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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DELINQUENCY; AMENDING THE DELINQUENCY ACT;
EXPANDING THE DEFINITIONS FOR "DELINQUENT ACT", "SERIOUS
YOUTHFUL OFFENDER" AND "YOUTHFUL OFFENDER"; 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 CHILDREN'S COURT
ATTORNEY CONSULT PROBATION SERVICES BEFORE FILING A DELINQUENCY
PETITION; 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; EXPANDING
THE COURT'S DISCRETION TO HOLD A DETENTION HEARING BY MEANS OF
ELECTRONIC COMMUNICATION; PROVIDING THE CHILDREN, YOUTH AND
FAMILIES DEPARTMENT AND THE CORRECTIONS DEPARTMENT WITH
DISCRETION TO PREPARE CERTAIN PREDISPOSITION REPORTS; REMOVING

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1 LIMITATIONS ON THE TYPES OF COMMITMENT A COURT MAY ORDER;
2 PROVIDING THAT A COURT MAY NOT WEIGH ONE AMENABILITY FACTOR
3 MORE HEAVILY THAN ANOTHER FOR SENTENCING PURPOSES; PROVIDING A
4 COURT WITH DISCRETION TO EXTEND A JUDGMENT UP TO THE DATE A
5 CHILD REACHES TWENTY-FIVE YEARS OF AGE; ELIMINATING THE
6 CHILDREN, YOUTH AND FAMILIES DEPARTMENT'S EXCLUSIVE
7 JURISDICTION AND AUTHORITY TO RELEASE AN ADJUDICATED DELINQUENT
8 CHILD; PROVIDING THAT THE STANDARD OF PROOF IN A PROBATION
9 REVOCATION PROCEEDING IS A PREPONDERANCE OF THE EVIDENCE;
10 AUTHORIZING A PARTY TO REFERENCE SEALED JUVENILE RECORDS FOR
11 THE PURPOSES OF A HEARING REGARDING PRETRIAL DETENTION,
12 CONDITIONS OF RELEASE OR SENTENCING; REPEALING SECTIONS 32A-2-2
13 AND 32A-2-32.1 NMSA 1978 (BEING LAWS 1993, CHAPTER 77, SECTION
14 31 AND LAWS 2007, CHAPTER 96, SECTION 1, AS AMENDED); MAKING
15 CONFORMING AMENDMENTS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

21 A. "delinquent act" means an act committed by a
22 child that would be designated as a crime under the law if
23 committed by an adult, not including a violation of Section
24 30-9-2 NMSA 1978, including the following offenses:

25 (1) any of the following offenses pursuant to

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1 municipal traffic codes or the Motor Vehicle Code:

2 (a) driving while under the influence of
3 intoxicating liquor or drugs;

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

6 (c) unlawful taking of a vehicle or
7 motor vehicle;

8 (d) receiving or transferring of a
9 stolen vehicle or motor vehicle;

10 [~~(e)~~] ~~homicide by vehicle;~~

11 ~~(f)~~] (e) injuring or tampering with a
12 vehicle;

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

15 [~~(h)~~] (g) altering or forging of a
16 driver's license or permit or any making of a fictitious
17 license or permit;

18 [~~(i)~~] (h) reckless driving;

19 [~~(j)~~] (i) driving with a suspended or
20 revoked license; or

21 [~~(k)~~] (j) an offense punishable as a
22 felony;

23 (2) any of the following offenses related to
24 alcohol or cannabis:

25 (a) buying, attempting to buy,

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

14 (b) buying, attempting to buy, receiving
15 or possessing or being served cannabis or a cannabis product or
16 being present in a cannabis establishment, except in the
17 presence of the child's parent, guardian, custodian or adult
18 spouse; provided that the provisions of this subparagraph shall
19 not apply to a child participating in the medical cannabis
20 program pursuant to the Lynn and Erin Compassionate Use Act.
21 As used in this subparagraph, "cannabis", "cannabis product"
22 and "cannabis establishment" have the same definitions as in
23 the Cannabis Regulation Act;

