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HOUSE BILL #  
**57<sup>TH</sup> LEGISLATURE – STATE OF NEW MEXICO – FIRST SESSION, 2025**  
INTRODUCED BY

AN ACT  
**Delinquency**

**32A-2-2. Purpose of act.**

The purpose of the Delinquency Act is:

- A. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;
- B. to provide effective deterrents to acts of juvenile delinquency, where appropriate,

- 1 including an emphasis on community-based alternatives;
- 2 C. to strengthen families and to successfully reintegrate children into homes and
- 3 communities;
- 4 D. to foster and encourage collaboration between government agencies and communities
- 5 with regard to juvenile justice policies and procedures;
- 6 E. to develop juvenile justice policies and procedures that are supported by data;
- 7 F. to develop objective risk assessment instruments to be used for admission to juvenile
- 8 detention centers;
- 9 G. to encourage efficient processing of cases;
- 10 H. to develop community-based alternatives to detention when appropriate;
- 11 I. to eliminate or reduce disparities based upon race or gender;
- 12 J. to improve conditions of confinement in juvenile detention centers; and
- 13 K. to achieve reductions in the number of warrants issued, the number of probation
- 14 violations and the number of youth awaiting placements.

15 **32A-2-3. Definitions.**

16 As used in the Delinquency Act:

- 17 A. "delinquent act" means an act committed by a child that would be designated as a crime
- 18 under the law if committed by an adult, not including a violation of Section [30-9-2](#) NMSA
- 19 1978, including the following offenses:

1 (1) any of the following offenses pursuant to municipal traffic codes or the Motor Vehicle  
2 Code [Chapter 66, Articles 1 through 8 NMSA 1978]:

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

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

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

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

8 ~~(e) homicide by vehicle;~~

9 (f) injuring or tampering with a vehicle;

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

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

13 (i) reckless driving;

14 (j) driving with a suspended or revoked license; or

15 (k) an offense punishable as a felony;

16 (2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor  
17 or being present in a licensed liquor establishment, other than a restaurant or a licensed retail  
18 liquor establishment, except in the presence of the child's parent, guardian, custodian or adult  
19 spouse. As used in this paragraph, "restaurant" means an establishment where meals are

1 prepared and served primarily for on-premises consumption and that has a dining room, a  
2 kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant"  
3 does not include an establishment, as defined in regulations promulgated by the director of  
4 the special investigations unit of the department of public safety, that serves only  
5 hamburgers, sandwiches, salads and other fast foods;

6 (3) a violation of Section [30-29-2](#) NMSA 1978, regarding the illegal use of a glue,  
7 aerosol spray product or other chemical substance;

8 (4) a violation of the Controlled Substances Act [Chapter [30](#), Article [31](#) NMSA 1978];

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

12 (6) a violation of Section [30-15-1.1](#) NMSA 1978 regarding unauthorized graffiti on  
13 personal or real property; or

14 (7) a violation of an order of protection issued pursuant to the provisions of the Family  
15 Violence Protection Act [Chapter [40](#), Article [13](#) NMSA 1978];

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

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

19 D. "detention facility" means a place where a child may be detained under the Children's  
20 Code pending court hearing and does not include a facility for the care and rehabilitation of

1 an adjudicated delinquent child;

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

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

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

15 H. "serious youthful offender" means an individual fifteen to eighteen years of age who is  
16 charged with ~~and indicted or bound over for trial for~~ :

17 1. First degree murder;

18 2. Second degree murder;

19 3. Voluntary manslaughter;

20 4. Armed robbery with the use of a firearm;

1 5. Shooting at or from a motor vehicle resulting in great bodily harm or death; or

2 6. Shooting at a dwelling or occupied building resulting in great bodily harm or death.

3 A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions  
4 of this section;

5 If a "serious youthful offender" is not adjudicated on any enumerated crime in Section (H),  
6 the case will revert back to the Children's Court for sentencing purposes.

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

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

14 (1) fourteen to eighteen years of age at the time of ~~the offense and who is adjudicated for~~  
15 at least one of the following offenses:

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

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

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

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

- 1 (e) aggravated battery against a household member, as provided in Subsection C of Section  
2 [30-3-16](#) NMSA 1978;
- 3 (f) aggravated battery upon a peace officer, as provided in Subsection C of Section [30-22-25](#)  
4 NMSA 1978;
- 5 (g) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as  
6 provided in Section [30-3-8](#) NMSA 1978;
- 7 (h) dangerous use of explosives, as provided in Section [30-7-5](#) NMSA 1978;
- 8 (i) criminal sexual penetration, as provided in Section [30-9-11](#) NMSA 1978;
- 9 (j) robbery, as provided in Section [30-16-2](#) NMSA 1978;
- 10 (k) aggravated burglary, as provided in Section [30-16-4](#) NMSA 1978;
- 11 (l) aggravated arson, as provided in Section [30-17-6](#) NMSA 1978; or
- 12 (m) abuse of a child that results in great bodily harm or death to the child, as provided in  
13 Section [30-6-1](#) NMSA 1978;
- 14 (n) unlawful carrying of a firearm handgun by a person, as provided in Section 30-7-2.2  
15 NMSA 1978.
- 16 (o) vehicular homicide
- 17 (p) involuntary manslaughter
- 18 (q) failure to stop in the event of an accident causing death.

1 (2) fourteen to eighteen years of age at the time of the offense, who is adjudicated for any  
2 felony offense and who has had three prior, separate felony adjudications within a three-year  
3 time period immediately preceding the instant offense. The felony adjudications relied upon  
4 as prior adjudications shall not have arisen out of the same transaction or occurrence or series  
5 of events related in time and location. Successful completion of consent decrees is not  
6 considered a prior adjudication for the purposes of this paragraph; or

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

9  
10 **32A-2-4. Detention facilities; standards; reports; appeals.**

11 A. The department shall promulgate updated standards for all detention facilities, including  
12 standards for site, design, construction, equipment, care, program, personnel and clinical  
13 services. The department shall certify as approved all detention facilities in the state meeting  
14 the standards promulgated. The department may establish by rule appropriate procedures for  
15 provisional certification and the waiving of any of its standards for facilities in existence at  
16 the time of the adoption of the standards, except that it shall not allow waiver of any standard  
17 pertaining to adequate health and safety protection of the residents and staff of the facility.

18 No child shall be detained in a detention facility unless it is certified as approved by the  
19 department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978.

20 B. The department shall inspect all detention facilities in the state at least once each twelve  
21 months and shall require those reports it deems necessary from detention facilities in a form

1 and containing the information determined by the department. If as the result of an inspection  
2 a certified detention facility is determined as failing to meet the required standards, its  
3 certification is subject to revocation or refusal for renewal by the department.

