AN ACT

RELATING TO CHILDREN; AMENDING SECTIONS OF THE CHILDREN'S CODE AND OTHER LAWS; REPLACING THE JUVENILE PAROLE BOARD WITH A JUVENILE PUBLIC SAFETY ADVISORY BOARD; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 9-2A-5 NMSA 1978 (being Laws 1992, Chapter 57, Section 5) is amended to read:

"9-2A-5. ADMINISTRATIVELY ATTACHED AGENCY.--The juvenile public safety advisory board is administratively attached to the department."

Section 2. Section 9-2A-16 NMSA 1978 (being Laws 1992, Chapter 57, Section 16) is amended to read:

"9-2A-16. FUNCTIONS OF JUVENILE JUSTICE ADVISORY COMMITTEE AND DEPARTMENT.--

A. The juvenile justice advisory committee shall have policymaking, planning and review powers over only the following functions pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974:

(1) in conjunction with the department, approval of a comprehensive state plan and modifications reflecting statewide goals, objectives and priorities for the expenditure of federal funds received under that act;

(2) approval or disapproval of applications
or amendments submitted by eligible entities pursuant to that
act;

(3) in conjunction with the department,
assurance that fund accounting, auditing and evaluation of
programs and projects funded pursuant to that act comply with
federal requirements and state law;

(4) in conjunction with the department,
receive and review annual reports from adult jails and
lockups regarding compliance with federal requirements that
apply when a juvenile is temporarily held in an adult jail or
lockup. The juvenile justice advisory committee and the
department shall determine the format of the annual reports;

(5) assistance to the governor, the
legislature and entities created or funded pursuant to that
act in developing new or improved approaches, policies or
legislation designed to improve juvenile justice in New
Mexico; and

(6) provision of technical assistance by the
department to eligible entities pursuant to that act.

B. All budgetary, evaluation, monitoring and
grants administration functions required pursuant to the
federal Juvenile Justice and Delinquency Prevention Act of
1974 shall be carried out by the department."

Section 3. Section 30-22-11.1 NMSA 1978 (being Laws
1993, Chapter 121, Section 1) is amended to read:
"30-22-11.1. ESCAPE FROM THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ESCAPE FROM JUVENILE DETENTION.--Escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the custody of a department juvenile justice facility or who is alleged to be a delinquent child and has been lawfully detained in a juvenile detention facility:

A. escaping or attempting to escape from custody within the confines of a children, youth and families department juvenile justice facility; or

B. escaping or attempting to escape from another lawful place of custody or confinement that is not within the confines of a children, youth and families department juvenile justice facility.

Any person who commits escape from the custody of a children, youth and families department juvenile justice facility is guilty of a misdemeanor."

Section 4. Section 30-22-11.2 NMSA 1978 (being Laws 1994, Chapter 18, Section 1) is amended to read:

"30-22-11.2. AGGRAVATED ESCAPE FROM THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--Aggravated escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the
custody of a department juvenile justice facility or who is
alleged to be a delinquent child and has been lawfully
detained in a juvenile detention facility:

A. escaping or attempting to escape from custody
within the confines of a children, youth and families
department juvenile justice facility and committing assault
or battery on another person in the course of escaping or
attempting to escape; or

B. escaping or attempting to escape from a lawful
place of custody or confinement that is not within the
confines of a children, youth and families department
juvenile justice facility and committing assault or battery
on another person in the course of escaping or attempting to
escape.

Any person who commits aggravated escape from the
custody of the children, youth and families department is
guilty of a fourth degree felony."

Section 5. Section 31-26-12 NMSA 1978 (being Laws 1994,
Chapter 144, Section 12, as amended) is amended to read:

"31-26-12. PROCEDURES WHEN AN INMATE IS RELEASED FROM
INCARCERATION--ADULT PAROLE BOARD--CORRECTIONS DEPARTMENT--
PROCEDURES WHEN A DELINQUENT CHILD IS RELEASED FROM CUSTODY--
JUVENILE PAROLE BOARD--CHILDREN, YOUTH AND FAMILIES
DEPARTMENT--DISTRICT ATTORNEYS.--

A. The adult parole board and the children, youth
and families department shall provide a copy of their respective regular release dockets to each district attorney in the state at least ten working days before the docket is considered. The district attorney shall notify any person known to reside in the district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

B. The adult parole board or the children, youth and families department shall provide a copy of a supplemental, addendum or special docket to each district attorney at least five working days before the release docket is considered.

