENTION RISK ASSESSMENT INSTRUMENT; EXTENDING THE STANDARD
TERMS OF COMMITMENT FOR DELINQUENT OFFENDERS; EXTENDING THE
STANDARD TERM OF COMMITMENT FOR YOUTHFUL OFFENDERS SUBJECT TO
JUVENILE SANCTIONS; AMENDING THE JUVENILE COMMUNITY CORRECTIONS
ACT; DEFINING NEW TERMS; PROVIDING THAT QUALIFIED GRANTEEES MAY
PROVIDE SERVICES TO PERSONS OTHER THAN CHILDREN OR ADULTS
ADJUDICATED PURSUANT TO THE DELINQUENCY ACT; PROVIDING THAT
QUALIFIED GRANTEEES SHALL PRIORITIZE SERVICES TO CHILDREN OR

1 ADULTS ADJUDICATED PURSUANT TO THE DELINQUENCY ACT; REQUIRING
2 THAT A GRANTEE'S PROGRAMS OR SERVICES SHALL BE RESEARCH-BASED
3 AND INCORPORATE BEST PRACTICES IN RISK REDUCTION; MAKING
4 TECHNICAL AND CONFORMING AMENDMENTS; REPEALING SECTION 32A-2-2
5 NMSA 1978 (BEING LAWS 1993, CHAPTER 77, SECTION 31, AS
6 AMENDED).

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

11 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

12 A. "child" includes a person eighteen years of age
13 or older who committed a delinquent act as a minor and is
14 subject to the provisions of the Delinquency Act;

15 ~~[A.]~~ B. "delinquent act" means an act committed by
16 a child that would be ~~[designated]~~ charged as a crime ~~[under~~
17 ~~the law]~~ if committed by an adult, [not including] except for
18 an act that would be charged as a violation of Section 30-9-2
19 NMSA 1978, [including the following offenses] and includes:

20 (1) any of the following offenses ~~[pursuant~~
21 ~~to]~~ provided for by a municipal traffic [codes] code or the
22 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

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)~~] (c) homicide by vehicle;

7 [~~(f)~~] (d) injuring or tampering with a
8 vehicle;

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

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

14 [~~(i)~~] (g) reckless driving;

15 [~~(j)~~] (h) driving with a suspended or
16 revoked license; or

17 [~~(k)~~—an] (i) any other traffic offense
18 punishable as a felony;

19 (2) buying, attempting to buy, receiving,
20 possessing or being served any alcoholic liquor or being
21 present in a licensed liquor establishment, other than a
22 restaurant or a licensed retail liquor establishment, except in
23 the presence of the child's parent, guardian, custodian or
24 adult spouse; provided that as used in this paragraph,
25 "restaurant" means an establishment where meals are prepared

1 and served primarily for on-premises consumption and that has a
2 dining room, a kitchen and the employees necessary for
3 preparing, cooking and serving meals [~~"Restaurant"~~] but does
4 not include an establishment [~~as defined in regulations~~]
5 subject to the rules promulgated by the director of the special
6 investigations unit of the New Mexico state police division of
7 the department of public safety that serves only hamburgers,
8 sandwiches, salads and 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 (7) a violation of an order of protection
21 issued pursuant to the provisions of the Family Violence
22 Protection Act; or

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

25 [~~B-~~] C. "delinquent child" means a child who has

1 committed a delinquent act;

2 [G.] D. "delinquent offender" means [a] an
3 adjudicated delinquent child who is subject to only juvenile
4 sanctions [only] and who is not a youthful offender or a
5 serious youthful offender;

6 [D.] E. "detention facility" means a place [~~where a~~
7 ~~child may be detained under~~] established pursuant to the
8 Children's Code where a child may be detained pending a court
9 hearing [~~and does not include a facility for the care and~~
10 ~~rehabilitation of an adjudicated delinquent child~~] before
11 adjudication or where a child may be committed after
12 adjudication only for a period not to exceed fifteen days
13 within a three-hundred-sixty-five-day period;

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

16 G. "juvenile corrections facility" means a place
17 established pursuant to the Children's Code where an
18 adjudicated child may be committed for care and rehabilitation
19 as part of the child's disposition;

20 [F.] H. "misdemeanor" means an act that would be a
21 misdemeanor or petty misdemeanor if committed by an adult;

22 [G.] I. "restitution" means financial reimbursement
23 by [~~the~~] a child to [~~the~~] a victim or community service ordered
24 or imposed [~~by the court and~~] as part of the disposition of a
25 complaint that is limited to easily ascertainable damages for

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

14 ~~H.]~~ J. "serious youthful offender" is not a
15 delinquent child and means ~~[an individual]~~ a child fifteen 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]~~ indicted or charged
20 and bound over for trial for:

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

23 (2) shooting at a dwelling or occupied
24 building that results in great bodily harm to another person or
25 shooting at or from a motor vehicle that results in great

1 bodily harm to another person as provided in Section 30-3-8
2 NMSA 1978;

3 ~~[I.]~~ K. "supervised release" means the release of
4 ~~[a juvenile, whose term of commitment has not expired from a~~
5 ~~facility for the care and rehabilitation of adjudicated~~
6 ~~delinquent children, with specified conditions to protect~~
7 ~~public safety and promote successful transition and~~
8 ~~reintegration into the community. A juvenile on supervised~~
9 ~~release is subject to monitoring by the department until the~~
10 ~~term of commitment has expired and may be returned to custody~~
11 ~~for violating conditions of release]~~ an adjudicated child from
12 a juvenile corrections facility who is subject to specified
13 conditions and monitoring by the department until the child's
14 term of commitment expires; and

15 ~~[J.]~~ L. "youthful offender" means a delinquent
16 child subject to adult or juvenile sanctions who is:

17 (1) fourteen to eighteen years of age at the
18 time of the offense and ~~[who is]~~ adjudicated for at least one
19 of the following offenses:

20 ~~[(a) second degree murder, as provided~~
21 ~~in Section 30-2-1 NMSA 1978;~~

22 ~~(b)]~~ (a) assault with intent to commit a
23 violent felony as provided in Section 30-3-3 NMSA 1978;

24 ~~[(c)]~~ (b) kidnapping as provided in
25 Section 30-4-1 NMSA 1978;

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

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

6 ~~[(f)]~~ (e) aggravated battery upon a
7 peace officer with a deadly weapon or in a manner whereby great
8 bodily harm or death can be inflicted as provided in
9 ~~[Subsection C of]~~ Section 30-22-25 NMSA 1978;

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

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

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

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

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

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

25 ~~[(m)]~~ (l) abuse of a child that results

1 in great bodily harm or death to the child as provided in
2 Section 30-6-1 NMSA 1978;

3 (m) voluntary manslaughter as provided
4 in Section 30-2-3 NMSA 1978; or

5 (n) attempt to commit any of the
6 offenses enumerated in this paragraph;

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

18 (3) fourteen years of age and ~~[who is]~~
19 adjudicated for ~~[first degree]~~:

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

23 (b) shooting at a dwelling or occupied
24 building that results in great bodily harm to another person or
25 shooting at or from a motor vehicle that results in great

1 bodily harm to another person as provided in Section 30-3-8
2 NMSA 1978."