4 C. The department shall promulgate rules establishing procedures that provide for prior  
5 notice and public hearings on detention facilities' standards adoption and changes. The  
6 department shall also promulgate rules establishing procedures for facility certification,  
7 renewal of certification, refusal to renew certification and revocation of certification. The  
8 procedures adopted on these matters shall provide for adequate prior notice of intended  
9 action by the department, opportunity for the aggrieved person to have an administrative  
10 hearing and written notification of the administrative decision. Rules promulgated under this  
11 subsection shall not be effective unless filed in accordance with the State Rules Act [Chapter  
12 [14](#), Article [4](#) NMSA 1978].

13 D. Any person aggrieved by an administrative decision of the department rendered under the  
14 provisions of this section may petition for the review of the administrative decision by  
15 appealing to the district court pursuant to the provisions of Section [39-3-1.1](#) NMSA 1978.

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

18 F. A juvenile detention facility certified by the department shall comply with the daily  
19 reporting requirement for children in detention, including reports on the length of stay for  
20 each child. This information shall be reported as required by the department.

1 **32A-2-4.1. Adult jails and lockups used as temporary holding facilities; reports.**

2 A. A child arrested and detained for an alleged delinquent act may be temporarily held in an  
3 adult jail or lockup for no longer than six hours. A child who is detained in an adult jail or  
4 lockup shall be placed in a setting that is physically segregated by sight and sound from adult  
5 offenders. After six hours, the child may be placed or detained pursuant to the provisions of  
6 Section [32A-2-12](#) NMSA 1978.

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

11 C. A serious youthful offender will be transported to adult district court for any trial  
12 setting. The serious youthful offender will be held in a cell separate from any adults, and to  
13 the best extent possible, out of sight and sound from any adults.

14  
15 **32A-2-5. Juvenile probation and parole services; establishment; juvenile probation and**  
16 **parole officers; powers and duties.**

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

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

20 (1) receive and examine complaints and allegations that a child is a delinquent child for

1 the purpose of considering beginning a proceeding pursuant to the provisions of the  
2 Delinquency Act;

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

4 (3) make predisposition studies and assessments and submit reports and  
5 recommendations to the court;

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

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

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

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

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

17 (9) upon receipt of a referral, contact an Indian child's tribe to consult and exchange  
18 information for the purpose of collaborating on appropriate referrals for services along with  
19 case planning throughout the period of involvement with juvenile justice services.

1 C. A juvenile probation and parole officer does not have the powers of a law enforcement  
2 officer. A juvenile probation and parole officer may take into physical custody and place in  
3 detention, subject to application of a detention risk assessment instrument, a child who is  
4 under supervision as a delinquent child or as a youthful offender when there is reasonable  
5 cause to believe that the child has violated the conditions of the child's probation or that the  
6 child may leave the jurisdiction of the court. Taking a child into custody under this  
7 subsection is subject to and shall proceed in accordance with the provisions of the  
8 Delinquency Act relating to custody and detention procedures and criteria.

9  
10 **32A-2-6. Transfer of jurisdiction over child from other tribunals to court.**

11 A. If it appears to a tribunal in a criminal matter that the defendant was under the age of  
12 eighteen years at the time the offense charged was alleged to have been committed and the  
13 offense charged is a delinquent act pursuant to the provisions of the Delinquency Act, the  
14 tribunal shall promptly transfer jurisdiction of the matter and the defendant to the court  
15 together with a copy of the accusatory pleading and other papers, documents and transcripts  
16 of testimony relating to the case. The tribunal shall not transfer a serious youthful offender.

17 B. Upon transfer the court shall have exclusive jurisdiction over the proceedings and the  
18 defendant. The transferring tribunal shall order that the defendant promptly be taken to the  
19 court, or taken to a place of detention designated by the court, or released to the custody of a  
20 parent, guardian, custodian or other person legally responsible for the defendant to be  
21 brought before the court at a time designated by the court. Upon transfer to the court a

1 petition shall be prepared and filed in the court in accordance with the provisions of the  
2 Delinquency Act. If the defendant is not a child at the time of transfer the court retains  
3 jurisdiction over the matter only until disposition is made by the court.

4  
5 **32A-2-7. Complaints; referral; preliminary inquiry; notice; time waiver.**

6 A. Complaints alleging delinquency shall be referred to probation services, which shall  
7 conduct a preliminary inquiry to determine the best interests of the child and of the public  
8 with regard to any action to be taken.

9 B. During the preliminary inquiry on a delinquency complaint, the matter may be referred to  
10 another appropriate agency and conferences may be conducted for the purpose of effecting  
11 adjustments or agreements that will obviate the necessity for filing a petition. At the  
12 commencement of the preliminary inquiry, the parties shall be advised of their basic rights  
13 pursuant to Section [32A-2-14](#) NMSA 1978, and no party may be compelled to appear at any  
14 conference, to produce any papers or to visit any place. The child shall be informed of the  
15 child's right to remain silent. The preliminary inquiry shall be completed within the time  
16 limits set forth in the Children's Court Rules.

17 C. Prior to a preliminary inquiry being conducted with a child who is detained, the child's  
18 parent, guardian or custodian or the child's attorney shall be given reasonable notice by the  
19 juvenile probation and parole officer and an opportunity to be present at the preliminary  
20 inquiry. If a child is not detained, the preliminary inquiry shall be conducted within thirty  
21 (30) days of receipt of the referral from law enforcement. The thirty- (30) day time period

1 may be extended upon a determination by the department that an extension is necessary to  
2 conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best  
3 interests of the child.

4 D. When a child is in detention or custody and the children's court attorney does not file a  
5 petition within the time limits authorized by the Children's Court Rules, the child shall be  
6 released immediately. If a child is not detained and a determination is made to file a petition,  
7 the petition shall be filed within sixty (60) days of completion of the preliminary inquiry,  
8 unless a motion is granted to extend the time limit for good cause shown. If a child is not in  
9 custody or detention, a petition shall not be dismissed for failure to comply with the time  
10 limit set forth in this subsection unless there is a showing of prejudice to the child.

11 E. After completion of the preliminary inquiry on a delinquency complaint involving a  
12 misdemeanor, probation services may notify the children's court attorney and recommend an  
13 appropriate disposition for the case. If the child has been referred for three (3) or more prior  
14 misdemeanors within two (2) years of the instant offense, probation services shall notify the  
15 children's court attorney and recommend an appropriate disposition for the case.

16 F. Probation services shall notify the children's court attorney of the receipt of any  
17 complaint involving an act that constitutes a felony under the applicable criminal law.  
18 Probation services shall also recommend a disposition to the children's court attorney.