C. Following consideration of a release docket by the adult parole board or the children, youth and families department, the board and department shall promptly notify each district attorney of recommendations for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in the district attorney's district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

D. In the case of an inmate scheduled to be released from incarceration without parole or prior to parole for any reason, or a delinquent child scheduled to be released from custody, the corrections department or the
children, youth and families department shall notify each
district attorney at least fifteen working days before the
inmate's or delinquent child's release. The district
attorney shall notify any person known to reside in the
district who was a victim of the criminal offense for which
the inmate was incarcerated or the delinquent child was
committed."

Section 6. Section 32A-1-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 12, as amended) is amended to read:

"32A-1-3. PURPOSE OF ACT.--The Children's Code shall be
interpreted and construed to effectuate the following
legislative purposes:

A. first to provide for the care, protection and
wholesome mental and physical development of children coming
within the provisions of the Children's Code and then to
preserve the unity of the family whenever possible. A
child's health and safety shall be the paramount concern.
Permanent separation of a child from the child's family,
however, would especially be considered when the child or
another child of the parent has suffered permanent or severe
injury or repeated abuse. It is the intent of the
legislature that, to the maximum extent possible, children in
New Mexico shall be reared as members of a family unit;

B. to provide judicial and other procedures
executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

C. to provide a continuum of services for children and their families, from prevention to treatment, considering whenever possible prevention, diversion and early intervention, particularly in the schools;

D. to provide children with services that are sensitive to their cultural needs;

E. to reduce overrepresentation of minority children and families in the juvenile justice, family services and abuse and neglect systems through early intervention, linkages to community support services and the elimination of discrimination;

F. to provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of a child victim; and

G. to provide continuity for children and families appearing before the children's court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family."

Section 7. 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 an adult with whom the child lives who is not a parent or guardian of the child;

F. "department" means the children, youth and families department, unless otherwise specified;

G. "disproportionate minority contact" means the involvement of a racial or ethnic group with the criminal or juvenile justice system at a proportion either higher or lower than that group's proportion in the general population;

H. "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;

I. "guardian" means a person appointed as a
guardian by a court or Indian tribal authority or a person
authorized to care for the child by a parental power of
attorney as permitted by law;

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; 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. "Indian tribe" means a federally recognized
Indian tribe, community or group pursuant to 25 U.S.C.
Section 1903(1);

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

O. "legal custody" means a legal status created by
order of the court or other court of competent jurisdiction
or by operation of statute 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, personal care, 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;

P. "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;

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

(1) reunification;

(2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement;

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

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

T. "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child;

U. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

V. "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;

W. "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

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

Section 8. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT JURISDICTION.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child;

(2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act;

(3) a neglected child;
(4) an abused child;
(5) a child subject to adoption; or
(6) a child subject to placement for a
developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction
to emancipate a minor.

C. During abuse or neglect proceedings in which
New Mexico is the home state, pursuant to the provisions of
the Uniform Child-Custody Jurisdiction and Enforcement Act,
the court shall have jurisdiction over both parents to
determine the best interest of the child and to decide all
matters incident to the court proceedings.

D. Nothing in this section shall be construed to
in any way abridge the rights of any Indian tribe to exercise
jurisdiction over child custody matters as defined by and in
accordance with the federal Indian Child Welfare Act of 1978.

E. A tribal court order pertaining to an Indian
child in an action under the Children's Code shall be
recognized and enforced by the district court for the
judicial district in which the tribal court is located. A
tribal court order pertaining to an Indian child that
accesses state resources shall be recognized and enforced
pursuant to the provisions of intergovernmental agreements
entered into by the Indian child's tribe and the department
or another state agency. An Indian child residing on or off
a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child.

F. The court may acquire jurisdiction over a Motor Vehicle Code or municipal traffic code violation as set forth in Section 32A-2-29 NMSA 1978."