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

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

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

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

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

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

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

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

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

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

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

3 G. "restitution" means financial reimbursement by
4 the child to the victim or community service imposed by the
5 court and is limited to easily ascertainable damages for injury
6 to or loss of property, actual expenses incurred for medical,
7 psychiatric and psychological treatment for injury to a person
8 and lost wages resulting from physical injury, which are a
9 direct and proximate result of a delinquent act. "Restitution"
10 does not include reimbursement for damages for mental anguish,
11 pain and suffering or other intangible losses. As used in this
12 subsection, "victim" means a person who is injured or suffers
13 damage of any kind by an act that is the subject of a complaint
14 or referral to law enforcement officers or juvenile probation
15 authorities. Nothing contained in this definition limits or
16 replaces the provisions of Subsections A and B of Section
17 32A-2-27 NMSA 1978;

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

25 (1) murder in the first degree or murder in

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1 the second degree, as provided in Section 30-2-1 NMSA 1978;

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

4 (3) criminal sexual penetration in the first,
5 second, third or fourth degree or aggravated criminal sexual
6 penetration, as provided in Section 30-9-11 NMSA 1978;

7 (4) robbery while armed with a deadly weapon,
8 as provided in Section 30-16-2 NMSA 1978; or

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

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

23 J. "youthful offender" means a delinquent child
24 subject to adult or juvenile sanctions who is ~~(+1)~~ fourteen to
25 eighteen years of age ~~[at the time of the offense and who is~~

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1 ~~adjudicated for at least one of the following offenses:~~

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

4 (1) charged with at least one of the following
5 offenses:

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

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

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

12 [~~e~~] (d) aggravated battery against a
13 household member, as provided in Subsection C of Section
14 30-3-16 NMSA 1978;

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

18 [~~g~~] (f) shooting at a dwelling or
19 occupied building that does not result in great bodily harm to
20 another person or shooting at or from a motor vehicle that does
21 not result in great bodily harm to another person, as provided
22 in Section 30-3-8 NMSA 1978;

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

25 [~~i~~] ~~criminal sexual penetration, as~~

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

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

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

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

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

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

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

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

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

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

6 (a) the felony adjudications relied upon
7 as prior adjudications shall not have arisen out of the same
8 transaction or occurrence or series of events related in time
9 and location; and

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

13 ~~(3) fourteen years of age and who is~~
14 ~~adjudicated for first degree murder, as provided in Section~~
15 ~~30-2-1 NMSA 1978]."~~

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

18 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
19 HOLDING FACILITIES--REPORTS.--

20 A. A child arrested and detained for an alleged
21 delinquent act may be temporarily held in an adult jail or
22 lockup for no longer than six hours. A child who is detained
23 in an adult jail or lockup shall be placed in a setting that is
24 physically segregated by sight and sound from adult offenders.
25 After six hours, the child may be placed or detained pursuant

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1 to the provisions of Section 32A-2-12 NMSA 1978.

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

7 C. A serious youthful offender shall be transported
8 to a district court when the serious youthful offender's
9 appearance is ordered by the district court; provided, however,
10 that the serious youthful offender shall be physically
11 segregated from adult offenders and segregated by sight and
12 sound from adult offenders to the fullest extent possible."

13 SECTION 3. Section 32A-2-8 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 37) is amended to read:

15 "32A-2-8. PETITION--AUTHORIZATION TO FILE.--A petition
16 alleging delinquency shall not be filed [~~in~~] to initiate
17 delinquency proceedings unless the children's court attorney
18 [~~after consulting with probation services~~] has determined and
19 endorsed upon the petition that the filing of the petition is
20 in the best interest of the public and the child. The
21 children's court attorney shall furnish legal services in
22 connection with the authorization and preparation of the
23 petition."