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

5 "32A-2-5. JUVENILE PROBATION [~~AND PAROLE~~] SERVICES--
6 [~~ESTABLISHMENT~~] CREATED--JUVENILE PROBATION [~~AND PAROLE~~]
7 OFFICERS--POWERS AND DUTIES.--

8 [~~A. Juvenile probation and parole services shall be~~
9 ~~provided by the department.~~

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

13 A. "Juvenile probation services" is created as an
14 office in the juvenile justice division of the department and
15 shall:

16 (1) receive and examine complaints and
17 allegations [~~that a child is a delinquent child for the purpose~~
18 ~~of considering beginning a proceeding pursuant to the]~~ in
19 accordance with the provisions of the Delinquency Act;

20 (2) make case referrals for appropriate
21 services [~~as appear appropriate or desirable~~];

22 (3) [~~make~~] conduct predisposition studies and
23 assessments and submit reports and recommendations to the
24 court;

25 (4) supervise and assist a child placed on

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1 probation or supervision or on supervised release [~~or under~~
2 ~~supervision by court order or by the department~~] from a term of
3 commitment;

4 (5) give notice to any [~~individual~~] person who
5 [~~has been~~] was the subject of a [~~petition filed~~] proceeding
6 pursuant to [~~the provisions of~~] the Delinquency Act of the
7 sealing of that [~~individual's~~] person's records in accordance
8 with that act;

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

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

14 (8) identify whether a child in a delinquency
15 case is an Indian child [~~for the purpose of contacting the~~] and
16 contact an identified Indian child's tribe [~~in delinquency~~
17 ~~cases~~]; and

18 (9) upon receipt of a referral, contact an
19 Indian child's tribe to consult, [~~and~~] exchange information
20 [~~for the purpose of collaborating on~~] and collaborate to
21 determine appropriate referrals for services [~~along with case~~
22 ~~planning throughout the period of involvement with juvenile~~
23 ~~justice services~~] or recommendations for the appropriate
24 disposition of the Indian child's delinquency case.

25 [G.] B. The director of the juvenile justice

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

16 SECTION 3. Section 32A-2-7 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 36, as amended) is amended to read:

18 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
19 NOTICE--TIME WAIVER.--

20 A. [~~Complaints~~] A complaint alleging delinquency
21 shall be referred to juvenile probation services, which shall
22 conduct a preliminary inquiry to determine the best interests
23 of the child and of the public [~~with regard to any action to be~~
24 ~~taken~~] and to recommend an appropriate disposition for the
25 case.

1 B. During the preliminary inquiry, ~~[on a~~
2 ~~delinquency complaint, the matter may be referred]~~ juvenile
3 probation services may refer the matter to another appropriate
4 agency and conferences may be conducted for the purpose of
5 effecting adjustments or agreements that will obviate the
6 necessity for filing a petition. At the commencement of the
7 preliminary inquiry, ~~[the parties]~~ a child and the child's
8 parent, guardian or custodian shall be advised of ~~[their]~~ the
9 basic rights ~~[pursuant to]~~ provided for in Section 32A-2-14
10 NMSA 1978 and ~~[no party may be compelled to appear at any~~
11 ~~conference, to produce any papers or to visit any place]~~ the
12 child shall be ~~[informed]~~ advised of the child's right to
13 remain silent. The preliminary inquiry shall be completed
14 within the time limits set forth in the Children's Court Rules.
15 A child or a child's parent, guardian or custodian shall not be
16 compelled to attend any conference, produce any papers or visit
17 any place.

18 C. Prior to a preliminary inquiry ~~[being conducted~~
19 ~~with]~~ for a child who is detained, the child's parent, guardian
20 or custodian or the child's attorney shall be given reasonable
21 notice by the juvenile probation ~~[and parole]~~ officer and an
22 opportunity to be present at the preliminary inquiry. If a
23 child is not detained, the preliminary inquiry shall be
24 conducted within thirty days of juvenile probation services'
25 receipt of the referral ~~[from law enforcement]~~. The thirty-day

1 time period may be extended [~~upon a determination by~~] if the
2 department determines that an extension is necessary to conduct
3 a thorough preliminary inquiry and that the extension is not
4 prejudicial to the best interests of the child.

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

17 E. After completion of the preliminary inquiry on a
18 delinquency complaint involving a misdemeanor, probation
19 services may notify the children's court attorney and recommend
20 an appropriate disposition for the case. If the child has been
21 referred for three or more prior misdemeanors within two years
22 of the instant offense, probation services shall notify the
23 children's court attorney and recommend an appropriate
24 disposition for the case.

25 F. Juvenile probation services shall notify the

1 children's court attorney of the receipt of any complaint
2 involving an act that constitutes a felony [~~under the~~
3 ~~applicable criminal law. Probation services shall also~~] and
4 recommend [a] an appropriate disposition [~~to the children's~~
5 ~~court attorney~~] for the case.

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

23 H. Upon reviewing a case after the preliminary
24 inquiry, if the children's court attorney decides not to file a
25 delinquency petition, the children's court attorney may refer

1 the child back to juvenile probation services and recommend an
2 appropriate disposition."

3 SECTION 4. Section 32A-2-9 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 38) is amended to read:

5 "32A-2-9. TAKING INTO CUSTODY.--A child may be detained
6 or taken into custody:

7 A. pursuant to the order of the court issued
8 because a parent, guardian or custodian fails [~~when requested~~]
9 to bring the child before the court [~~after having promised to~~
10 ~~do so when the child was delivered upon release from custody~~]
11 as required;

12 B. pursuant to [~~the laws of arrest for~~] an arrest
13 warrant or pursuant to a lawful exception to the warrant
14 requirement for the child's commission of a delinquent act; or

15 C. by a juvenile probation [~~and parole~~] officer
16 [~~proceeding pursuant to the provisions of Section 32-2-5 NMSA~~
17 ~~1978~~] as authorized by the Delinquency Act."

18 SECTION 5. 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 otherwise ordered by [~~the~~] a court
22 pursuant to [~~the provisions of~~] the Delinquency Act, a child
23 taken into custody for an alleged delinquent act [~~shall not be~~
24 ~~placed in detention unless~~] may be detained only in accordance
25 with Section 32A-2-10 NMSA 1978 and only if a detention risk

1 assessment ~~[instrument]~~ is completed and a determination is
2 made that the child:

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

5 (2) poses a substantial risk of harm to
6 others; or

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

9 B. The ~~[criteria for detention in]~~ provisions of
10 Subsection A of this section ~~[shall govern the decisions of]~~
11 apply to all persons responsible for determining whether
12 ~~[detention is appropriate prior]~~ to detain a child before a
13 detention hearing ~~[based upon review of the detention risk~~
14 ~~assessment instrument]~~ is held.

15 C. The department shall develop, validate and
16 implement an instrument to conduct a detention risk assessment
17 ~~[instrument]~~. The department shall collect and analyze data
18 regarding the application ~~[of the detention risk assessment~~
19 ~~instrument. On January 1, 2004, the department shall provide~~
20 ~~the legislature with a written report with respect to its~~
21 ~~collection and analysis of data regarding the application of~~
22 ~~the detention risk assessment instrument]~~ and effectiveness of
23 the instrument every three years and update the instrument
24 based on the data.