19 G. The child, through counsel, and the children's court attorney may agree, without judicial  
20 approval, to a waiver of time limitations imposed after a petition is filed. A time waiver  
21 defers adjudication of the charges. The children's court attorney may place restrictions on a

1 child's behavior as a condition of a time waiver. If the child completes the agreed upon  
2 conditions and no new charges are filed against the child, the pending petition shall be  
3 dismissed. If the children's court attorney files a new petition against the child, the children's  
4 court attorney may proceed on both the original petition and the new charges. The  
5 department shall become a party if probation services are requested as a condition of the time  
6 waiver.

7 **32A-2-8. Petition; authorization to file.**

8 A petition alleging delinquency shall not be filed in delinquency proceedings unless the  
9 children's court attorney, ~~after consulting with probation services~~, has determined and  
10 endorsed upon the petition that the filing of the petition is in the best interest of the public  
11 and the child. The children's court attorney shall furnish legal services in connection with the  
12 authorization and preparation of the petition.

13  
14 **32A-2-9. Taking into custody.**

15 A child may be taken into custody:

16 A. pursuant to the order of the court issued because a parent, guardian or custodian fails  
17 when requested to bring the child before the court after having promised to do so when the  
18 child was delivered upon release from custody;

19 B. pursuant to the laws of arrest for commission of a delinquent act; or

20 C. by a juvenile probation and parole officer proceeding pursuant to the provisions of

1 Section 32-2-5 [32A-2-5] NMSA 1978.

2

3 **32A-2-10. Release or delivery from custody.**

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

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

8 (2) release the child to the child's parent, guardian or custodian or an adult authorized to  
9 sign on behalf of the child's parent, guardian or custodian upon written promise to bring the  
10 child before the court when requested by the court. If the parent, guardian or custodian or an  
11 adult authorized to sign on behalf of the child's parent, guardian or custodian fails, when  
12 requested, to bring the child before the court as promised, the court may order the child taken  
13 into custody and brought before the court;

14 (3) deliver the child to a place of detention as provided in Section [32A-2-12](#) NMSA  
15 1978;

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

18 (5) deliver the child to an evaluation facility, if available, if the person taking the child  
19 into custody has reasonable grounds to believe the child presents a likelihood of serious harm  
20 to the child's self or others or is suffering from some other serious mental condition or illness

1 that requires prompt treatment or prompt diagnosis; or

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

4 B. When an alleged delinquent child is delivered to a place of detention or a center or  
5 organization recognized as an alternative to secure detention as provided in Section [32A-2-12](#)  
6 NMSA 1978, only a department employee or a trained county detention professional  
7 designated by the department may place the child in detention or with a center or  
8 organization recognized as an alternative to secure detention in accordance with the criteria  
9 for detention set forth in Section [32A-2-11](#) NMSA 1978. If the criteria for detention of an  
10 alleged delinquent child are not met, the child shall be released from custody.

11 C. A child under the age of twelve shall not be held in detention. If a child under the age of  
12 twelve poses a substantial risk of harm to the child's self or others, a peace officer may detain  
13 and transport that child for emergency mental health evaluation and care in accordance with  
14 Section [32A-6A-19](#) NMSA 1978.

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

21 E. In all cases when a child is taken into custody, the child shall be released to the child's

1 parent, guardian or custodian or an adult authorized by the child's parent, guardian or  
2 custodian in accordance with the conditions and time limits set forth in the Children's Court  
3 Rules.

4 **32A-2-11. Criteria for detention of children.**

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

8 (1) poses a substantial risk of harm to himself;

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

10 (3) has demonstrated that he may leave the jurisdiction of the court.

11 B. The criteria for detention in this section shall govern the decisions of all persons  
12 responsible for determining whether detention is appropriate prior to a detention hearing,  
13 ~~based upon review of the detention risk assessment instrument.~~

14 ~~C. The department shall develop and implement a detention risk assessment instrument. The~~  
15 ~~department shall collect and analyze data regarding the application of the detention risk~~  
16 ~~assessment instrument. On January 1, 2004, the department shall provide the legislature with~~  
17 ~~a written report with respect to its collection and analysis of data regarding the application of~~  
18 ~~the detention risk assessment instrument.~~

19

1 **32A-2-12. Placement or detention.**

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

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

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

7 (3) a shelter-care facility provided for in the Children's Shelter Care Act [[32A-9-1](#) to  
8 [32A-9-7](#) NMSA 1978] that is in compliance with all standards, conditions and regulatory  
9 requirements and that shall be considered a temporary placement subject to judicial review  
10 within thirty days of placement;

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

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

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

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

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

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

7 C. A child adjudicated as a youthful offender who is violent toward staff or other residents in  
8 a detention facility may be transferred and detained, pending a court hearing, in a county jail.

9 In the event that a child is detained in a jail, the director of the jail shall presume that the  
10 child is vulnerable to victimization by inmates within the adult population because of the  
11 child's age, and shall take measures to provide protection to the child. However, provision of  
12 protective measures shall not result in diminishing a child's civil rights to less than those  
13 existing for an incarcerated adult.

14 D. A child who has previously been incarcerated as an adult or a person eighteen years of  
15 age or older shall not be detained in a juvenile detention facility or a facility for the long-term  
16 care and rehabilitation of delinquent children, but may be detained in a county jail. ~~A child~~

17 ~~shall not~~ Any person who reaches the age of eighteen while in a juvenile detention facility  
18 shall be transferred to a county jail. ~~solely on the basis of attaining the age of eighteen while~~

19 ~~detained in a juvenile detention facility.~~ In the event that a child is detained in a jail, the  
20 director of the jail shall presume that the child is vulnerable to victimization by inmates  
21 within the adult population because of the child's age, and shall take measures to provide

1 protection to the child. However, provision of protective measures shall not result in  
2 diminishing a child's civil rights to less than those existing for an incarcerated adult.

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

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

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

12 (3) a county jail, if a facility in Paragraph (1) or (2) of this subsection is not appropriate.

13 In the event that a child is detained in a jail, the director of the jail shall presume that the  
14 child is vulnerable to victimization by inmates within the adult population because of the  
15 child's age and shall take measures to provide protection to the child. However, provision of  
16 protective measures shall not result in diminishing a child's civil rights to less than those  
17 existing for an incarcerated adult.

