

AN ACT

RELATING TO JUVENILE JUSTICE; AMENDING PROVISIONS OF THE CHILDREN'S  
CODE REGARDING PLACEMENT OF CHILDREN, APPELLATE PROCEDURES,  
DETENTION PROCEEDINGS AND PAROLE PROCEDURES.

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

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77,  
Section 13, as amended) is amended to read:

- "32A-1-4. DEFINITIONS.--As used in the Children's Code:
  - A. "adult" means a person who is eighteen years of age or older;
  - B. "child" means a person who is less than eighteen years old;
  - C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;
  - D. "court appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;
  - E. "custodian" means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including an employee of a residential facility or a person providing out-of-home care;
  - F. "department" means the children, youth and families department, unless otherwise specified;

G. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

H. "guardian" means the person having the duty and authority of guardianship;

I. "guardianship" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about the child's general welfare and includes:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States or to major medical, psychiatric and surgical treatment;

(2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

(3) the authority and duty of reasonable visitation of the child;

(4) the rights and responsibilities of legal custody when the physical custody of the child is exercised by the child's parents, except when legal custody has been vested in another person; and

(5) when the rights of the child's parents have been terminated as provided for in the laws governing termination of parental rights or when both of the child's parents are deceased, the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could have made;

J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding;

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provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

K. "Indian child" means an unmarried person who is:

- (1) less than eighteen years old;
- (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and
- (3) the biological child of a member of an Indian tribe;

L. "Indian child's tribe" means:

- (1) the Indian tribe in which an Indian child is a member or eligible for membership; or
- (2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

M. "judge", when used without further qualification, means the judge of the court;

N. "legal custody" means a legal status created by the order of the court or other court of competent jurisdiction that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States, all subject to the powers, rights, duties and

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responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities. A person granted legal custody of a child shall exercise the rights and responsibilities as custodian personally, unless otherwise authorized by the court entering the order;

O. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child. A parent retains all of the duties and authority of guardianship and legal custody of the child, unless otherwise limited or altered by court order;

P. "permanency plan" means a determination by the court that the child's interest will be served best by:

- (1) return to the parent;
- (2) placement with a person who will be the child's permanent guardian;
- (3) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;
- (4) placement in the custody of the department with the child placed in the home of a fit and willing relative; or
- (5) placement in the custody of the department under a planned permanent living arrangement;

Q. "person" means an individual or any other form of entity recognized by law;

R. "preadoptive parent" means a person with whom a child has been placed for adoption;

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S. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

T. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

U. "tribunal" means any judicial forum other than the court."

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

"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, including an emphasis on community-based alternatives; and

C. to strengthen families and to successfully reintegrate children into homes and communities."

Section 3. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77,

Section 32, as amended) is amended to read:

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

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

- (1) an offense pursuant to municipal traffic codes or the Motor Vehicle Code:
  - (a) driving while under the influence of intoxicating liquor or drugs;
  - (b) failure to stop in the event of an accident causing death, personal injury or damage to property;
  - (c) unlawful taking of a vehicle or motor vehicle;
  - (d) receiving or transferring of a stolen vehicle or motor vehicle;
  - (e) homicide by vehicle;
  - (f) injuring or tampering with a vehicle;
  - (g) altering or changing of an engine number or other vehicle identification numbers;
  - (h) altering or forging of a driver's license or permit or any making of a fictitious license or permit;
  - (i) reckless driving;
  - (j) driving with a suspended or revoked license; or
  - (k) an offense punishable as a felony;
- (2) buying, attempting to buy, receiving, possessing or being

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

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(3) a felony violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

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

(5) a violation of the Controlled Substances Act;

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

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

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

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

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

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

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

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

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act.

"Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities.

Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual fifteen to eighteen

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years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of this section; and

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

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

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

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

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

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

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

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

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

(h) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(i) robbery, as provided in Section

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30-16-2 NMSA 1978;

(j) aggravated burglary, as provided in Section 30-16-4

NMSA 1978;

(k) aggravated arson, as provided in Section 30-17-6

NMSA 1978; or

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

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

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

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

"32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--  
ESTABLISHMENT --JUVENILE PROBATION AND PAROLE OFFICERS--POWERS AND  
DUTIES.--

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

B. To carry out the objectives and provisions of the Delinquency Act,

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but subject to its limitations, the department has the power and duty to:

(1) receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of the Delinquency Act;

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

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

(4) supervise and assist a child placed on probation or parole or under supervision by court order or by the juvenile parole board;

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

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

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

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

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

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

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Section 5. Section 32A-2-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 39) is amended to read:

"32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

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

- (1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;
- (2) release the child to the child's parent, guardian or custodian upon their written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails, when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court;
- (3) deliver the child to a place of detention as provided in Section 32A-2-12 NMSA 1978;
- (4) deliver the child to a medical facility, if available, if the child is believed to be suffering from a serious illness that requires prompt treatment or

prompt diagnosis; or

(5) deliver the child to an evaluation facility, if available, if the person taking the child into custody has reasonable grounds to believe the child presents a likelihood of serious harm to himself or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis.