25 D. On or before September 1 of each year, the

1 department shall provide to the legislature a written report on
2 the application and effectiveness of the instrument used to
3 conduct a detention risk assessment. If applicable, the report
4 shall explain the validation of the instrument and updates made
5 to the instrument."

6 SECTION 6. Section 32A-2-12 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 41, as amended) is amended to read:

8 "32A-2-12. PLACEMENT OR DETENTION.--

9 A. Before adjudication, a child alleged to be a
10 delinquent child may be placed or detained [~~pending a court~~
11 ~~hearing~~] in any of the following places:

12 (1) a licensed foster home or a home otherwise
13 authorized [~~under the~~] by law to provide foster or group care;

14 (2) a facility operated by a licensed child
15 welfare services agency or a tribal child welfare or social
16 services agency;

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

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

24 (5) any other suitable place [~~other than a~~
25 ~~facility for the long term care and rehabilitation of~~

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

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

8 B. Before adjudication, a child alleged to be a
9 youthful offender may be detained [~~pending a court hearing~~] in
10 any of the following places:

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

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

20 C. Before adjudication, a child alleged to be a
21 delinquent child or youthful offender shall not be detained at
22 a juvenile corrections facility.

23 [G.] D. A child who is eighteen to twenty-five
24 years of age who was adjudicated as a youthful offender who is
25 violent toward staff or other residents in a detention facility

1 may be transferred and detained, pending a court hearing, in a
2 county jail. In the event that a child is detained in a jail,
3 the director of the jail shall presume that the child is
4 vulnerable to victimization by inmates within the adult
5 population because of the child's age and shall take measures
6 to ~~[provide protection to]~~ protect the child; ~~[However,~~
7 ~~provision of]~~ provided that protective measures shall not
8 result in diminishing a child's civil rights to less than those
9 existing for an incarcerated adult.

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

1 ~~[F.]~~ F. Before adjudication, a child alleged to be
2 a serious youthful offender may be detained pending a court
3 hearing in any of the following places ~~[prior to arraignment in~~
4 ~~metropolitan, magistrate or district court]~~:

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

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

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

24 ~~[F.]~~ G. When a person who is eighteen years of age
25 or older is taken into custody and transported to an adult

1 facility on a juvenile warrant or an adult warrant or other
2 adult charges and an outstanding juvenile warrant exists,
3 notice shall be given to the children's court attorney and the
4 juvenile probation [~~and parole~~] services office in the
5 jurisdiction where the juvenile warrant was issued within one
6 day of the person being taken into custody. The juvenile
7 probation [~~and parole~~] services office shall give notice that
8 the person has been taken into custody to the children's court
9 judge and the attorney who represented the person in the
10 juvenile proceeding.

11 ~~[G. In addition to the judicial review required by~~
12 ~~Paragraph (3) of Subsection A of this section]~~

13 H. A child detained in an out-of-home placement
14 pursuant to this section may request judicial review of the
15 appropriateness of the placement."

16 **SECTION 7.** Section 32A-2-13 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 42, as amended) is amended to read:

18 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED
19 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--
20 DISPOSITION.--

21 A. [~~When~~] If a child who has been taken into
22 custody without a warrant is [~~not released but is~~] detained,
23 [~~(1)~~] a judicial determination of probable cause shall be made
24 by a judge, [~~or~~] special master or magistrate within forty-
25 eight hours, including Saturdays, Sundays and legal holidays

1 ~~[except for children taken into custody under an arrest warrant~~
2 ~~pursuant to the Children's Court Rules]~~. A statement of the
3 charges by a law enforcement officer ~~[which shall include the~~
4 ~~charges]~~ may be the basis of a probable cause determination.
5 The probable cause determination ~~[shall be]~~ is nonadversarial
6 and may be held in the absence of the child and counsel ~~[and~~
7 ~~may be conducted by telephone]~~. If the court ~~[finds no]~~
8 determines that there is not probable cause to believe the
9 child committed an offense, the child shall be released.

10 ~~[+2)]~~ B. If the children's court attorney or the
11 department proposes detention of a child pending adjudication,
12 a petition shall be filed within twenty-four hours from the
13 time the child is taken into custody with or without a warrant,
14 excluding Saturdays, Sundays and legal holidays ~~[and]~~. If a
15 petition is not filed within the ~~[stated time]~~ required twenty-
16 four hours, the child shall be released ~~[and]~~.

17 ~~[+3)]~~ C. A detention hearing shall be held within
18 twenty-four hours, excluding Saturdays, Sundays and legal
19 holidays, from the time ~~[of filing]~~ the petition ~~[to determine~~
20 ~~whether continued detention is required pursuant to the~~
21 ~~criteria established by the Children's Code]~~ is filed. At the
22 request of ~~[any]~~ a party, the court may permit a detention
23 hearing to be conducted by appropriate means of electronic
24 communication; provided that all hearings conducted by
25 electronic means shall be recorded and preserved as part of the

1 record, the child shall have legal representation present with
2 the child, no plea shall be allowed to be taken via electronic
3 communication and the court [~~finds~~] shall first make findings
4 that:

5 [~~(a) — that~~] (1) undue hardship will result
6 from conducting the hearing with all parties, including the
7 child, present in the courtroom; and

8 [~~(b) — that~~] (2) the hardship substantially
9 outweighs any prejudice or harm to the child that is likely to
10 result from the hearing being conducted by electronic means.

11 [~~B.~~] D. The [~~judge~~] court may appoint one or more
12 persons to serve as special master on a full- or part-time
13 basis for the purpose of holding detention hearings. A
14 juvenile probation [~~and parole~~] officer shall not be appointed
15 as a special master. The [~~judge~~] court shall approve all
16 contracts with special masters and shall fix their hourly
17 compensation, subject to the approval of the director of the
18 administrative office of the courts.

19 [~~G.~~] E. Notice of the detention hearing, either
20 oral or written, stating the time, place and purpose of the
21 hearing shall be given by the person designated by the court to
22 the child and the child's parents, guardian or custodian, if
23 [~~they can be found, and to the child~~] practicable. The
24 department shall be provided with reasonable oral or written
25 [~~notification~~] notice and an opportunity to be heard [~~At any~~

1 ~~hearing held pursuant to this subsection, the department may~~
2 ~~appear~~] as a party.

3 ~~[D.]~~ F. At the commencement of the detention
4 hearing, the judge or special master shall advise the parties
5 of their basic rights provided in the Children's Code and shall
6 appoint counsel and guardians ~~[and]~~ or custodians, if
7 appropriate.

8 ~~[E.]~~ G. If the judge or special master finds that
9 the child's detention is appropriate ~~[under the criteria~~
10 ~~established by]~~ in accordance with the Children's Code, the
11 judge or special master shall order detention ~~[in an~~
12 ~~appropriate facility in accordance with the Children's Code]~~ at
13 an appropriate place pursuant to Section 32A-2-12 NMSA 1978.