Section 9. Section 32A-1-21 NMSA 1978 (being Laws 2007, Chapter 185, Section 2) is amended to read:

"32A-1-21. RUNAWAY CHILD--LAW ENFORCEMENT--PERMITTED ACTS.--Whenever a law enforcement agency receives a report from a parent, guardian or custodian that a child over whom the parent, guardian or custodian has custody has, without permission, left the home or residence lawfully prescribed for the child and the parent, guardian or custodian believes the child has run away, a law enforcement agent may help the parent, guardian or custodian locate the child and:

A. return the child to the parent, guardian or custodian unless safety concerns are present;
B. hold the child for up to six hours if the parent, guardian or custodian cannot be located; provided, however, that no child shall be placed in a secured setting pursuant to this section; or

C. after the six hours has expired, follow the procedures outlined in Section 32A-3B-3 NMSA 1978."

Section 10. 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) any of the following offenses 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 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;

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

(4) a violation of the Controlled Substances
Act;

(5) 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;

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

(7) 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 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;

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

J. "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 against a
household member, as provided in Subsection C of Section
30-3-16 NMSA 1978;

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

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

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

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

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

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

(l) aggravated arson, as provided in
Section 30-17-6 NMSA 1978; or

(m) 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, who is 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
related 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 who is
adjudicated for first degree murder, as provided in Section
30-2-1 NMSA 1978."

Section 11. Section 32A-2-4 NMSA 1978 (being Laws 1993,
Chapter 77, Section 33, as amended) is amended to read:

"32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--
APPEALS.--

A. The department shall promulgate updated
standards for all detention facilities, including standards
for site, design, construction, equipment, care, program,
personnel and clinical services. The department shall
certify as approved all detention facilities in the state
meeting the standards promulgated. The department may
establish by rule appropriate procedures for provisional
certification and the waiving of any of its standards for
facilities in existence at the time of the adoption of the
standards, except that it shall not allow waiver of any
standard pertaining to adequate health and safety protection
of the residents and staff of the facility. No child shall
be detained in a detention facility unless it is certified as
approved by the department, except as otherwise provided in
Chapter 32A, Article 2 NMSA 1978.

B. The department shall inspect all detention
facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If as the result of an inspection a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.

C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act.

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

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

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

Section 12. A new Section 32A-2-4.1 NMSA 1978 is enacted to read:

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

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

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

Section 13. 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, 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 supervised release or under supervision by court
order or by the department;
(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.

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 the child's 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."

Section 14. Section 32A-2-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 39, as amended) 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 or an adult authorized by 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 or an adult authorized to sign on behalf of the child's parent, guardian or custodian upon written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian or an adult authorized to sign on behalf of the child's 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;

(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 the child's self or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis; or

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

B. When an alleged delinquent child is delivered to a place of detention or a center or organization recognized as an alternative to secure 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 or with a center or organization recognized as an alternative to secure 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. A child under the age of eleven shall not be held in detention. If a child under the age of eleven poses a substantial risk of harm to the child's self or others, a peace officer may detain and transport that child for emergency mental health evaluation and care in accordance with Section 32A-6A-19 NMSA 1978.

D. If a child is taken into custody and is not released to the child's parent, guardian or custodian or an adult authorized by 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 or an adult authorized by the child's parent, guardian or custodian and to the court, together with a statement of the reason for taking the child into custody.

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

Section 15. Section 32A-2-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 41, as amended) 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 agency;

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

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

(5) 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 that meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(6) 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 the adult population because of the child's 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.

D. A child who has previously been incarcerated as an adult or a person eighteen years of age or older 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. A child shall not be transferred to a county jail solely on the basis of attaining the age of eighteen while detained in a juvenile detention facility. 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 the child’s 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.

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 that 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 the child's 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.

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

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

Section 16. Section 32A-2-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 42, as amended) 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 by the Children's Code. At the request of any party, the court may permit a detention hearing to be conducted by appropriate means of electronic communication; provided that all hearings conducted by electronic means shall be recorded and preserved as part of the record, the child shall have legal representation present with the child, no plea shall be allowed to be taken via electronic communication and the court finds:

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

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

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:

(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.

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.

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 the child's
self or others."

Section 17. Section 32A-2-14 NMSA 1978 (being Laws
1993, Chapter 77, Section 43, as amended) 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,
including rights provided by the Delinquency Act, 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;
   (2) whether the respondent is in custody;
   (3) the manner in which the respondent was advised of the respondent's 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 of being questioned;

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

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

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

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, including all post-dispositional court proceedings.
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.

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 18. Section 32A-2-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 45) is amended to read:

"32A-2-16. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

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

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

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

D. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of delinquency shall make and record its findings on whether the delinquent acts subscribed to the child were committed by the child. If the court finds that the allegations of delinquency have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings.