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

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

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

7  
8 **32A-2-13. Detention hearing required on detained children; probable cause**  
9 **determination; court determination; disposition.**

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

11 (1) a judicial determination of probable cause shall be made by a judge or special master  
12 or magistrate within forty-eight hours, including Saturdays, Sundays and legal holidays,  
13 except for children taken into custody under an arrest warrant pursuant to the Children's  
14 Court Rules [[10-101](#) NMRA]. A statement by a law enforcement officer, which shall include  
15 the charges, may be the basis of a probable cause determination. The probable cause  
16 determination shall be nonadversarial, may be held in the absence of the child and counsel  
17 and may be conducted by telephone. If the court finds no probable cause to believe the child  
18 committed an offense, the child shall be released;

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

1 time, the child shall be released; and

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

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

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

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

19 C. Notice of the detention hearing, either oral or written, stating the time, place and purpose  
20 of the hearing shall be given by the person designated by the court to the child's parents,  
21 guardian or custodian, if they can be found, and to the child. The department shall be

1 provided with reasonable oral or written notification and an opportunity to be heard. At any  
2 hearing held pursuant to this subsection, the department may appear as a party.

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

6 E. If the judge ~~or special master~~ finds that the child's detention is appropriate under the  
7 criteria established by the Children's Code, the judge or special master shall order detention  
8 in an appropriate facility in accordance with the Children's Code.

9 F. If the judge ~~or special master~~ finds that detention of the child is not appropriate under the  
10 criteria established by the Children's Code, the judge ~~or special master~~ shall order the release  
11 of the child, but, in so doing, may order one or more of the following conditions to meet the  
12 individual needs of the child:

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

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

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

20 G. An order releasing a child on any conditions specified in this section may at any time be

1 amended to impose additional or different conditions of release or to return the child to  
2 custody or detention for failure to conform to the conditions originally imposed.

3 H. At the detention hearing, all relevant and material evidence helpful in determining the  
4 need for detention may be admitted by the judge ~~or special master~~ even though it would not  
5 be admissible in a hearing on the petition.

6 I. If the child is not released at the detention hearing and a parent, guardian or custodian was  
7 not notified of the hearing and did not appear or waive appearance at the detention hearing,  
8 the judge or special master shall rehear the detention matter without unnecessary delay upon  
9 the filing of an affidavit stating the facts and a motion for rehearing.

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

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

16  
17 **32A-2-14. Basic rights.**

18 A. A child subject to the provisions of the Delinquency Act is entitled to the same basic  
19 rights as an adult, except as otherwise provided in the Children's Code, including rights  
20 provided by the Delinquency Act, except as otherwise provided in the Children's Code [\[32A-](#)

1 [1-1](#) NMSA 1978].

2 B. If after due notice to the parent, guardian or custodian and after a hearing determining  
3 indigency, the parent, guardian or custodian is declared indigent by the court, the public  
4 defender shall represent the child. If the court finds that the parent, guardian or custodian is  
5 financially able to pay for an attorney but is unwilling to do so, the court shall order the  
6 parent, guardian or custodian to reimburse the state for public defender representation.

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

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

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

16 (1) the age and education of the respondent;

17 (2) whether the respondent is in custody;

18 (3) the manner in which the respondent was advised of the respondent's rights;

19 (4) the length of questioning and circumstances under which the respondent was  
20 questioned;

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

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

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

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

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

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

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

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

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

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

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

16 M. A serious youthful offender who is detained prior to trial in an ~~adult~~ facility has a right to  
17 ~~bail~~ a review of conditions of release as provided under ~~SCRA 1986~~, NMRA Rule 5-401 and  
18 5-409. A child held in a juvenile facility designated as a place of detention prior to  
19 adjudication ~~does not have a right to bail but~~ may be released pursuant to the provisions of  
20 the Delinquency Act.

21 N. The provisions of the Delinquency Act shall not be interpreted to limit the right of a child

1 to petition a court for a writ of habeas corpus.

2 O. Any child fourteen (14) years of age or older has the right to waive amenability and accept  
3 an adult sentence.

4  
5 **32A-2-15. Time limitations on delinquency adjudicatory hearing.**

6 The adjudicatory hearing in a delinquency proceeding shall be held in accordance with the  
7 time limits set forth in the Children's Court Rules and Forms [[10-101](#) NMRA].

8  
9 **32A-2-16. Conduct of hearings; findings; dismissal; dispositional matters; penalty.**

10 A. Hearings on petitions shall be conducted by the court separate from other proceedings. A  
11 jury trial on the issues of alleged delinquent acts may be demanded by the child, parent,  
12 guardian, custodian or counsel in proceedings on petitions alleging delinquency when the  
13 offense alleged would be triable by jury if committed by an adult. If a jury is demanded and  
14 the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual  
15 issue of whether the child committed the alleged delinquent acts. If no jury is demanded, the  
16 hearing shall be by the court without a jury. Jury trials shall be conducted in accordance with  
17 rules promulgated under the provisions of Subsection B of Section [32A-1-5](#) NMSA 1978. A  
18 delinquent child facing a juvenile disposition shall be entitled to a six-member jury. If the  
19 children's court attorney has filed a motion to invoke an adult sentence, the child is entitled to  
20 a twelve-member jury. A unanimous verdict is required for all jury trials. The proceedings

1 shall be recorded by stenographic notes or by electronic, mechanical or other appropriate  
2 means.

3 B. All hearings to declare a person in contempt of court and all hearings on petitions  
4 pursuant to the provisions of the Delinquency Act shall be open to the general public, except  
5 where the court in its discretion, after a finding of exceptional circumstances, deems it  
6 appropriate to conduct a closed delinquency hearing. Only the parties, their counsel,  
7 witnesses and other persons approved by the court may be present at a closed hearing. Those  
8 other persons the court finds to have a proper interest in the case or in the work of the court  
9 may be admitted by the court to closed hearings on the condition that they refrain from  
10 divulging any information concerning the exceptional circumstances that resulted in the need  
11 for a closed hearing. Accredited representatives of the news media shall be allowed to be  
12 present at closed hearings subject to the conditions that they refrain from divulging  
13 information concerning the exceptional circumstances that resulted in the need for a closed  
14 hearing and subject to such enabling regulations as the court finds necessary for the  
15 maintenance of order and decorum and for the furtherance of the purposes of the  
16 Delinquency Act.

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

19 D. The court shall determine if the allegations of the petition are admitted or denied. If the  
20 allegations are denied, the court shall proceed to hear evidence on the petition. The court  
21 after hearing all of the evidence bearing on the allegations of delinquency shall make and

1 record its findings on whether the delinquent acts subscribed to the child were committed by  
2 the child. If the court finds that the allegations of delinquency have not been established, it  
3 shall dismiss the petition and order the child released from any detention or legal custody  
4 imposed in connection with the proceedings.

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

7 F. If the court finds on the basis of a valid admission of the allegations of the petition or on  
8 the basis of proof beyond a reasonable doubt that the child is a delinquent, the court may  
9 proceed immediately or at a postponed hearing to make disposition of the case.