14 ~~[F.]~~ H. If the judge or special master finds that
15 detention of the child is not appropriate ~~[under the criteria~~
16 ~~established by]~~ in accordance with the Children's Code, the
17 judge or special master shall order the release of the child.
18 ~~[but, in so doing, may order one or more of the following~~
19 ~~conditions to meet the individual needs of the child]~~ Upon
20 ordering the child's release, the judge or special master may
21 impose one or more of the following conditions on the child's
22 release:

23 (1) place the child in the custody of a
24 parent, guardian or custodian or under the supervision of an
25 agency agreeing to supervise the child;

1 (2) [~~place restrictions on~~] restrict the
2 child's travel, association with other persons or place of
3 [~~abode during the period of the child's release~~] residence; or

4 (3) impose any other condition deemed
5 reasonably necessary and consistent with the [~~criteria for~~
6 ~~detaining children established by the~~] Children's Code,
7 including a condition requiring that the child return to
8 custody as required.

9 [~~G.~~] I. An order releasing a child on any
10 conditions specified in this section may at any time be amended
11 to impose additional or different conditions of release or to
12 return the child to custody or detention for failure to conform
13 to the conditions originally imposed.

14 [~~H.~~] J. At the detention hearing, all relevant and
15 material evidence helpful in determining the need for detention
16 may be admitted by the judge or special master even though it
17 would not be admissible in a hearing on the petition.

18 [~~I.~~] K. If the child is not released at the
19 detention hearing and a parent, guardian or custodian was not
20 notified of the hearing and did not appear or waive appearance
21 at the detention hearing, the judge or special master shall
22 rehear the detention matter without unnecessary delay upon the
23 filing of an affidavit stating the facts and a motion for
24 rehearing.

25 [~~J.~~] L. If a child is not released at the detention

1 hearing, the child's detention may be subsequently reviewed by
2 the court or the court may review the child's detention in
3 conjunction with a pretrial conference.

4 [K-] M. If [A] an adjudicated child who is detained
5 is not placed within ten days after a disposition hearing, the
6 child may be released [~~and placed~~] under appropriate
7 supervision by the department, so long as the child does not
8 pose a flight risk or substantial risk of harm to the child's
9 self or others."

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

12 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
13 OFFENDER OR YOUTHFUL OFFENDER--JUVENILE SANCTIONS.--

14 A. The dispositions provided for in this section
15 constitute juvenile sanctions for children adjudicated pursuant
16 to the Delinquency Act.

17 [A-] B. At the conclusion of the dispositional
18 hearing, the court may make and include in the dispositional
19 judgment its findings on the following:

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

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

25 (3) the mental and physical health of all

1 individuals involved, including consideration of such factors
2 as the child's brain development, maturity, trauma history and
3 disability;

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

6 (5) the wishes of the child's parents as to
7 the child's custody;

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

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

13 (8) the ability of the parents to care for the
14 child in the home.

15 [B.] C. If a child is ~~[found to be delinquent]~~
16 adjudicated as a delinquent offender or youthful offender
17 subject to juvenile sanctions, the court may ~~[enter its~~
18 judgment making] order any of the following dispositions, ~~[for~~
19 ~~the supervision, care and rehabilitation of the child]~~ if
20 appropriate:

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

1 ~~shall thereafter determine the appropriate placement,~~
2 ~~supervision and rehabilitation program for the child. The~~
3 ~~judge may include recommendations for placement of the child.~~
4 ~~Commitments are subject to limitations and modifications set~~
5 ~~forth in Section 32A-2-23 NMSA 1978. The types of commitments~~
6 ~~include:~~

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

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

24 ~~(c) if the child is a delinquent~~
25 ~~offender who committed one of the criminal offenses set forth~~

1 ~~in Subsection J of Section 32A-2-3 NMSA 1978, a commitment to~~
2 ~~age twenty-one, unless sooner discharged; or~~

3 ~~(d) if the child is a youthful offender,~~
4 ~~a commitment to age twenty-one, unless sooner discharged]~~ for
5 commitment at a juvenile corrections facility for an
6 appropriate term in accordance with the provisions of Section
7 32A-2-19.1 NMSA 1978;

8 (2) place the child on probation [~~under those~~
9 ~~conditions and limitations as the court may prescribe]~~ or
10 supervision subject to appropriate conditions;

11 (3) [~~place]~~ commit the child [~~in]~~ to a local
12 detention facility that [~~has been]~~ is certified [~~in accordance~~
13 ~~with the provisions of]~~ pursuant to Section 32A-2-4 NMSA 1978
14 for a period not to exceed fifteen days within a three hundred
15 sixty-five day time period [~~or if a child is found to be~~
16 ~~delinquent solely on the basis of Paragraph (3) of Subsection A~~
17 ~~of Section 32A-2-3 NMSA 1978, the court shall only enter a~~
18 ~~judgment placing the child on probation or ordering restitution~~
19 ~~or both]; or~~

20 (4) if a child is found to be delinquent
21 solely [~~on the basis of Paragraph (2), (3) or (4)]~~ for
22 violating the offenses enumerated in Paragraphs (2) through (4)
23 of Subsection [A] B of Section 32A-2-3 NMSA 1978, the court may
24 [make any disposition provided by this section and may enter
25 its judgment placing the child on probation and, as a condition

1 ~~of probation, transfer]~~ place the child on probation or
2 supervision subject to appropriate conditions that may include:

3 (a) transferring custody of the child to
4 the department for treatment for a period not to exceed six
5 months ~~[without further order of the court]~~; provided that
6 ~~[this transfer shall not be made unless]~~ the court first
7 determines that the department is able to provide or contract
8 for adequate and appropriate treatment for the child and that
9 the treatment is likely to be beneficial; or

10 (b) ordering the suspension or denial of
11 the child's driving privileges or revocation of the child's
12 driver's license for a period of ninety days for a first
13 adjudication and for twelve months for a second or subsequent
14 adjudication; provided that the court shall give notice of the
15 suspension, denial or revocation to the taxation and revenue
16 department within twenty-four hours of entering the judgment;
17 and provided further that suspension, denial or revocation
18 shall be in accordance with the Motor Vehicle Code.

19 ~~[G. When the]~~ D. If a child is an Indian child,
20 the Indian child's cultural needs shall be considered in the
21 dispositional judgment and, if applicable, reasonable access to
22 cultural practices and traditional treatment shall be provided.

23 ~~[D. A child found to be delinquent shall not be~~
24 ~~committed or transferred to a penal institution or other~~
25 ~~facility used for the execution of sentences of persons~~

1 ~~convicted of crimes.]~~

2 E. Whenever the court [~~vests~~] transfers legal
3 custody [~~in~~] of a child to an agency, institution or
4 department, [~~it~~] the court shall transmit with the
5 dispositional judgment copies of the clinical reports, the
6 predisposition study and report and other information [~~it has~~]
7 in the record that is pertinent to the care and treatment of
8 the child.

9 F. Prior to [~~any~~] the custody of a child being
10 [~~placed in the custody of~~] transferred to the department, the
11 department shall be provided with reasonable [~~oral or written~~
12 ~~notification~~] notice and an opportunity to be heard.

13 G. In addition to [~~any other~~] a disposition
14 pursuant to Subsection [~~B~~] C of this section, the court may
15 make an abuse or neglect report [~~for investigation and~~
16 ~~proceedings as provided for in~~] that shall be processed in
17 accordance with the Abuse and Neglect Act. The report may be
18 made to a local law enforcement agency, the department or a
19 tribal law enforcement or social service agency for an Indian
20 child [~~residing~~] who resides in Indian country.