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

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

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

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

Section 19. Section 32A-2-17 NMSA 1978 (being Laws
1993, Chapter 77, Section 46, as amended) is amended to read:
"32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
EXAMINATIONS--

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

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

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

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

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

(b) the court makes the findings necessary to impose an adult sentence pursuant to Section

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32A-2-20 NMSA 1978, the adult probation and parole division of the corrections department shall prepare a subsequent predisposition report; and

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

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

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

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

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

Section 20. 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 and siblings and any other
person who may significantly affect the child's best
interests;
(2) the child's adjustment to the child's home, school and community;

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

(4) the wishes of the child as to the child's 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:

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

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

(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;

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

(3) 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; or 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

(4) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) 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. A child found to be delinquent shall not 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 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 Subsection B of this section, the court may make an abuse or neglect report for investigation and proceedings as provided for in the Abuse and Neglect Act. The report may be made to a local law enforcement agency, the department or a tribal law enforcement or social service agency for an Indian child residing in Indian country.

H. 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), (3) or (4) 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 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

I. 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 (6) 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 the parent or legal guardian is the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Section 21. 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 children with developmental disabilities or mental disorders.

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;

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

(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.

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 child fourteen years of age or older, charged with first degree murder, but not convicted of first degree murder and found to have committed a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, is subject to the dispositions set forth in this section.

H. A child fourteen years of age or older charged with first degree murder, but found to have committed a delinquent act that is neither first degree murder nor a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent subject to the dispositions set forth in Section 32A-2-19 NMSA 1978."

Section 22. 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.

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

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

F. 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.

G. 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 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.

H. 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.

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

Section 23. A new Section 32A-2-23.1 NMSA 1978 is enacted to read:

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

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

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

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

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

E. The secretary of children, youth and families or the secretary's designee may review the case of any child upon the child's or the juvenile public safety advisory board's reasonable request at any time after release is denied."

Section 24. A new Section 32A-2-23.2 NMSA 1978 is enacted to read:

"32A-2-23.2. RELEASE PROCEEDINGS.--

A. When the department determines that a child is ready to be released, it shall provide a list of children to the juvenile public safety advisory board at least thirty-five days prior to the next regularly scheduled release consideration meeting. The department shall ensure that all other notifications of a pending release proceeding are accomplished consistent with the provisions of the Victims of Crime Act."
B. Release consideration meetings shall be held at least quarterly, are not open to the public and shall include the child, a quorum of the board and a representative of the department. The child's attorney shall receive notice and may be present at the release meeting."

Section 25. Section 32A-2-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 53) is amended to read:

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

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

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

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

"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;

(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; and

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

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; 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.

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

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

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

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

Section 27. Section 32A-2-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 58, as amended) 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 Section 32A-2-3 NMSA 1978, it shall have exclusive jurisdiction over all traffic offenses alleged to
have been committed by the child arising out of the same
occurrence.

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

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

E. All traffic offenses that 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.

F. 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 28. Section 32A-2-32 NMSA 1978 (being Laws
1993, Chapter 77, Section 61, as amended) is amended to read:

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

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

B. The disclosure of all mental health and developmental disability records shall be made pursuant to the Children's Mental Health and Developmental Disabilities Act.

C. The records described in Subsection A of this section, other than mental health and developmental disability records, shall be disclosed only to any of the following, provided that the agency, person or institution receiving information shall not re-release the information without proper consent or as otherwise provided by law:

   (1) court personnel;

   (2) the child's court appointed special advocates;

   (3) the child's attorney or guardian ad litem representing the child in any matter;
(4) department personnel;

(5) corrections department personnel;

(6) law enforcement officials when the request is related to the investigation of a crime;

(7) district attorneys or children's court attorneys;

(8) a state government social services agency in any state;

(9) 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 under that act;

(10) tribal juvenile justice system and social service representatives;

(11) 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 disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for treatment and care of the child;

(12) school personnel involved with the child if the records concern the child's educational needs, but shall only include that information necessary to provide for the child's educational planning and needs;
(13) a health care or mental health professional involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;

(14) representatives of the protection and advocacy system;

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

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

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

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

E. 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.

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

Section 29. Section 32A-3B-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 80, as amended) is amended to read:

"32A-3B-8. BASIC RIGHTS.--

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

B. In proceedings on a petition alleging a family in need of court-ordered services, the court may appoint counsel if appointment of counsel would serve the interests of justice.