B. When an alleged delinquent child is delivered to a place of detention as provided in Section 32A-2-12 NMSA 1978, only a department employee or a trained county detention professional designated by the department may place the child in detention, in accordance with the criteria for detention set forth in Section 32A-2-11 NMSA 1978. If the criteria for detention of an alleged delinquent child are not met, the child shall be released from custody.

C. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian and to the court, together with a statement of the reason for taking the child into custody.

D. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian in accordance with the conditions and time limits set forth in the Children's Court Rules."

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

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

A. Unless ordered by the court pursuant to the provisions of the

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Delinquency Act, a child taken into custody for an alleged delinquent act shall not be placed in detention unless a detention risk assessment instrument is completed and a determination is made that the child:

- (1) poses a substantial risk of harm to himself;
- (2) poses a substantial risk of harm to others; or
- (3) has demonstrated that he may leave the jurisdiction of the

court.

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

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

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

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

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

- (1) a licensed foster home or a home otherwise authorized under the law to provide foster or group care;
- (2) a facility operated by a licensed child welfare services

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agency;

(3) a shelter-care facility provided for in the Children's Shelter Care Act or a detention facility certified by the department for children alleged to be delinquent children;

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

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

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

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

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

C. A child adjudicated as a youthful offender who is violent toward staff or other residents in a detention facility may be transferred and detained, pending a court hearing, in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within

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the adult population because of his age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

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D. A child who has previously been incarcerated as an adult or a person older than eighteen years of age shall not be detained in a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children, but may be detained in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of his age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

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

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

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

(3) a county jail, if a facility in Paragraph (1) or (2) of this subsection is not appropriate. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within



the adult population because of his age and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult."

Section 8. Section 32A-2-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 42) is amended to read:

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

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

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

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

(3) a detention hearing shall be held within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time of filing the petition to determine whether continued detention is required pursuant to the criteria established

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by the Children's Code.

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

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

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

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

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

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- (1) place the child in the custody of a parent, guardian or custodian or under the supervision of an agency agreeing to supervise the child;
- (2) place restrictions on the child's travel, association with other persons or place of abode during the period of the child's release; or
- (3) impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children established by the Children's Code, including a condition requiring that the child return to custody as required.

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G. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.

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

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

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

K. If a child is not placed within ten days after a disposition hearing, the child may be released and placed under appropriate supervision, so long as the child

does not pose a flight risk or substantial risk of harm to himself or others."

Section 9. Section 32A-2-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 43) is amended to read:

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

A. A child subject to the provisions of the Delinquency Act is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

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

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

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

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

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

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- (2) whether the respondent is in custody;
- (3) the manner in which the respondent was advised of his rights;
- (4) the length of questioning and circumstances under which the respondent was questioned;
- (5) the condition of the quarters where the respondent was being kept at the time he was questioned;
- (6) the time of day and the treatment of the respondent at the time that he was questioned;
- (7) the mental and physical condition of the respondent at the time that he was questioned; and
- (8) whether the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

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

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

H. The child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition. If counsel is not

retained for the child or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

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

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

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

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

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

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

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

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

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

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

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

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

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

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

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

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

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

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(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with the Abuse and Neglect Act;

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year, followed by a period of parole for ninety days;

(b) a long-term commitment for no more than two years in a long-term facility for the care and rehabilitation of adjudicated delinquent children;

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

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

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

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period;

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(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

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

D. No child found to be delinquent shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

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

F. Prior to any child being placed in the custody of the department, the

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department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

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

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the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Section 11. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

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

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

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

(2) the child is not eligible for commitment to an institution for the developmentally disabled or mentally disordered.

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

(1) the seriousness of the alleged offense;

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

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- (3) whether a firearm was used to commit the alleged offense;
- (4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
- (5) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;
- (6) the record and previous history of the child;
- (7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and
- (8) any other relevant factor, provided that factor is stated on the record.

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

E. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in

Section 32A-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978.