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

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1 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

2 A. [~~Unless~~] Except as otherwise ordered by the
3 court pursuant to the provisions of the Delinquency Act, a
4 child taken into custody for an alleged delinquent act shall
5 not be placed in detention unless [~~a detention risk assessment~~
6 ~~instrument is completed and~~] a determination is made that the
7 child:

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

10 (2) poses a substantial risk of harm to
11 others; or

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

14 B. The criteria for detention provided for in this
15 section shall [~~govern~~] apply to the decisions of all persons
16 responsible for determining whether detention is appropriate
17 prior to a detention hearing. [~~based upon review of the~~
18 ~~detention risk assessment instrument.~~

19 ~~C. The department shall develop and implement a~~
20 ~~detention risk assessment instrument. The department shall~~
21 ~~collect and analyze data regarding the application of the~~
22 ~~detention risk assessment instrument. On January 1, 2004, the~~
23 ~~department shall provide the legislature with a written report~~
24 ~~with respect to its collection and analysis of data regarding~~
25 ~~the application of the detention risk assessment instrument.]"~~

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

3 "32A-2-12. PLACEMENT OR DETENTION.--

4 A. A child alleged to be a delinquent child may be
5 placed or detained, pending a court hearing, in any of the
6 following places:

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

9 (2) a facility operated by a licensed child
10 welfare services agency;

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

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

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

25 (6) the child's home or place of residence,

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1 under conditions and restrictions approved by the court.

2 B. A child alleged to be a youthful offender may be
3 detained, pending a court hearing, in any of the following
4 places:

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

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 by the court ~~[and]~~ that meets the standards
12 for detention facilities pursuant to the Children's Code and
13 federal law.

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

25 D. A child who has previously been incarcerated as

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

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

- 20 (1) a detention facility, licensed by the
21 department, for children alleged to be delinquent children;
22 (2) any other suitable place, other than a
23 facility for the long-term care and rehabilitation of
24 delinquent children to which children adjudicated as delinquent
25 children may be confined pursuant to Section 32A-2-19 NMSA

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1 1978, designated by the court that meets the standards for
2 detention facilities pursuant to the Children's Code and
3 federal law; or

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

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

24 G. In addition to the judicial review required by
25 Paragraph (3) of Subsection A of this section, a child detained

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1 in an out-of-home placement pursuant to this section may
2 request judicial review of the appropriateness of the
3 placement."

4 SECTION 6. Section 32A-2-13 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 42, as amended) is amended to read:

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

9 A. [~~When~~] If a child who has been taken into
10 custody is not released but is detained:

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

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

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1 filed within the stated time, the child shall be released; and

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

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

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

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

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1 ~~the director of the administrative office of the courts.~~

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

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

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

19 ~~F.]~~ E. If the judge [~~or special master~~] finds that
20 detention of the child is not appropriate under the criteria
21 established by the Children's Code, the judge [~~or special~~
22 ~~master~~] shall order the release of the child, but, in so doing,
23 may order one or more of the following conditions to meet the
24 individual needs of the child:

- 25 (1) place the child in the custody of a

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1 parent, guardian or custodian or under the supervision of an
2 agency agreeing to supervise the child;

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

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

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

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

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

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1 rehearing.

2 [J-] I. If a child is not released at the detention
3 hearing, the child's detention may be subsequently reviewed by
4 the court or the court may review the child's detention in
5 conjunction with a pretrial conference.

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

11 **SECTION 7.** 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

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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

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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.

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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

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

10 SECTION 8. Section 32A-2-17 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 46, as amended) is amended to read:

12 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
13 EXAMINATIONS.--

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

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

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

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

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

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

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

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

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1 psychologist, a licensed professional clinical counselor or a
2 licensed independent social worker prior to a hearing on the
3 merits of the petition. An examination made prior to the
4 hearing or as a part of the predisposition study and report
5 shall be conducted on an outpatient basis, unless the court
6 finds that placement in a hospital or other appropriate
7 facility is necessary.

8 C. The court, after a hearing, may order
9 examination by a physician or psychiatrist, a licensed
10 psychologist or a licensed professional clinical counselor or a
11 licensed independent social worker of a parent or custodian
12 whose ability to care for or supervise a child is an issue
13 before the court.

14 D. The court may order that a child adjudicated as
15 a delinquent child be administered a predispositional
16 evaluation by a professional designated by the department for
17 purposes of diagnosis, with direction that the court be given a
18 report indicating what disposition appears most suitable when
19 the interests of the child and the public are considered. The
20 evaluation shall be completed within fifteen days of the
21 court's order and the preference shall be for performing the
22 evaluation in the child's community.

23 E. If a child is detained for purposes of
24 performing a predispositional evaluation, it shall be completed
25 within fifteen days and in no event shall a child be detained

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1 for more than fifteen days within a three-hundred-sixty-five-
2 day period for a predispositional evaluation, unless for good
3 cause shown."