C. In proceedings on a petition alleging a family in need of court-ordered services, the court shall appoint a guardian ad litem for a child under the age of fourteen and the court shall appoint an attorney for a child fourteen years of age or older at the inception of the proceedings. An officer or employee of an agency vested with legal custody of the child shall not be appointed as a guardian ad litem or attorney for the child. Only an attorney with appreciable training or experience shall be appointed as guardian ad
litem of or attorney for the child.

D. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:

1) the child requests a different attorney;
2) the guardian ad litem requests to be removed; or
3) the court determines that the appointment of a different attorney is appropriate.

E. Whenever it is reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's cultural background.

F. A person afforded rights pursuant to the provisions of the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition filed under the Children's Code.

G. A child of an alleged or adjudicated family in need of court-ordered services shall not be fingerprinted or photographed for identification purposes, unless pursuant to a court order."

Section 30. Section 32A-3B-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 84) is amended to read:

"32A-3B-12. ADJUDICATORY HEARING--TIME LIMITATIONS.--

A. An adjudicatory hearing for an alleged family
in need of court-ordered services shall be commenced within sixty days after the date of service on the respondent.

B. The children's court attorney shall represent the state at the adjudicatory hearing.

C. If the adjudicatory hearing is not commenced within the time limits specified in this section or within the period of any extension of those time limits, the petition shall be dismissed with prejudice."

Section 31. Section 32A-3B-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 88) is amended to read:

"32A-3B-16. DISPOSITIONAL JUDGMENT.--

A. At the conclusion of the dispositional hearing, the court shall set forth its findings on the following issues in the dispositional judgment:

(1) the ability of the parent and child to share a residence;

(2) the interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interest;

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

(4) whether the child's educational needs are being met;

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

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

(7) the wishes of the child's parent, guardian or custodian as to the child's custody;

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

(9) the availability of services recommended in the treatment plan;

(10) the department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the department has considered and rejected;

(11) whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been incorporated into the plan. When placement preferences have not been incorporated into the plan, an explanation shall be clearly stated and supported;

(12) when the child is an Indian child, whether the plan provides for maintaining the Indian child's cultural ties; and

(13) when the child is an undocumented
immigrant child, whether the family services plan included referral to nongovernmental agencies that may be able to assist the child, and family when appropriate, in addressing immigration status.

B. When there is an adjudication regarding a family in need of court-ordered services, the court shall enter judgment and make any of the following dispositions:

(1) permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations the court may prescribe;

(2) place the child under the protective supervision of the department;

(3) transfer legal custody of the child to:

(a) the department;

(b) an agency responsible for the care of neglected or abused children; or

(c) the child's noncustodial parent, if that is found to be in the child's best interests; or

(4) if the evidence indicates that the child's educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within forty-five days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

C. Unless a child of an adjudicated family in need
of court-ordered services is also found to be a delinquent child, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children or in a facility for the detention of alleged delinquent children.

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

Section 32. Section 32A-3B-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 90) is amended to read:

"32A-3B-18. DISPOSITIONAL JUDGMENTS--TIME LIMITATIONS--MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDER.--

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered.

B. A judgment vesting legal custody of a child in an individual, other than the child's parent, shall remain in force for two years from the date entered unless terminated sooner by court order.

C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated.
or reaches the age of majority.

D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by a party, including the child by and through the child's guardian ad litem or attorney.

E. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for additional periods of one year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.

F. When a child reaches eighteen years of age, all family in need of court-ordered services orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services."

Section 33. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including
the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. "abused child" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:
(1) attempted, conspired to cause or caused
great bodily harm to the child or great bodily harm or death
to the child's sibling;

(2) attempted, conspired to cause or caused
great bodily harm or death to another parent, guardian or
custodian of the child;

(3) attempted, conspired to subject or has
subjected the child to torture, chronic abuse or sexual
abuse; or

(4) had parental rights over a sibling of
the child terminated involuntarily;

D. "great bodily harm" means an injury to a person
that creates a high probability of death, that causes serious
disfigurement or that results in permanent or protracted loss
or impairment of the function of a member or organ of the
body;

E. "neglected child" means a child:

(1) who has been abandoned by the child's
parent, guardian or custodian;

(2) who is without proper parental care and
control or subsistence, education, medical or other care or
control necessary for the child's well-being because of the
faults or habits of the child's parent, guardian or custodian
or the failure or refusal of the parent, guardian or
custodian, when able to do so, to provide them;
(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

F. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation
for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

G. "sexual abuse" includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

H. "sexual exploitation" includes but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law; and

I. "transition plan" means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any
other party as appropriate, to enable the child to be
self-sufficient upon emancipation."