21 [~~H. In addition to any other disposition pursuant~~
22 ~~to this section or any other penalty provided by law, if a~~
23 ~~child who is fifteen years of age or older is adjudicated~~
24 ~~delinquent on the basis of Paragraph (2), (3) or (4) of~~
25 ~~Subsection A of Section 32A-2-3 NMSA 1978, the child's driving~~

1 ~~privileges may be denied or the child's driver's license may be~~
2 ~~revoked for a period of ninety days. For a second or a~~
3 ~~subsequent adjudication, the child's driving privileges may be~~
4 ~~denied or the child's driver's license revoked for a period of~~
5 ~~one year. Within twenty-four hours of the dispositional~~
6 ~~judgment, the court may send to the motor vehicle division of~~
7 ~~the taxation and revenue department the order adjudicating~~
8 ~~delinquency. Upon receipt of an order from the court~~
9 ~~adjudicating delinquency, the director of the motor vehicle~~
10 ~~division of the taxation and revenue department may revoke or~~
11 ~~deny the delinquent's driver's license or driving privileges.~~
12 ~~Nothing in this section may prohibit the delinquent from~~
13 ~~applying for a limited driving privilege pursuant to Section~~
14 ~~66-5-35 NMSA 1978 or an ignition interlock license pursuant to~~
15 ~~the Ignition Interlock Licensing Act, and nothing in this~~
16 ~~section precludes the delinquent's participation in an~~
17 ~~appropriate educational, counseling or rehabilitation program.~~

18 ~~I.]~~ H. In addition to ~~[any other]~~ a disposition
19 pursuant to this section or any other penalty ~~[provided]~~
20 prescribed by law, ~~[when]~~ if a child is adjudicated delinquent
21 ~~[on the basis of Paragraph (6) of Subsection A of Section~~
22 ~~32A-2-3 NMSA 1978]~~ for violating Section 30-15-1.1 NMSA 1978
23 regarding unauthorized graffiti on personal or real property,
24 the child shall perform the mandatory community service ~~[set~~
25 ~~forth in Section 30-15-1.1 NMSA 1978. When]~~ required for that

1 offense. If a child fails to [~~completely perform~~] complete the
2 mandatory community service, the name and address of the
3 child's parent or legal guardian shall be published in a
4 newspaper of general circulation, accompanied by a notice that
5 the parent or legal guardian is the parent or legal guardian of
6 a child adjudicated delinquent for committing graffiti."

7 SECTION 9. A new section of the Delinquency Act, Section
8 32A-2-19.1 NMSA 1978, is enacted to read:

9 "32A-2-19.1. [NEW MATERIAL] STANDARD TERMS OF COMMITMENT
10 FOR AN ADJUDICATED DELINQUENT OFFENDER OR A YOUTHFUL
11 OFFENDER.--

12 A. If an adjudicated delinquent child is
13 transferred to the custody of the department for commitment,
14 the commitment shall be at a juvenile corrections facility
15 licensed by the department. An adjudicated delinquent child
16 shall not be committed at a penal institution or other facility
17 for the detention of adults convicted of crimes, unless the
18 child is a youthful offender subject to an adult sentence.

19 B. Before placing the child at a juvenile
20 corrections facility, the department shall first assess the
21 child at a department-designated assessment facility to
22 determine the placement, type of supervision and rehabilitation
23 program appropriate for the child. In determining the
24 appropriate placement, supervision and program for the child,
25 the department may consider any recommendations made by the

1 court.

2 C. Either of the following terms of commitment are
3 standard for a child adjudicated as a delinquent offender and
4 are subject to modification in accordance with Section 32A-2-23
5 NMSA 1978:

6 (1) a short-term commitment shall not exceed
7 eighteen months; provided that no more than twelve months of
8 the commitment may be served at a juvenile corrections facility
9 and no more than one hundred eighty days of the commitment
10 shall be served on supervised release, unless supervised
11 release is revoked pursuant to Section 32A-2-25 NMSA 1978; and

12 (2) a long-term commitment shall not exceed
13 thirty months; provided that no more than twenty-four months of
14 the commitment may be served at a juvenile corrections facility
15 and no more than one hundred eighty days of the commitment
16 shall be served on supervised release, unless supervised
17 release is revoked pursuant to Section 32A-2-25 NMSA 1978.

18 D. The standard term of commitment for a child who
19 is adjudicated as a delinquent offender for an offense that
20 would have otherwise made the child a youthful offender begins
21 on the date of the dispositional judgment and ends on the date
22 the child reaches the age of twenty-one and is subject to
23 modification in accordance with Section 32A-2-23 NMSA 1978.

24 E. The standard term of commitment for a child who
25 is adjudicated as a youthful offender with juvenile sanctions

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1 begins on the date of the dispositional judgment and ends on
2 the date the child reaches the age of twenty-five and is
3 subject to modification in accordance with Section 32A-2-23
4 NMSA 1978."

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

7 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER--ADULT
8 SENTENCE--AMENABILITY.--

9 A. The court [~~has the discretion to invoke either~~]
10 may impose an adult sentence or juvenile sanctions [~~on a~~] as a
11 disposition for a youthful offender. If the children's court
12 attorney seeks an adult sentence for the child, the attorney
13 shall file a notice of intent [~~to invoke an adult sentence~~]
14 within ten working days [~~of the filing of~~] from the date the
15 petition is filed; provided that the court may extend the time
16 for filing of the notice of intent [~~to invoke an adult~~
17 ~~sentence~~] for good cause [~~shown, prior to the adjudicatory~~
18 ~~hearing~~]. A preliminary [~~hearing~~] examination by the court or
19 a hearing before a grand jury shall be held within ten days
20 [~~after the filing of~~] from the date the notice of intent [~~to~~
21 ~~invoke an adult sentence, to determine whether probable cause~~
22 ~~exists to support the allegations contained in the petition~~] is
23 filed.

24 B. After the adjudication of a child as a youthful
25 offender, if the children's court attorney [~~has~~] filed a notice

1 of intent to ~~[invoke]~~ seek an adult sentence ~~[and the child is~~
2 ~~adjudicated as a youthful offender]~~ in accordance with
3 Subsection A of this section, the court shall make the
4 following findings in order to ~~[invoke]~~ impose an adult
5 sentence:

6 (1) the child is not amenable to treatment or
7 rehabilitation ~~[as a child]~~ in available facilities for
8 children; 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]~~ required in
13 Subsection B of this section, the ~~[judge]~~ court shall consider
14 the following factors:

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~~] imposes an adult
16 sentence, the [~~court may~~] sentence [~~the child to less than,~~
17 ~~but~~] shall not exceed the mandatory adult sentence; provided
18 that a child given an adult sentence shall not be sentenced to
19 life imprisonment without the possibility of release or parole.