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

6 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--
7 NONADMISSIBILITY.--

8 A. The court shall enter a judgment setting forth
9 the court's findings and disposition in the proceeding. A
10 judgment in proceedings on a petition under the Delinquency Act
11 resulting in a juvenile disposition shall not be deemed a
12 conviction of crime nor shall it impose any civil disabilities
13 ordinarily resulting from conviction of a crime nor shall it
14 operate to disqualify the child in any civil service
15 application or appointment. The juvenile disposition of a
16 child and any evidence given in a hearing in court shall not be
17 admissible as evidence against the child in any case or
18 proceeding in any other tribunal whether before or after
19 reaching the age of majority, except in sentencing proceedings
20 [~~after conviction of a felony and then only for the purpose of~~
21 ~~a presentence study and report~~] or a hearing held pursuant to
22 Article 2, Section 13 of the constitution of New Mexico or in
23 accordance with supreme court rule to consider or address
24 conditions of release.

25 B. If a judgment resulting from a youthful offender

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1 or serious youthful offender proceeding under the Delinquency
2 Act results in an adult sentence, a record of the judgment
3 shall be admissible in any other case or proceeding in any
4 other court involving the youthful offender or serious youthful
5 offender.

6 C. If a judgment on a proceeding under the
7 Delinquency Act results in an adult sentence, the determination
8 of guilt at trial becomes a conviction for purposes of the
9 Criminal Code."

10 SECTION 10. 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.--

14 A. At the conclusion of the dispositional hearing,
15 the court may make and include in the dispositional judgment
16 its findings on the following:

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

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

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

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

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

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

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

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

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

15 (1) transfer legal custody to the department
16 or an agency responsible for the care and rehabilitation of
17 delinquent children, which shall receive the child at a
18 facility designated by the secretary of the department as a
19 juvenile reception facility. The department shall thereafter
20 determine the appropriate placement, supervision and
21 rehabilitation program for the child. The judge may include
22 recommendations for placement of the child. Commitments are
23 subject to limitations and modifications set forth in Section
24 32A-2-23 NMSA 1978. The court has discretion to consider the
25 child's unique circumstances and history when imposing

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1 probation or commitment and may impose probation or commitment
2 for any period up to the date the child reaches twenty-five
3 years of age; [The types of commitments include:

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

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

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

25 ~~(d) if the child is a youthful offender,~~

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1 ~~a commitment to age twenty-one, unless sooner discharged;~~
2 ~~(2) place the child on probation under those~~
3 ~~conditions and limitations as the court may prescribe;~~
4 ~~(3)]~~ (2) place the child in a local detention
5 facility that has been certified in accordance with the
6 provisions of Section 32A-2-4 NMSA 1978 for a period not to
7 exceed [~~fifteen~~] thirty days within a three hundred sixty-five
8 day time period; or if a child is found to be delinquent solely
9 on the basis of Paragraph (3) of Subsection A of Section
10 32A-2-3 NMSA 1978, the court shall only enter a judgment
11 placing the child on probation or ordering restitution or both;
12 or
13 [~~(4)]~~ (3) if a child is found to be delinquent
14 solely on the basis of Paragraph (2), (3) or (4) of Subsection
15 A of Section 32A-2-3 NMSA 1978, the court may make any
16 disposition provided by this section and may enter its judgment
17 placing the child on probation and, as a condition of
18 probation, transfer custody of the child to the department for
19 a period not to exceed six months without further order of the
20 court; provided that this transfer shall not be made unless the
21 court first determines that the department is able to provide
22 or contract for adequate and appropriate treatment for the
23 child and that the treatment is likely to be beneficial.
24 C. [~~When~~] If the child is an Indian child, the
25 Indian child's cultural needs shall be considered in the

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1 dispositional judgment and reasonable access to cultural
2 practices and traditional treatment shall be provided.

3 D. A child found to be delinquent shall not be
4 committed or transferred to a penal institution or other
5 facility used for the execution of sentences of persons
6 convicted of crimes, unless the child reaches eighteen years of
7 age.