Section 34. Section 32A-4-5 NMSA 1978 (being Laws 1993,
Chapter 77, Section 99, as amended) is amended to read:

"32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY
OF REPORTING PERSON--INVESTIGATION OF REPORT.--

A. In any proceeding alleging neglect or abuse
under the Children's Code resulting from a report required by
Section 32A-4-3 NMSA 1978 or in any proceeding in which that
report or any of its contents are sought to be introduced in
evidence, the report or its contents or any other facts
related thereto or to the condition of the child who is the
subject of the report shall not be excluded on the ground
that the matter is or may be the subject of a
physician-patient privilege or similar privilege or rule
against disclosure.

B. Anyone reporting an instance of alleged child
neglect or abuse or participating in a judicial proceeding
brought as a result of a report required by Section 32A-4-3
NMSA 1978 is presumed to be acting in good faith and shall be
immune from liability, civil or criminal, that might
otherwise be incurred or imposed by the law, unless the
person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the
public official, any school personnel or other person who has
the duty to report child abuse pursuant to Section 32A-4-3
NMSA 1978 shall permit a member of a law enforcement agency,
including tribal police officers, an employee of the district
attorney's office, an investigative interviewer for a program
described in Subsection E of this section or an employee of
the department, to interview a child with respect to a report
without the permission of the child's parent or guardian.
Any person permitting an interview pursuant to this
subsection is presumed to be acting in good faith and shall
be immune from liability, civil or criminal, that might
otherwise be incurred or imposed by law, unless the person
acted in bad faith or with malicious purpose.

D. An investigation may be conducted by law
enforcement, the district attorney's office, a program
described in Subsection E of this section and the department.
Interviews shall be conducted in a manner and place that
protects the child and family from unnecessary trauma and
embarrassment. The investigating entity shall conduct the
investigation in a manner that will protect the privacy of
the child and the family, with the paramount consideration
being the safety of the child. All interactions with child
victims and child witnesses shall be conducted in a
child-sensitive manner, taking into consideration the special
needs of the child and the child's abilities, age and
intellectual maturity. The interviews shall be conducted in a
place where the child feels secure and in a language that the
child uses and understands.

E. If a community has a program for child abuse
investigation that includes an investigation interview of the
alleged victim or child witness, the investigation may be
conducted at a site designated by the community program. The
child abuse victim or child witness shall, when possible, be
interviewed in an environment where the alleged abuse
perpetrator will not be present.

F. Prior to interviewing a child, the department
shall notify the parent or guardian of the child who is being
interviewed, unless the department determines that
notification would adversely affect the safety of the child
about whom the report has been made or compromise the
investigation."

Section 35. Section 32A-4-6 NMSA 1978 (being Laws 1993,
Chapter 77, Section 100, as amended) is amended to read:

"32A-4-6. TAKING INTO CUSTODY--PENALTY.--

A. A child may be held or taken into custody:

(1) by a law enforcement officer when the
officer has evidence giving rise to reasonable grounds to
believe that the child is abused or neglected and that there
is an immediate threat to the child's safety; provided that
the law enforcement officer contacts the department to enable
the department to conduct an on-site safety assessment to
determine whether it is appropriate to take the child into immediate custody, except that a child may be taken into custody by a law enforcement officer without a protective services assessment being conducted if:

(a) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(b) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(c) the child has been abandoned;

(d) the child is in need of emergency medical care;

(e) the department is not available to conduct a safety assessment in a timely manner; or

(f) the child is in imminent risk of abuse; or

(2) by medical personnel when there are reasonable grounds to believe that the child has been injured as a result of abuse or neglect and that the child may be at risk of further injury if returned to the child's parent, guardian or custodian. The medical personnel shall hold the child until a law enforcement officer is available to take

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custody of the child pursuant to Paragraph (1) of Subsection A of this section.

B. When a child is taken into custody by law enforcement, the department is not compelled to place the child in an out-of-home placement and may release the child to the child's parent, guardian or custodian.

C. When a child is taken into custody, the department shall make reasonable efforts to determine whether the child is an Indian child.