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

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

20

1 **32A-2-17. Predisposition studies; reports and examinations.**

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

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

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

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

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

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

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

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

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

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

21 E. If a child is detained for purposes of performing a predispositional evaluation, it shall be

1 completed within fifteen days and in no event shall a child be detained for more than fifteen  
2 days within a three-hundred-sixty-five-day period for a predispositional evaluation, unless  
3 for good cause shown.

4 **32A-2-18. Judgment; noncriminal nature; nonadmissibility.**

5 A. The court shall enter a judgment setting forth the court's findings and disposition in the  
6 proceeding. A judgment in proceedings on a petition under the Delinquency Act resulting in a  
7 juvenile disposition shall not be deemed a conviction of crime nor shall it impose any civil  
8 disabilities ordinarily resulting from conviction of a crime nor shall it operate to disqualify  
9 the child in any civil service application or appointment. The juvenile disposition of a child  
10 and any evidence given in a hearing in court shall not be admissible as evidence against the  
11 child in any case or proceeding in any other tribunal whether before or after reaching the age  
12 of majority, except in any conditions of release hearings or sentencing proceedings, ~~during~~  
13 ~~which the parties may reference any juvenile dispositions after conviction of a felony and~~  
14 ~~then only for the purpose of a presentence study and report.~~

15 B. If a judgment resulting from a youthful offender or serious youthful offender proceeding  
16 under the Delinquency Act results in an adult sentence, a record of the judgment shall be  
17 admissible in any other case or proceeding in any other court involving the youthful offender  
18 or serious youthful offender.

19 C. If a judgment on a proceeding under the Delinquency Act results in an adult sentence, the  
20 determination of guilt at trial becomes a conviction for purposes of the Criminal Code [[30-1-](#)  
21 [1](#) NMSA 1978].

1 **32A-2-19. Disposition of an adjudicated delinquent offender.**

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

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

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

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

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

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

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

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

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

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

17 (1) transfer legal custody to the department, an agency responsible for the care and  
18 rehabilitation of delinquent children, which shall receive the child at a facility designated by  
19 the secretary of the department as a juvenile reception facility. The department shall

1 thereafter determine the appropriate placement, supervision and rehabilitation program for  
2 the child. The judge may include recommendations for placement of the  
3 child. Commitments are subject to limitations and modifications set forth in Section 32A-2-  
4 23 NMSA 1978. The Court has the discretion to impose any amount of probation or  
5 commitment based on the child's unique circumstances and history up to the age twenty-

6 five. The types of commitments include:

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

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

21 ~~(d) if the child is a youthful offender, a commitment to age twenty one five, unless sooner~~

1 discharged;

2 ~~(2) — place the child on probation under those conditions and limitations as the court may~~  
3 ~~prescribe;~~

4 (3) place the child in a local detention facility that has been certified in accordance with  
5 the provisions of Section [32A-2-4](#) NMSA 1978 for a period not to exceed ~~fifteen~~ thirty days  
6 within a three hundred sixty-five day time period; or if a child is found to be delinquent  
7 solely on the basis of Paragraph (3) of Subsection A of Section [32A-2-3](#) NMSA 1978, the  
8 court shall only enter a judgment placing the child on probation or ordering restitution or  
9 both; or

10 (4) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) of  
11 Subsection A of Section [32A-2-3](#) NMSA 1978, the court may make any disposition provided  
12 by this section and may enter its judgment placing the child on probation and, as a condition  
13 of probation, transfer custody of the child to the department for a period not to exceed six  
14 months without further order of the court; provided that this transfer shall not be made unless  
15 the court first determines that the department is able to provide or contract for adequate and  
16 appropriate treatment for the child and that the treatment is likely to be beneficial.

17 C. When the child is an Indian child, the Indian child's cultural needs shall be considered in  
18 the dispositional judgment and reasonable access to cultural practices and traditional  
19 treatment shall be provided.

20 D. A child found to be delinquent shall not be committed or transferred to a penal institution  
21 or other facility used for the execution of sentences of persons convicted of crimes, unless the

1 offender is over 18 years of age.

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

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

7 G. In addition to any other disposition pursuant to Subsection B of this section, the court  
8 may make an abuse or neglect report for investigation and proceedings as provided for in the  
9 Abuse and Neglect Act [Chapter [32A](#), Article [4](#) NMSA 1978]. The report may be made to a  
10 local law enforcement agency, the department or a tribal law enforcement or social service  
11 agency for an Indian child residing in Indian country.

12 H. In addition to any other disposition pursuant to this section or any other penalty provided  
13 by law, if a child who is fifteen years of age or older is adjudicated delinquent on the basis of  
14 Paragraph (2), (3) or (4) of Subsection A of Section [32A-2-3](#) NMSA 1978, the child's driving  
15 privileges may be denied or the child's driver's license may be revoked for a period of ninety  
16 days. For a second or a subsequent adjudication, the child's driving privileges may be denied  
17 or the child's driver's license revoked for a period of one year. Within twenty-four hours of  
18 the dispositional judgment, the court may send to the motor vehicle division of the taxation  
19 and revenue department the order adjudicating delinquency. Upon receipt of an order from  
20 the court adjudicating delinquency, the director of the motor vehicle division of the taxation  
21 and revenue department may revoke or deny the delinquent's driver's license or driving

1 | privileges. Nothing in this section may prohibit the delinquent from applying for a limited  
2 | driving privilege pursuant to Section [66-5-35](#) NMSA 1978 or an ignition interlock license  
3 | pursuant to the Ignition Interlock Licensing Act [[66-5-501](#) to [66-5-504](#) NMSA 1978], and  
4 | nothing in this section precludes the delinquent's participation in an appropriate educational,  
5 | counseling or rehabilitation program.

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

14 | **32A-2-20. Disposition of a youthful offender.**

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

1 contained in the petition.

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

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

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

9 C. In making the findings set forth in Subsection B of this section, the judge shall consider  
10 the following factors, with no factor weighing more heavily than the other:

11 (1) the seriousness of the alleged offense;

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

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

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

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

1 (6) the record and previous history of the child;

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

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

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

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

16 F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in  
17 Section [32A-2-19](#) NMSA 1978. A youthful offender may be subject to extended  
18 commitment in the care of the department until the age of twenty-~~one~~ five, pursuant to the  
19 provisions of Section [32A-2-23](#) NMSA 1978.

20 G. A child fourteen years of age or older, charged with ~~first degree murder~~ a serious youthful

1 offense, but not convicted of first degree murder a serious youthful offense and found to have  
2 committed a youthful offender offense as set forth in Subsection J of Section [32A-2-3](#) NMSA  
3 1978, is subject to the dispositions set forth in this section.