8 E. Whenever the court vests legal custody in an
9 agency, institution or department, it shall transmit with the
10 dispositional judgment copies of the clinical reports,
11 predisposition study and report and other information it has
12 pertinent to the care and treatment of the child.

13 F. Prior to any child being placed in the custody
14 of the department, the department shall be provided with
15 reasonable oral or written notification and an opportunity to
16 be heard.

17 G. In addition to any other disposition pursuant to
18 Subsection B of this section, the court may make an abuse or
19 neglect report for investigation and proceedings as provided
20 for in the Abuse and Neglect Act. The report may be made to a
21 local law enforcement agency, the department or a tribal law
22 enforcement or social service agency for an Indian child
23 residing in Indian country.

24 H. In addition to any other disposition pursuant to
25 this section or any other penalty provided by law, if a child

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

21 I. In addition to any other disposition pursuant to
22 this section or any other penalty provided by law, when a child
23 is adjudicated delinquent on the basis of Paragraph (6) of
24 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
25 perform the mandatory community service set forth in Section

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1 30-15-1.1 NMSA 1978. When a child fails to completely perform
2 the 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 11. Section 32A-2-20 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 49, as amended) is amended to read:

9 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER AND SERIOUS
10 YOUTHFUL OFFENDER.--

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

23 B. If the children's court attorney has filed a
24 notice of intent to invoke an adult sentence and the child is
25 adjudicated as a youthful offender, the court shall make the

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1 following findings in order to invoke an adult sentence:

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

4 (2) the child is not eligible for commitment
5 to an institution for children with developmental disabilities
6 or mental disorders.

7 C. In making the findings set forth in Subsection B
8 of this section, the judge shall consider the following
9 factors, but may not weigh one factor more heavily than
10 another:

11 (1) the seriousness of the alleged offense;

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

14 (3) whether a firearm was used to commit the
15 alleged offense;

16 (4) whether the alleged offense was against
17 persons or against property [~~greater weight being given to~~
18 ~~offenses against persons, especially if personal injury~~
19 ~~resulted~~];

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

24 (6) the record and previous history of the
25 child;

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1 (7) the prospects for adequate protection of
2 the public and the likelihood of reasonable rehabilitation of
3 the child by the use of procedures, services and facilities
4 currently available; and

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

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

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

22 F. If a juvenile disposition is appropriate, the
23 court shall follow the provisions set forth in Section 32A-2-19
24 NMSA 1978. A youthful offender may be subject to extended
25 commitment in the care of the department until the age of

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1 ~~[twenty-one]~~ twenty-five, pursuant to the provisions of Section
2 32A-2-23 NMSA 1978.

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

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

19 **SECTION 12.** Section 32A-2-22 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 51, as amended) is amended to read:

21 "32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT
22 JUDGMENT--CONSENT DECREE--DISPOSITION.--

23 A. At any time after the filing of a delinquency
24 petition and before the entry of a judgment, the court may, on
25 motion of the children's court attorney or that of counsel for

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1 the child, suspend the proceedings and continue the child under
2 supervision in the child's own home under terms and conditions
3 negotiated with probation services and agreed to by ~~[all the~~
4 ~~parties affected]~~ the state and the child's defense attorney
5 and approved by the court. The court's order continuing the
6 child under supervision under this section shall be known as a
7 "consent decree". An admission of some or all of the
8 allegations stated in the delinquency petition shall not be
9 required for a consent decree order.

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

18 C. A consent decree shall remain in force for six
19 months unless the child is discharged sooner by probation
20 services. Prior to the expiration of the six-month period and
21 upon the application of probation services or any other agency
22 supervising the child under a consent decree, the court may
23 extend the decree for an additional six months in the absence
24 of objection to extension by the child. If the child objects
25 to the extension, the court shall hold a hearing and make a

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1 determination on the issue of extension; provided that a
2 consent decree shall not be available to a child charged as a
3 youthful offender or serious youthful offender.

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

12 (1) extend the period of the consent decree;

13 or

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

16 E. A child who is discharged by probation services
17 or who completes a period under supervision without
18 reinstatement of the original delinquency petition shall not
19 again be proceeded against in any court for the same offense
20 alleged in the petition or an offense based upon the same
21 conduct and the original petition shall be dismissed with
22 prejudice. Nothing in this subsection precludes a civil suit
23 against the child for damages arising from the child's conduct.