20 A youthful offender given an adult sentence shall be treated as
21 an adult offender and shall be transferred to the legal custody
22 of an agency responsible for incarceration of persons sentenced
23 to adult sentences. This transfer terminates the jurisdiction
24 of the court over the child with respect to the delinquent acts
25 alleged in the petition. [~~A child given an adult sentence~~

1 ~~shall not be sentenced to life imprisonment without the~~
2 ~~possibility of release or parole.]~~

3 F. If [a] juvenile [~~disposition is~~] sanctions are
4 appropriate, the court shall [~~follow the provisions set forth~~]
5 dispose of the case as provided in Section 32A-2-19 NMSA 1978.
6 [~~A youthful offender may be subject to extended commitment in~~
7 ~~the care of the department until the age of twenty-one,~~
8 ~~pursuant to the provisions of Section 32A-2-23 NMSA 1978.]~~

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

15 H. A child fourteen years of age or older who was
16 charged with first degree murder but [~~found to have committed a~~
17 ~~delinquent act that is neither first degree murder nor a~~
18 ~~youthful offender offense as set forth in Subsection J of~~
19 ~~Section 32A-2-3 NMSA 1978, shall be~~] was instead adjudicated as
20 a delinquent offender is subject to the dispositions set forth
21 in Section 32A-2-19 NMSA 1978."

22 SECTION 11. Section 32A-2-23 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 52, as amended) is amended to read:

24 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
25 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

1 A. Upon the entry of a judgment transferring legal
2 custody of an adjudicated delinquent child to the department,
3 ~~[an agency responsible for the care and rehabilitation of~~
4 ~~delinquent children divests the court of jurisdiction at the~~
5 ~~time of transfer of custody, unless]~~ the court is divested of
6 jurisdiction; provided that the court retains jurisdiction if
7 the transfer of legal custody is for a commitment at a local
8 detention facility not exceeding fifteen days pursuant to the
9 provisions of Section 32A-2-19 NMSA 1978 ~~[in which case the~~
10 ~~court retains jurisdiction]~~.

11 B. A judgment ~~[of]~~ ordering probation or
12 ~~[protective]~~ supervision shall remain in force for an
13 indeterminate period not to exceed the standard term of
14 commitment ~~[from the date entered]~~ a court is authorized to
15 order for the child.

16 C. ~~[A child shall be released by an agency and]~~
17 Probation or supervision shall be terminated ~~[by]~~ before the
18 expiration of the judgment if juvenile probation ~~[and parole]~~
19 services or the agency providing supervision ~~[when it appears]~~
20 determines that ~~[the purpose of the order has been achieved~~
21 ~~before the expiration of the period of the judgment. A]~~
22 continued probation or supervision is not necessary because the
23 child has substantially complied with the conditions of the
24 probation or supervision. The release or termination and the
25 reasons ~~[therefor]~~ for release or termination shall be reported

1 promptly to the court in writing [~~by the releasing authority~~].

2 D. Prior to the expiration of a standard short-term
3 commitment, [~~of one year, as provided for in Section 32A-2-19~~
4 ~~NMSA 1978~~] the court may extend the judgment for up to one six-
5 month period if the court finds that the extension is necessary
6 to safeguard the welfare of the child or the [~~public~~] safety of
7 the public. If a short-term commitment is extended, the
8 [~~mandatory ninety-day~~] term of a child's supervised release
9 [~~as~~] required by Section [~~32A-2-19~~] 32A-2-19.1 NMSA 1978 shall
10 be included in the extension. Notice and hearing are required
11 for any extension of a [~~juvenile's~~] child's commitment.

12 E. Prior to the expiration of a standard long-term
13 commitment, [~~as provided for in Section 32A-2-19 NMSA 1978~~] the
14 court may extend the judgment for additional periods of one
15 year until the child reaches the age of [~~twenty-one~~] twenty-
16 five if the court finds that the extension is necessary to
17 safeguard the welfare of the child or the [~~public~~] safety of
18 the public. If a long-term commitment is extended, the
19 [~~mandatory ninety-day~~] term of the child's supervised release
20 [~~as~~] required by Section [~~32A-2-19~~] 32A-2-19.1 NMSA 1978 shall
21 be included in the extension. Notice and hearing are required
22 for any extension of a [~~juvenile's~~] child's commitment.

23 F. Prior to the expiration of a judgment of
24 probation, the court may extend the judgment for an additional
25 period of one year until the child reaches the age of [~~twenty-~~

1 ~~one]~~ twenty-five if the court finds that the extension is
2 necessary to ~~[protect the community or to]~~ safeguard the
3 welfare of the child or the safety of the public.

4 G. The court may dismiss a motion to modify a
5 disposition if ~~[it finds]~~ after preliminary investigation the
6 court determines that the motion is without ~~[substance]~~ merit.
7 If the court ~~[is of the opinion]~~ determines that the matter
8 should be reviewed, ~~[it may, upon notice to all necessary~~
9 ~~parties, proceed to]~~ the court shall hold a hearing ~~[in the~~
10 ~~manner provided for hearings on petitions alleging delinquency]~~
11 after giving notice to the necessary parties. The court may
12 terminate a judgment if it finds that the child is no longer in
13 need of care, supervision or rehabilitation or it may enter a
14 judgment extending or modifying the original judgment if it
15 finds that action necessary to safeguard the child or the
16 ~~[public interest]~~ safety of the public.

17 H. [A] An adjudicated delinquent child may ~~[make]~~
18 file a motion to request a hearing to modify ~~[a children's~~
19 ~~court or adult]~~ the child's disposition within thirty days ~~[of~~
20 ~~the judge's decision]~~ from the date of the dispositional
21 judgment. If the court ~~[is of the opinion that the matter~~
22 ~~should be reviewed, it may, upon notice to all necessary~~
23 ~~parties, proceed to]~~ determines that the child's request has
24 merit, the court shall hold a hearing ~~[in the manner provided~~
25 ~~for hearings on petitions alleging delinquency]~~ on the request

1 after notice is given to the necessary parties.

2 I. The department ~~[may seek a bench warrant from~~
3 ~~the court when the]~~ shall give notice to the court if a child
4 absconds from probation or supervision or from supervised
5 release. Upon receiving such notice, the court shall issue a
6 warrant for the child's arrest."

7 SECTION 12. Section 32A-2-24 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 53, as amended) is amended to read:

9 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

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

24 B. The standard of proof in probation revocation
25 proceedings shall be evidence beyond a reasonable doubt and the

1 hearings shall be before the court without a jury [~~In all other~~
2 ~~respects, proceedings to revoke probation shall be~~] and
3 otherwise governed by the procedures, rights and duties
4 applicable to proceedings on a delinquency petition. If a
5 child is found to have violated a term of the child's
6 probation, the court may extend the period of probation or make
7 any other judgment or disposition that would have been
8 appropriate in the original disposition of the case.

9 C. If a juvenile probation officer has reasonable
10 cause to believe that a child on probation or subject to a
11 consent decree or court-ordered supervision has violated a
12 condition of the child's probation, consent decree or order or
13 is at risk of absconding from probation, the officer may take
14 the child into custody; provided that the child may be placed
15 in detention only in accordance with the provisions of Sections
16 32A-2-11 and 32A-2-12 NMSA 1978."

17 **SECTION 13.** Section 32A-2-25 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 54, as amended) is amended to read:

19 "32A-2-25. [~~PAROLE~~] REVOCATION OF SUPERVISED RELEASE--
20 PROCEDURES.--

21 A. [~~A child on parole from an agency that has legal~~
22 ~~eustody who violates a term of parole may be proceeded against~~
23 ~~in a parole revocation proceeding conducted by the department~~
24 ~~or the supervising agency or by a hearing officer contracted by~~
25 ~~the department who is neutral to the child and the agency in~~

1 ~~accordance with procedures established by the department in~~
2 ~~cooperation with the juvenile parole board]~~ If an adjudicated
3 delinquent child violates a condition of the child's supervised
4 release, the department may propose revocation of the
5 supervised release. If the department proposes revocation, the
6 department shall conduct a revocation hearing that is presided
7 over by the department or a neutral hearing officer contracted
8 by the department. A child may waive the right to a revocation
9 hearing after consultation with the child's attorney, parent,
10 guardian or custodian.