4 H. A child fourteen years of age or older charged with ~~first degree murder~~, a serious youthful  
5 offense, but found to have committed a delinquent act that is neither ~~first degree murder~~ a  
6 serious youthful offense nor a youthful offender offense as set forth in Subsection J of  
7 Section [32A-2-3](#) NMSA 1978, shall be adjudicated as a delinquent subject to the dispositions  
8 set forth in Section [32A-2-19](#) NMSA 1978.

9 **32A-2-21. Disposition of a child with a mental disorder or developmental disability in a**  
10 **delinquency proceeding.**

11 A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence  
12 indicates that the child has or may have a mental disorder or developmental disability, the  
13 court may:

14 (1) order the child detained if appropriate under the criteria established pursuant to the  
15 provisions of the Delinquency Act; and

16 (2) initiate proceedings for the involuntary placement of the child as a minor with a  
17 mental disorder or developmental disability pursuant to the provisions of the Children's  
18 Mental Health and Developmental Disabilities Act [[32A-6A-1](#) to [32A-6A-30](#) NMSA 1978].

19 B. If the child is placed for residential treatment or habilitation pursuant to the Children's  
20 Mental Health and Developmental Disabilities Act, the department shall retain legal custody

1 during the period of involuntary placement or until further order of the court.

2 C. If a child is committed to a psychiatric hospital for treatment or habilitation and in the  
3 event that the department should be required to pay more than four hundred dollars (\$400)  
4 per day because of the individualized treatment plan, the annual costs over four hundred  
5 dollars (\$400) per child per day will be reported annually by the department to the legislative  
6 finance committee.

7 D. The child may remain in the residential treatment or habilitation facility pending the  
8 disposition of the delinquency petition.

9 E. When a child in departmental custody needs involuntary placement for residential mental  
10 health or developmental disability services as a result of a mental disorder or developmental  
11 disability, the department shall request the children's court attorney to petition for that child's  
12 placement pursuant to the provisions of the Children's Mental Health and Developmental  
13 Disabilities Act.

14 F. A child subject to the provisions of the Delinquency Act who receives treatment in a  
15 residential treatment or habilitation program shall enjoy all the substantive and procedural  
16 rights set forth in the Children's Mental Health and Developmental Disabilities Act.

17 G. A child's competency to stand trial or participate in his own defense may be raised by a  
18 party at any time during a proceeding. If the child has been accused of an act that would be  
19 considered a misdemeanor if the child were an adult and the child is found to be incompetent  
20 to stand trial, the court shall dismiss the petition with prejudice and may recommend that the  
21 children's court attorney initiate proceedings pursuant to the provisions of the Children's

1 Mental Health and Developmental Disabilities Act. In all other cases, the court shall stay the  
2 proceedings until the child is competent to stand trial; provided that a petition shall not be  
3 stayed for more than one year. The court may order treatment to enable the child to attain  
4 competency to stand trial and may amend the conditions of release pursuant to Sections 32A-  
5 2-11 and 32A-2-13 NMSA 1978. The child's competency to stand trial shall be reviewed  
6 every ninety days for up to one year. The court shall dismiss the petition without prejudice if,  
7 at any time during the year, the court finds that a child cannot be treated to competency or if,  
8 after one year, the court determines that a child is incompetent to stand trial or participate in  
9 his own defense. Upon dismissal, the court may recommend that the children's court attorney  
10 initiate proceedings pursuant to the provisions of the Children's Mental Health and  
11 Developmental Disabilities Act.

12 H. Involuntary residential treatment shall only occur pursuant to the provisions of the  
13 Children's Mental Health and Developmental Disabilities Act.

14  
15 **32A-2-22. Continuance under supervision without judgment; consent decree;**  
16 **disposition.**

17 A. At any time after the filing of a delinquency petition and before the entry of a judgment,  
18 the court may, on motion of the children's court attorney or that of counsel for the child,  
19 suspend the proceedings and continue the child under supervision in the child's own home  
20 under terms and conditions negotiated with probation services and agreed to by ~~all the parties~~  
21 ~~affected~~ the State, defense counsel and the judge. The court's order continuing the child under

1 supervision under this section shall be known as a "consent decree". An admission of some or  
2 all of the allegations stated in the delinquency petition shall not be required for a consent  
3 decree order.

4 B. If the child objects to a consent decree, the court shall proceed to findings, adjudication  
5 and disposition of the case. If the child does not object but an objection is made by the  
6 children's court attorney after consultation with probation services, the court shall, after  
7 considering the objections and the reasons given, proceed to determine whether it is  
8 appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

9 C. A consent decree shall remain in force for six months unless the delinquent child is  
10 discharged sooner by probation services. Prior to the expiration of the six-month period and  
11 upon the application of probation services or any other agency supervising the child under a  
12 consent decree, the court may extend the decree for an additional six months in the absence  
13 of objection to extension by the child. If the child objects to the extension, the court shall  
14 hold a hearing and make a determination on the issue of extension. This does not apply to  
15 youthful offender or serious youthful offender cases.

16 D. If either prior to discharge by probation services or expiration of the consent decree the  
17 child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a  
18 petition to revoke the consent decree. Proceedings on the petition shall be conducted in the  
19 same manner as proceedings on petitions to revoke probation. If the child is found to have  
20 violated the terms of the consent decree, the court may:

21 (1) extend the period of the consent decree; or

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

3 E. A child who is discharged by probation services or who completes a period under  
4 supervision without reinstatement of the original delinquency petition shall not again be  
5 proceeded against in any court for the same offense alleged in the petition or an offense  
6 based upon the same conduct and the original petition shall be dismissed with prejudice.

7 Nothing in this subsection precludes a civil suit against the child for damages arising from  
8 the child's conduct.

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

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

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

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

1 driver's license or driving privileges, the court shall send the decree to the motor vehicle  
2 division of the taxation and revenue department. Upon receipt of the decree from the court  
3 consenting to the denial or revocation of the child's driving privileges or driver's license, the  
4 director of the motor vehicle division of the taxation and revenue department shall revoke or  
5 deny the delinquent child's driver's license or driving privileges. Nothing in this section shall  
6 prohibit the delinquent child from applying for a limited driving privilege pursuant to Section  
7 [66-5-35](#) NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock  
8 Licensing Act [[66-5-501](#) to [66-5-504](#) NMSA 1978], and nothing in this section precludes the  
9 delinquent child's participation in an appropriate educational, counseling or rehabilitation  
10 program.

11 **32A-2-23. Limitations on dispositional judgments; modification; termination or**  
12 **extension of court orders.**

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

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

20 C. A child shall be released by an agency and probation or supervision shall be terminated by  
21 juvenile probation and parole services or the agency providing supervision when it appears

1 that the purpose of the order has been achieved before the expiration of the period of the  
2 judgment. A release or termination and the reasons therefore shall be reported promptly to the  
3 court in writing by the releasing authority.