24 F. A judge who pursuant to this section elicits or
25 examines information or material about a child that would be

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1 inadmissible in a hearing on the allegations of the petition
2 shall not, over the objection of the child, participate in any
3 subsequent proceedings on the delinquency if:

4 (1) a consent decree is denied and the
5 allegations in the petition remain to be decided in a hearing
6 where the child denies the allegations; or

7 (2) a consent decree is granted but the
8 delinquency petition is subsequently reinstated.

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

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1 shall revoke or deny the delinquent child's driver's license or
2 driving privileges. Nothing in this section shall prohibit the
3 delinquent child from applying for a limited driving privilege
4 pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock
5 license pursuant to the Ignition Interlock Licensing Act, and
6 nothing in this section precludes the delinquent child's
7 participation in an appropriate educational, counseling or
8 rehabilitation program."

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

11 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
12 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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

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

24 C. A child shall be released by an agency and
25 probation or supervision shall be terminated by juvenile

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1 probation and parole services or the agency providing
2 supervision when it appears that the purpose of the order has
3 been achieved before the expiration of the period of the
4 judgment. A release or termination and the reasons therefor
5 shall be reported promptly to the court in writing by the
6 releasing authority.

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

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

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

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

20 ~~H.]~~ F. A child may make a motion to modify a
21 children's court or adult disposition within thirty days of the
22 judge's decision. If the court is of the opinion that the
23 matter should be reviewed, it may, upon notice to all necessary
24 parties, proceed to a hearing in the manner provided for
25 hearings on petitions alleging delinquency.

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1 ~~[F.]~~ G. The department may seek a bench warrant
2 from the court when the child absconds from supervised
3 release."

4 SECTION 14. Section 32A-2-23.1 NMSA 1978 (being Laws
5 2009, Chapter 239, Section 23) is amended to read:

6 "32A-2-23.1. RELEASE ELIGIBILITY.--

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

18 ~~B.]~~ A. The decision to grant or deny release shall
19 be made by the secretary of children, youth and families or the
20 secretary's designee. The department may impose such
21 conditions of release as it deems appropriate.

22 ~~[G. A child is eligible for release any time after~~
23 ~~the entry of a judgment transferring legal custody to the~~
24 ~~department, and the department may consider a reasonable~~
25 ~~request for release from the child at any time sixty days after~~

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1 ~~the child has been committed.~~

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

21 ~~[E.]~~ C. The secretary of children, youth and
22 families or the secretary's designee may review the case of any
23 child upon the child's or the juvenile public safety advisory
24 board's reasonable request at any time after release is
25 denied."

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1 SECTION 15. Section 32A-2-24 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 53, as amended) is amended to read:

3 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

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

16 B. The standard of proof in probation revocation
17 proceedings shall be [~~evidence beyond a reasonable doubt~~] a
18 preponderance of the evidence and the hearings shall be before
19 the court without a jury. In all other respects, proceedings
20 to revoke probation shall be governed by the procedures, rights
21 and duties applicable to proceedings on a delinquency petition.
22 If a child is found to have violated a term of the child's
23 probation, the court may extend the period of probation or make
24 any other judgment or disposition that would have been
25 appropriate in the original disposition of the case."

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1 SECTION 16. Section 32A-2-26 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 55, as amended) is amended to read:

3 "32A-2-26. SEALING OF RECORDS.--

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

13 (1) two years have elapsed since the final
14 release of the person from legal custody and supervision or two
15 years have elapsed since the entry of any other judgment not
16 involving legal custody or supervision;

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

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

25 B. Reasonable notice of the motion shall be given

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1 to:

2 (1) the children's court attorney;

3 (2) the authority granting the release;

4 (3) the law enforcement officer, department
5 and central depository having custody of the law enforcement
6 files and records; and

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

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

16 D. Inspection of the files and records or the
17 release of information in the records included in the sealing
18 order may thereafter be permitted by the court only:

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

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

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1 E. Any finding of delinquency or need of services
2 or conviction of a crime subsequent to the sealing order may at
3 the court's discretion be used by the court as a basis to set
4 aside the sealing order.