G. A fourteen to eighteen year old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this section."

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

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

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

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act has the exclusive power to parole or release the child, subject to the provisions of Section 32A-7-8 NMSA 1978;

(2) the supervision of a child after release under Paragraph (1) of this subsection shall be conducted by the department;

(3) a child who completes a short-term commitment of one year, upon his release shall be placed on parole and supervised by the department for a period of ninety days; and

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(4) the period of time a child absconds from parole or probation supervision shall toll all time limits for the requirement of filing a petition to revoke probation or parole and shall toll the computation of the period of probation or parole supervision pursuant to the provisions of the Delinquency Act.

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

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

D. Prior to the expiration of a long-term commitment, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for additional periods of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to safeguard the welfare of the child or the public interest.

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

F. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The

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court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

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

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Section 13. Section 32A-2-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 55) is amended to read:

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

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

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

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

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

- (1) the children's court attorney;
- (2) the authority granting the release;
- (3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and
- (4) any other agency having custody of records or files subject to the sealing order.

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

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

- (1) upon motion by the person who is the subject of the records and only to those persons named in the motion; and
- (2) in its discretion, in an individual case, to any clinic, hospital or agency that has the person under care or treatment or to other persons engaged in fact finding or research.

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

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F. A person who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act shall be notified in writing by the juvenile probation and parole officer of the right to have records sealed at the expiration of the disposition.

G. A person who is not the subject of a delinquency petition or a person who is determined by the court not to be a delinquent offender shall have his files and records automatically sealed by the court.

H. If two years have elapsed since a person was released from legal custody and supervision and the department has not received any new allegations of delinquency regarding the person, that person's files and records shall be automatically sealed."

Section 14. Section 32A-2-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 58) is amended to read:

"32A-2-29. MOTOR VEHICLE CODE VIOLATIONS.--

A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

B. If the court acquires jurisdiction over a child pursuant to any of those Motor Vehicle Code violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

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

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

Section 15. Section 32A-2-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 61) is amended to read:

"32A-2-32. CONFIDENTIALITY--RECORDS.--

A. All social records, including diagnostic evaluation, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision histories obtained by the juvenile probation office, parole officers and parole board or in possession of the department, are privileged and shall not be disclosed directly or indirectly to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's attorney or guardian ad litem;
- (4) department personnel;
- (5) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (6) corrections department personnel;

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- (7) law enforcement officials;
  - (8) district attorneys;
  - (9) any state government social services agency in any state;
  - (10) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
  - (11) tribal juvenile justice system and social service representatives;
  - (12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent when the records concern the social, medical, psychological or educational needs of the child;
  - (13) school personnel involved with the child if the records concern the child's social or educational needs;
  - (14) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;
  - (15) representatives of the protection and advocacy system, pursuant to the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991; and
  - (16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or

records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor."

Section 16. Section 32A-2-33 NMSA 1978 (being Laws 1999, Chapter 216, Section 1) is amended to read:

"32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL PREMISES--  
DETENTION--HEARING.--

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

B. Upon receipt of a report pursuant to Subsection A of this section, the law enforcement agency may conduct an investigation to determine if there is probable cause to believe that the child possessed a firearm on school premises.

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

D. As used in this section, "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an

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explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun."

Section 17. Section 32A-7-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 201) is amended to read:

"32A-7-8. PAROLE ELIGIBILITY.--

A. A child is eligible to appear before the juvenile parole board forty days after the entry of a judgment transferring legal custody to an agency for the care and rehabilitation of delinquent children, unless recommended for an earlier appearance by the agency responsible for such care and rehabilitation.

B. In the event parole is denied, the child shall be eligible for review sixty days thereafter.

C. Consistent with the provisions of the Victims of Crime Act, in the event parole for a child is denied by the juvenile parole board, but parole is recommended for the child by the department, within ten days after the denial of parole the department shall transmit all records for review by the court of the judicial district from which legal custody of the child was transferred. The court shall have jurisdiction to review the matter without conducting a formal hearing and to issue an order that affirms the parole board's denial of parole or that grants parole to the child.

D. The juvenile parole board may review the case of any child upon its own motion at any time after parole is denied.

E. The provisions of the Juvenile Parole Board Act apply to all children who, on July 1, 1993, are on parole or eligible to be placed on parole with the same effect as if that act had been in effect at the time they were placed on parole or became eligible to be placed on parole."

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Section 18. EFFECTIVE DATE.--The effective date of the provisions of this act  
is July 1, ~~2003~~ 2007