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

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

17 F. Prior to the expiration of a judgment of probation or commitment, the court may extend  
18 the judgment for an additional period of time ~~of one year until~~ at the discretion of the Court  
19 based on the child's unique circumstances and history until the child reaches the age of  
20 twenty-~~one~~ five if the court finds that the extension is necessary to protect the community or  
21 to safeguard the welfare of the child.

1 G. The court may dismiss a motion if it finds after preliminary investigation that the motion  
2 is without substance. If the court is of the opinion that the matter should be reviewed, it may,  
3 upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings  
4 on petitions alleging delinquency. The court may terminate a judgment if it finds that the  
5 child is no longer in need of care, supervision or rehabilitation or it may enter a judgment  
6 extending or modifying the original judgment if it finds that action necessary to safeguard the  
7 child or the public interest.

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

12 I. The department may seek a bench warrant from the court when the child absconds  
13 from supervised release.

14 **32A-2-23.1. Release eligibility.**

15 ~~A. The department shall have exclusive jurisdiction and authority to release an adjudicated~~  
16 ~~delinquent child during the term of the child's commitment, consistent with the provisions of~~  
17 ~~the Victims of Crime Act [Chapter 31, Article 26 NMSA 1978]. In determining whether to~~  
18 ~~release a child, the department shall give due consideration to public safety, the extent to~~  
19 ~~which the child has been rehabilitated, the adequacy and suitability of the proposed release~~  
20 ~~plan and the needs and best interests of the child, including the child's need for behavioral~~  
21 ~~health or medical services that are not available in facilities for adjudicated delinquent~~

1 children.

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

5 ~~C. A child is eligible for release any time after the entry of a judgment transferring legal  
6 custody to the department, and the department may consider a reasonable request for release  
7 from the child at any time sixty days after the child has been committed.~~

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

20 E. The secretary of children, youth and families or the secretary's designee may review the  
21 case of any child upon the child's or the juvenile public safety advisory board's reasonable

1 request at any time after release is denied.

2

3 **32A-2-23.2. Release proceedings.**

4 A. When the department determines that a child is ready to be released, it shall provide a list  
5 of children to the juvenile public safety advisory board at least thirty-five days prior to the  
6 next regularly scheduled release consideration meeting. The department shall ensure that all  
7 other notifications of a pending release proceeding are accomplished consistent with the  
8 provisions of the Victims of Crime Act [Chapter [31](#), Article [26](#) NMSA 1978].

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

12

13 **32A-2-24. Probation revocation; disposition.**

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

1 have been violated and the factual basis for these allegations.

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

9  
10 **32A-2-25. Parole revocation; procedures.**

11 A. A child on parole from an agency that has legal custody who violates a term of parole  
12 may be proceeded against in a parole revocation proceeding conducted by the department or  
13 the supervising agency or by a hearing officer contracted by the department who is neutral to  
14 the child and the agency in accordance with procedures established by the department in  
15 cooperation with the juvenile parole board. A juvenile probation and parole officer may  
16 detain a child on parole status who is alleged to have violated a term or condition of parole  
17 until the completion and review of a preliminary parole revocation hearing. A child may  
18 waive the right to a preliminary parole revocation hearing after consultation with the child's  
19 attorney, parent, guardian or custodian.

20 B. If a retake warrant is issued by the department upon the completion of the preliminary  
21 parole revocation hearing, the juvenile institution to which the warrant is issued shall

1 promptly transport the child to that institution at the expense of the department. If a child  
2 absconds from parole supervision and is apprehended in another state after the issuance of a  
3 retake warrant by the department, the juvenile justice division of the department shall cause  
4 the return of the child to this state at the expense of the department.

5 **32A-2-26. Sealing of records.**

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

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

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

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

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

1 (1) the children's court attorney;

2 (2) the authority granting the release;

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

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

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

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

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

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

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

1 F. A court may set aside a sealing order for the juvenile disposition of a youthful offender  
2 and any evidence given in a hearing in court for a youthful offender for the purpose of  
3 considering the setting of bail or other conditions of release of a person charged with a felony  
4 whether charged as an adult or a juvenile.

5 G. A child who has been the subject of a petition filed pursuant to the provisions of the  
6 Delinquency Act shall be notified in writing by the department when the child reaches the  
7 age of eighteen or at the expiration of legal custody and supervision, whichever occurs later,  
8 that the department's records have been sealed and that the court, the children's court  
9 attorney, the child's attorney and the referring law enforcement agency have been notified  
10 that the child's records are subject to sealing.

11 H. The department shall seal the child's files and records when the child reaches the age of  
12 eighteen or at the expiration of the disposition, whichever occurs later. The department shall  
13 notify the children's court attorney, the child's attorney and the referring law enforcement  
14 agency that the child's records are subject to sealing.

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

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

1 K. After sealing, the department may store and use a person's records for research and  
2 reporting purposes, subject to the confidentiality provisions of Section [32A-2-32](#) NMSA  
3 1978 and other applicable federal and state laws.

4 L. Any party may reference a juvenile record during any court hearing where conditions of  
5 release are being addressed or at any sentencing hearing, without needing to first seek an  
6 order to unseal the juvenile records. Prior to discussing the contents of the juvenile records,  
7 the parties must alert the court. The parties may reference the existence of a juvenile record  
8 in a court pleading without discussing the contents.

9 **32A-2-27. Injury to person or destruction of property; liability; costs and attorney fees;**  
10 **restitution.**

11 A. Any person may recover damages not to exceed four thousand dollars (\$4,000) in a civil  
12 action in a court or tribunal of competent jurisdiction from the parent or guardian having  
13 custody and control of a child when the child has maliciously or willfully injured a person or  
14 damaged, destroyed or deprived use of property, real or personal, belonging to the person  
15 bringing the action.

16 B. Recovery of damages under this section is limited to the actual damages proved in the  
17 action, not to exceed four thousand dollars (\$4,000) taxable court costs and, in the discretion  
18 of the court, reasonable attorney fees to be fixed by the court or tribunal.

19 C. Nothing contained in this section limits the discretion of the court to issue an order  
20 requiring damages or restitution to be paid by the child when the child has been found to be  
21 within the provisions of the Delinquency Act.