11 B. A juvenile probation [and parole] officer may
12 detain a child on [parole status who is alleged to have]
13 supervised release if the officer has probable cause that the
14 child violated a [term or] condition of [parole] the supervised
15 release. A child detained pursuant to this subsection shall
16 remain in detention until the completion [and review of a
17 preliminary parole] of the revocation hearing. [A child may
18 waive the right to a preliminary parole revocation hearing
19 after consultation with the child's attorney, parent, guardian
20 or custodian.

21 ~~B. If a retake warrant is issued by the department~~
22 ~~upon the completion of the preliminary parole revocation~~
23 ~~hearing, the juvenile institution to which the warrant is~~
24 ~~issued shall promptly transport the child to that institution~~
25 ~~at the expense of the department.]~~

1 C. If a child's supervised release is revoked, the
2 department shall issue a notice of revocation to a juvenile
3 corrections facility. Upon receiving such notice, the facility
4 shall immediately take custody of the child for the remainder
5 of the commitment.

6 D. If a child absconds from [parole supervision]
7 supervised release and is apprehended in another state after
8 the issuance of a [retake] warrant by a court or a notice of
9 revocation by the department, the [juvenile justice division of
10 the] department shall [cause] provide for the return of the
11 child [to this state] at the expense of the department.

12 E. The issuance of a warrant upon an allegation
13 that the child has absconded from supervised release shall toll
14 the supervised release period. After a hearing upon return or
15 quashing of the warrant, if the court finds that the child
16 knowingly and willfully absconded from supervised release, the
17 time from the date of the violation to the date of the child's
18 arrest or quashing of the warrant shall not be counted as time
19 served on supervised release and the tolled time shall be added
20 to the supervised release term."

21 SECTION 14. Section 33-9A-2 NMSA 1978 (being Laws 1988,
22 Chapter 101, Section 40, as amended) is amended to read:

23 "33-9A-2. DEFINITIONS.--As used in the Juvenile Community
24 Corrections Act:

25 [A. "delinquent" means a child adjudicated

~~delinquent pursuant to the Children's Code;~~

B.] A. "department" means the children, youth and families department;

[G.] B. "fund" means the juvenile community corrections grant fund;

C. "justice-involved youth" means:

(1) children or adults who were adjudicated pursuant to the Delinquency Act;

(2) children subject to a delinquency complaint or delinquency petition for a delinquent act that would be a felony if committed by an adult who have not yet been or will not be adjudicated pursuant to the Delinquency Act; or

(3) persons who are at least eighteen years old but less than twenty-six years old;

D. "secretary" means the secretary of children, youth and families; and

E. "volunteer services" means services provided by individuals or organizations without compensation."

SECTION 15. Section 33-9A-3 NMSA 1978 (being Laws 1988, Chapter 101, Section 41, as amended) is amended to read:

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

A. ~~[There is created in the state treasury]~~ The "juvenile community corrections grant fund" ~~[to be administered~~

1 by] is created in the state treasury. The fund consists of
2 distributions, appropriations, gifts, grants, donations and
3 income from investment of the fund. The department [~~All~~
4 ~~balances~~] shall administer the fund. Money in the fund [are]
5 is appropriated to the department to carry out the purposes of
6 the fund. [~~and no money shall be transferred to another fund~~
7 ~~or be encumbered or disbursed in any manner except as provided~~
8 ~~in the Juvenile Community Corrections Act. Disbursements]~~
9 Expenditures from the fund shall be [~~made only upon warrant~~
10 ~~drawn~~] by warrant of the secretary of finance and
11 administration pursuant to vouchers signed by the secretary of
12 children, youth and families or the secretary's authorized
13 representative.

14 B. Money in the fund shall be used by the
15 department to make grants to counties, municipalities or
16 private organizations, individually or jointly, to provide
17 [~~community corrections~~] programs and services for [~~the~~
18 ~~diversion of adjudicated delinquents to community-based~~
19 ~~settings. No]~~ justice-involved youth. A grant shall not be
20 made to a private, for-profit or commercial organization [~~that~~
21 ~~is not a nonprofit organization~~] without the approval of the
22 secretary. The department may also use money in the fund to
23 provide or directly contract [~~directly~~] for [~~or operate~~
24 ~~juvenile community corrections programs]~~ services for justice-
25 involved youth.

1 C. No more than ~~[ten]~~ twelve percent of the money
2 in the fund shall be used by the department for administration
3 and program monitoring by the department. No more than ~~[ten]~~
4 twelve percent of any grant from the fund shall be used for
5 administrative costs incurred by the grantee.

6 D. ~~[After notice and public hearing as required by~~
7 ~~law]~~ The secretary shall ~~[adopt regulations that provide~~
8 ~~standards]~~ promulgate rules for the qualifications ~~[for grants]~~
9 of grantees, priorities for awarding of grants and ~~[other]~~
10 standards ~~[regarding juvenile community corrections programs~~
11 ~~deemed necessary]~~ for eligible programs or services for
12 justice-involved youth; provided that, at minimum, eligible
13 programs or services shall be evidence- or research-based. The
14 department shall review and approve or disapprove all
15 applications for grants submitted pursuant to the Juvenile
16 Community Corrections Act ~~[for a grant of funds from the fund]~~.

17 E. The department shall submit an annual report to
18 the governor and legislature ~~[not later than]~~ on or before
19 December 15 ~~[providing information]~~ of each year on grant
20 awards ~~[program]~~ made, the effectiveness of grantee programs,
21 ~~[and]~~ the department's monitoring efforts and ~~[making]~~ the
22 department's recommendations, ~~[as necessary to carry out the~~
23 ~~purpose of the fund]~~ if applicable.

24 F. The department may accept donations, payments,
25 contributions, gifts or grants from whatever source for the

benefit of the fund."

SECTION 16. Section 33-9A-4 NMSA 1978 (being Laws 1988, Chapter 101, Section 42, as amended) is amended to read:

"33-9A-4. APPLICATIONS--CRITERIA.--

A. Counties, municipalities or private organizations ~~[individually or jointly]~~ may apply for grants from the fund ~~[including grants for counties or municipalities to purchase contractual services from private organizations; provided that]~~ individually or jointly. At minimum, an applicant shall certify that:

(1) the ~~[application is for]~~ requested grant funding will be used for a program ~~[with priority use being for delinquents selected pursuant to the provisions of Section 33-9A-5 NMSA 1978]~~ that prioritizes services to children or adults who were adjudicated pursuant to the Delinquency Act;

(2) the applicant ~~[certifies that it is willing and able to]~~ or the applicant's agents or contractors will operate the program according to standards provided by the department; ~~[which may include the negotiation of a contract between the delinquent and program staff with provisions such as deductions from employment income for applicable victim restitution, family support, room and board, savings and weekly allowance. In addition to monetary restitution, to the extent practical, or if monetary restitution is not applicable, the contract may include provision for community service~~

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1 ~~restitution for a specific number of hours;~~

2 (3) the ~~[applicant demonstrates the support of~~
3 ~~key components of the criminal justice system]~~ applicant's
4 program or services for justice-involved youth is research-
5 based and incorporates best practices in risk reduction for
6 justice-involved youth;

7 (4) if the applicant ~~[if]~~ is a private
8 organization, ~~[demonstrates]~~ the applicant has the support of
9 the county and municipality where the program ~~[will provide~~
10 ~~services]~~ is operated; and

11 (5) the applicant ~~[certifies that it]~~ will
12 utilize volunteer services as an integral portion of the
13 program to the maximum extent feasible ~~[and]~~.