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

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

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

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

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

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

16 L. Notwithstanding the provisions of Subsections A
17 through K of this section, only with prior notice to the court,
18 a party may reference a juvenile record and the contents of a
19 juvenile record for the purposes of a hearing held in
20 accordance with Article 2, Section 13 of the constitution of
21 New Mexico, a hearing held pursuant to supreme court rule to
22 consider or address conditions of release or a sentencing
23 hearing. A party may reference the existence of a juvenile
24 record in written pleadings but may not disclose the contents
25 of the juvenile record unless otherwise allowed by law."

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1 SECTION 17. Section 26-2C-26 NMSA 1978 (being Laws 2021
2 (1st S.S.), Chapter 4, Section 26) is amended to read:

3 "26-2C-26. LIMITS ON PERSONAL USE--PENALTIES.--

4 A. Nothing in Section [~~25 of the Cannabis~~
5 ~~Regulation Act~~] 26-2C-25 NMSA 1978 shall be construed to:

6 (1) allow a person to smoke cannabis products
7 in a public place, except in a cannabis consumption area; or

8 (2) restrict the ability of a person to
9 prohibit conduct otherwise allowed in the Cannabis Regulation
10 Act on the person's privately owned property.

11 B. A person who violates Paragraph (1) of
12 Subsection A of this section shall be subject to a civil
13 penalty of fifty dollars (\$50.00).

14 C. As used in this section, "smoke" means to
15 inhale, exhale, burn or carry any lighted or heated device or
16 pipe or any other lighted or heated cannabis products intended
17 for inhalation, whether natural or synthetic, in any manner or
18 in any form.

19 ~~[D. A person less than eighteen years of age, the~~
20 ~~family of a person less than eighteen years of age or a person~~
21 ~~legally obligated to care for and support a person less than~~
22 ~~eighteen years of age who is subject to the fines pursuant to~~
23 ~~Subsection B of this section shall not be required to pay any~~
24 ~~fees or fines pursuant to the Cannabis Regulation Act.]"~~

25 SECTION 18. Section 26-2C-27 NMSA 1978 (being Laws 2021

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1 (1st S.S.), Chapter 4, Section 27) is amended to read:

2 "26-2C-27. PERSONAL PRODUCTION OF CANNABIS--PENALTIES.--

3 A. Unless otherwise provided in the Cannabis
4 Regulation Act, it is unlawful for a person without a license
5 to intentionally produce cannabis products except as provided
6 in this section.

7 B. A person twenty-one years of age or older who
8 intentionally produces:

9 (1) more than six and up to twelve mature or
10 immature cannabis plants shall be issued a penalty assessment
11 pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine
12 of fifty dollars (\$50.00); and

13 (2) more than twelve mature or immature
14 cannabis plants is guilty of a fourth degree felony and may be
15 sentenced as provided in Section 31-18-15 NMSA 1978.

16 C. A person who is eighteen years of age or older
17 but less than twenty-one years of age who intentionally
18 produces:

19 (1) up to six mature or immature cannabis
20 plants shall be issued a penalty assessment pursuant to Section
21 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars
22 (\$50.00);

23 (2) more than six mature or immature cannabis
24 plants and up to twelve mature or immature cannabis plants is
25 guilty of a misdemeanor and shall be sentenced pursuant to the

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1 provisions of Section 31-19-1 NMSA 1978; and

2 (3) more than twelve mature or immature
3 cannabis plants is guilty of a fourth degree felony and shall
4 be sentenced pursuant to the provisions of Section 31-18-15
5 NMSA 1978.

6 ~~[D. A person who is less than eighteen years of age
7 who intentionally produces cannabis products is guilty of a
8 civil violation and shall be subject to:~~

9 ~~(1) attendance at a four-hour evidence-based
10 drug education and legal rights program at no cost to the
11 minor; or~~

12 ~~(2) four hours of community service.]"~~

13 SECTION 19. REPEAL.--Sections 32A-2-2 and 32A-2-32.1 NMSA
14 1978 (being Laws 1993, Chapter 77, Section 31 and Laws 2007,
15 Chapter 96, Section 1, as amended) are repealed.