1 D. Nothing contained in this section shall be construed so as to impute liability to any foster  
2 parent.

3 **32A-2-28. Parental responsibility.**

4 A. In any complaint alleging delinquency, a parent of the child alleged to be delinquent may  
5 be made a party in the petition. If a parent is made a party and if a child is adjudicated a  
6 delinquent, the court may order the parent or parents to submit to counseling, participate in  
7 any probation or other treatment program ordered by the court and, if the child is committed  
8 for institutionalization, participate in any institutional treatment or counseling program  
9 including attendance at the site of the institution. The court shall order the parent to support  
10 the child committed for institutionalization by paying the reasonable costs of support,  
11 maintenance and treatment of the child that the parent is financially able to pay. The court  
12 may use the child support guidelines set forth in Section [40-4-11.1](#) NMSA 1978 to calculate a  
13 reasonable payment.

14 B. If a fine is imposed against a child by a court of this state, the parent of the child is not  
15 liable to pay the fine.

16 C. The court may enforce any of its orders issued pursuant to this section by use of its  
17 contempt power.

18 **32A-2-29. Motor Vehicle Code violations.**

19 A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction  
20 over all Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] or municipal

1 traffic code violations when the person alleged to have committed the violation is a child,  
2 with the exception of those violations contained in Paragraph (1) of Subsection A of Section  
3 [32A-2-3](#) NMSA 1978 and all traffic offenses alleged to have been committed by the child  
4 arising out of the same occurrence pursuant to Subsection B of this section.

5 B. If the court acquires jurisdiction over a child pursuant to Section [32A-2-3](#) NMSA 1978, it  
6 shall have exclusive jurisdiction over all traffic offenses alleged to have been committed by  
7 the child arising out of the same occurrence.

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

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

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

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

1

2 **32A-2-30. Indigency standard; fee schedule; reimbursement.**

3 A. The court shall use a standard adopted and information provided by the public defender  
4 department to determine indigency of children in proceedings on petitions alleging  
5 delinquency.

6 B. The court shall use a fee schedule adopted by the public defender department when  
7 appointing attorneys to represent children in proceedings on petitions alleging delinquency.

8 C. The court shall order reimbursement from the parents or guardians of a child who has  
9 received or desires to receive legal representation or another benefit under the Public  
10 Defender Act [Chapter [31](#), Article [15](#) NMSA 1978] after a determination is made that the  
11 child was not indigent according to the standard for indigency of children adopted by the  
12 public defender department.

13 D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for  
14 credit to the general fund.

15 **32A-2-31. Child adjudicated delinquent; victim restitution; compensation; deductions.**

16 A. A delinquent child may be ordered by the court to pay restitution to the victim of the  
17 child's delinquent act.

18 B. The department may provide compensation to a delinquent child engaged in a  
19 rehabilitative work program and shall promulgate necessary rules and regulations to provide  
20 deductions from that compensation for:

1 (1) victim restitution ordered by the court and for transmitting those deductions to the  
2 clerk of that court;

3 (2) the crime victims reparation fund and for transmitting those deductions to the state  
4 treasurer for credit to that fund; and

5 (3) the reasonable costs incident to the confinement of the delinquent child.

6 C. The deductions provided by Subsection B of this section shall not exceed fifty percent of  
7 the compensation earned by the child and shall not be less than five percent of that  
8 compensation.

9 **32A-2-32. Confidentiality; records.**

10 A. All records pertaining to the child, including all related social records, behavioral health  
11 screenings, diagnostic evaluations, psychiatric reports, medical reports, social studies reports,  
12 records from local detention facilities, client-identifying records from facilities for the care  
13 and rehabilitation of delinquent children, pre-parole or supervised release reports and  
14 supervision histories obtained by the juvenile probation office, parole officers and the  
15 juvenile public safety advisory board or in possession of the department, are confidential and  
16 shall not be disclosed directly or indirectly to the public.

17 B. The disclosure of all mental health and developmental disability records shall be made  
18 pursuant to the Children's Mental Health and Developmental Disabilities Act [[32A-6A-1](#) to  
19 [32A-6A-30](#) NMSA 1978].

20 C. The records described in Subsection A of this section, other than mental health and

1 developmental disability records, shall be disclosed only to any of the following, provided  
2 that the agency, person or institution receiving information shall not re-release the  
3 information without proper consent or as otherwise provided by law:

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

1 (12) school personnel involved with the child if the records concern the child's educational  
2 needs, but shall only include that information necessary to provide for the child's educational  
3 planning and needs;

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

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

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

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

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

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

16 E. Whoever intentionally and unlawfully releases any information or records closed to the  
17 public pursuant to this section or releases or makes other unlawful use of records in violation  
18 of this section is guilty of a petty misdemeanor.

19 F. The department shall promulgate rules for implementing disclosure of records pursuant to  
20 this section and in compliance with state and federal law and the Children's Court Rules [10-

1 [101 NMRA](#)].

2 ~~**32A-2-32.1. Information not to be disclosed on a public access web site.**~~

3 ~~A state agency or a political subdivision of the state, including a school district, county,~~  
4 ~~municipality or home rule municipality, shall not disclose on a public access web site~~  
5 ~~maintained by it any information concerning the following:~~

6 ~~A. an arrest or detention of a child;~~

7 ~~B. delinquency proceedings for a child;~~

8 ~~C. an adjudication of a child;~~

9 ~~D. an adult sentence imposed on a child, except information required to be disclosed~~  
10 ~~pursuant to the Sex Offender Registration and Notification Act [~~29-11A-1~~ NMSA 1978]; or~~

11 ~~E. social records pertaining to a child as provided in Section [32A-2-32](#) NMSA 1978.~~

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13 **32A-2-33. Child in possession of a firearm on school premises; detention; hearing.**

14 A. If a public school administrator or employee has reasonable cause to believe that a child  
15 is in possession of or has been in possession of a firearm on school premises in violation of  
16 Section [30-7-2.1](#) NMSA 1978, the administrator or employee shall immediately report the  
17 child's actions to a law enforcement agency and the children, youth and families department.

18 B. Upon receipt of a report pursuant to Subsection A of this section, the law enforcement  
19 agency may conduct an investigation to determine if there is probable cause to believe that

1 the child possessed a firearm on school premises.

2 C. If the law enforcement agency determines there is probable cause to believe that the child  
3 possessed a firearm on school premises, the law enforcement agency may take the child into  
4 custody and deliver the child to a detention facility licensed by the department. After the  
5 child is delivered to a detention facility, the department shall comply with the notification  
6 provisions set forth in Subsection C of Section [32A-2-10](#) NMSA 1978. The child shall be  
7 detained in the detention facility, pending a detention hearing pursuant to the provisions of  
8 Section [32A-2-13](#) NMSA 1978.

9 D. As used in this section, "firearm" means any weapon that will or is designed to or may  
10 readily be converted to expel a projectile by the action of an explosion; the frame or receiver  
11 of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any  
12 handgun, rifle or shotgun.

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