14 ~~[(6)]~~ B. No class A county alone or in conjunction
15 with any municipality within a class A county shall receive
16 more than forty-nine percent of ~~[any]~~ money appropriated to the
17 fund.

18 ~~[B. Notwithstanding the provisions of Subsection A~~
19 ~~of this section]~~

20 C. The department may ~~[utilize]~~ expend money from
21 the fund to place ~~[individuals]~~ persons who are eligible or
22 within twelve months of ~~[eligibility, for parole]~~ being
23 eligible for supervised release in community-based settings.
24 The department may ~~[in its discretion]~~ require participation
25 ~~[by a delinquent]~~ in a program for justice-involved youth as a

1 condition of supervised release for children or adults
2 adjudicated pursuant to the Delinquency Act; provided that the
3 department may also require that the programs serving those
4 children or adults assist, if applicable, in making income
5 deductions for victim restitution, family support, room and
6 board, savings and weekly allowances or in facilitating
7 community service restitution.

8 [G.] D. The department may utilize not more than
9 twenty-five percent of the fund to contract directly for
10 community corrections programs or to establish programs
11 operated by the department; provided [however] that the
12 department may utilize up to an additional ten percent of the
13 fund to operate juvenile community corrections programs if,
14 after a reasonable effort to solicit proposals, there are no
15 satisfactory proposals from a community where [it is determined
16 that] a program is necessary or if it becomes necessary to
17 cancel a program as provided in the contract.

18 [D.] E. The department shall establish additional
19 guidelines for allocation of funds under the Juvenile Community
20 Corrections Act. An applicant shall retain the authority to
21 accept or reject the placement of any delinquent in a program."

22 SECTION 17. Section 33-9A-5 NMSA 1978 (being Laws 1988,
23 Chapter 101, Section 43, as amended) is amended to read:

24 "33-9A-5. SELECTION PANELS.--

25 A. The department shall establish a [state]

1 ~~statewide panel [whose duties shall be to immediately screen~~
2 ~~and identify delinquents sentenced to a juvenile correctional~~
3 ~~facility of the department and transferred to the legal custody~~
4 ~~of the department, except individuals who are sentenced or~~
5 ~~transferred from a judicial district that has established a~~
6 ~~local panel to exercise these duties pursuant to the provisions~~
7 ~~of this section and who meet]~~ to determine eligibility for
8 programs created pursuant to the Juvenile Community Corrections
9 Act; provided that if a local panel is created pursuant to
10 Subsection D of this section, the local panel shall determine
11 eligibility for children or adults adjudicated in or
12 transferred to the local panel's community. The statewide
13 panel shall immediately identify a child or an adult
14 adjudicated pursuant to the Delinquency Act who is transferred
15 to the legal custody of the department for commitment to a
16 juvenile corrections facility and screen the child or adult for
17 eligibility pursuant to the following criteria:

18 (1) the child's or adult's adjudicated offense
19 ~~[involved]~~ is one for which community service or reasonable
20 restitution may be made using a payment schedule compatible
21 with the total amount of restitution to be paid and the time
22 the offender is to participate in a program; and

23 (2) the child or adult is willing to enter
24 into a contract that establishes objectives that shall be
25 achieved before release from the program.

1 B. The department may establish criteria in
2 addition to those established in Subsection A of this section
3 ~~[for the screening of delinquents who would benefit from~~
4 ~~participation in a program and who would not pose a threat to~~
5 ~~the community]~~.

6 C. If the ~~[state]~~ statewide panel determines that a
7 child or adult is suitable for placement in a program, ~~[a~~
8 ~~recommendation to that effect and for modification of~~
9 ~~disposition shall be presented as soon as possible to the~~
10 ~~sentencing judge or the department, which may, notwithstanding~~
11 ~~any provision of law, accept, modify or reject the~~
12 ~~recommendation]~~ the panel shall refer the child or adult for
13 participation in a program and, if applicable, request a
14 modification to the child's or adult's disposition in
15 accordance with the Delinquency Act. The ~~[determination]~~
16 referral shall be presented to the county, municipality or
17 private nonprofit organization, as applicable, for approval or
18 rejection.

19 D. A county, municipality or private nonprofit
20 organization, individually or jointly, may establish a local
21 panel to exercise the duties and responsibilities of the
22 ~~[state]~~ statewide panel pursuant to the provisions of
23 Subsection A of this section and, using the same criteria as
24 the state panel, the local panel may ~~[screen and identify~~
25 ~~delinquents]~~ identify and screen children and adults in the

1 local panel's community who are adjudicated pursuant to the
2 Delinquency Act and transferred to the legal custody of the
3 department for commitment to a juvenile corrections facility.

4 The composition of a local panel shall include, to the maximum
5 extent possible, representatives of the judiciary, the
6 administrative office of the district attorneys, the public
7 defender department, the children, youth and families
8 department, the county sheriff or the municipal police
9 department, ~~[individuals]~~ persons representing local programs
10 and private citizens."

11 SECTION 18. Section 33-9A-6 NMSA 1978 (being Laws 1988,
12 Chapter 101, Section 44) is amended to read:

13 "33-9A-6. SENTENCING.--

14 A. In every case where ~~[the commitment to the~~
15 ~~authority of a child adjudicated delinquent is contemplated by~~
16 ~~a judge]~~ an adjudicated child is subject to a potential
17 disposition that includes transfer of the child to custody of
18 the department for commitment to a facility for the care and
19 rehabilitation of adjudicated children, a predisposition report
20 shall be prepared containing the recommendation of the juvenile
21 probation officer regarding a community corrections placement
22 or a diagnostic evaluation shall be completed by the
23 ~~[authority]~~ department containing the recommendation of the
24 ~~[authority]~~ department regarding that placement and the judge
25 shall consider that report or evaluation prior to ~~[making that~~

underscored material = new
[bracketed material] = delete

1 ~~commitment]~~ ordering the disposition. A juvenile probation
2 officer shall consult with the ~~[authority]~~ department prior to
3 making a recommendation pursuant to this subsection.

4 B. ~~[At a sentencing hearing, if a judge of a court~~
5 ~~of competent jurisdiction]~~ If a court determines that placement
6 of an adjudicated child in community corrections is
7 appropriate, ~~[he]~~ the court shall ~~[defer or suspend the~~
8 ~~sentence and, as a condition of probation, require an~~
9 ~~individual to serve a period of time]~~ order participation in a
10 community corrections program as part of the disposition."

11 SECTION 19. REPEAL.--Section 32A-2-2 NMSA 1978 (being
12 Laws 1993, Chapter 77, Section 31, as amended) is repealed.

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