D. If a child taken into custody is an Indian child and is alleged to be neglected or abused, the department shall give notice to the agent of the Indian child's tribe in accordance with the federal Indian Child Welfare Act of 1978.

E. Any person who intentionally interferes with protection of a child, as provided by Subsection A of this section, is guilty of a petty misdemeanor."

Section 36. Section 32A-4-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 101, as amended) is amended to read:

"32A-4-7. 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; or
(2) deliver the child to the department or, in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a medical facility, the officer shall immediately notify the department that the child has been placed in the department's legal custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to a medical facility, a department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the legal custody of the department and is not released to the child's parent, guardian or custodian, the department 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 together with a statement of the reason for taking the child into custody.
D. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within two days from the date that the child was taken into custody.

E. The department may release the child at any time within the two-day period after the child was taken into custody if it is determined by the department that release is appropriate or if release has been ordered by the court.

Section 37. Section 32A-4-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 108, as amended) is amended to read:

"32A-4-14. CHANGE IN PLACEMENT.--

A. When the child's placement is changed, including a return to the child's home, written notice of the factual grounds supporting the change in placement shall be sent to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's foster parents and the court ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When the child, by and through the child's guardian ad litem or attorney, files a motion and requests a
court hearing to contest the proposed change, the department shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. When a child's placement is changed without prior notice as provided for in Subsection A of this section, written notice shall be sent to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's foster parents and the court within three days after the placement change.

D. Written notice is not required for removal of a child from temporary emergency care, emergency foster care or respite care. The department shall provide oral notification of the removal to the child's guardian ad litem or attorney.

E. Notice need not be given to the parties, other than the child, or to the court when placement is changed at the request of the child's foster parents or substitute care provider. Notice shall be given to the child's guardian ad litem or attorney."

Section 38. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused
has been placed in the legal custody of the department or the
department has petitioned the court for temporary custody, a
 custody hearing shall be held within ten days from the date
the petition is filed to determine if the child should remain
in or be placed in the department's custody pending
adjudication. Upon written request of the respondent, the
hearing may be held earlier, but in no event shall the
hearing be held sooner than two days after the date the
petition was filed.

B. The parent, guardian or custodian of the child
alleged to be abused or neglected shall be given reasonable
notice of the time and place of the custody hearing.

C. At the custody hearing, the court shall return
legal custody of the child to the child's parent, guardian or
custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness
or injury, and the parent, guardian or custodian is not
providing adequate care for the child;

(2) the child is in immediate danger from
the child's surroundings, and removal from those surroundings
is necessary for the child's safety or well-being;

(3) the child will be subject to injury by
others if not placed in the custody of the department;

(4) there has been an abandonment of the
child by the child's parent, guardian or custodian; or
(5) the parent, guardian or custodian is not able or willing to provide adequate supervision and care for the child.

D. At the conclusion of the custody hearing, if the court determines that probable cause exists pursuant to Subsection C of this section, the court may:

(1) return legal custody of the child to the child's parent, guardian or custodian upon such conditions as will reasonably ensure the safety and well-being of the child, including protective supervision by the department; or

(2) award legal custody of the child to the department.

E. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety.

F. At the conclusion of the custody hearing, if the court determines that probable cause does not exist pursuant to Subsection C of this section, the court shall:

(1) retain jurisdiction and, unless the court permits otherwise, order that the respondent and child remain in the jurisdiction of the court pending the adjudication;

(2) return legal custody of the child to the child's parent, guardian or custodian with conditions to provide for the safety and well-being of the child; and
(3) order that the child's parent, guardian
or custodian allow the child necessary contact with the
child's guardian ad litem or attorney.

G. At the conclusion of the custody hearing, the
court may order the respondent or the child alleged to be
neglected or abused, or both, to undergo appropriate
diagnostic examinations or evaluations. If the court
determines that probable cause does not exist, the court may
order the respondent or the child alleged to be neglected or
abused, or both, to undergo appropriate diagnostic
examinations or evaluations as necessary to protect the
child's best interests, based upon the allegations in the
petition and the evidence presented at the custody hearing.
Copies of any diagnostic or evaluation reports ordered by the
court shall be provided to the parties at least five days
before the adjudicatory hearing is scheduled. The reports
shall not be sent to the court.

H. The Rules of Evidence shall not apply to
custody hearings.

I. Nothing in this section shall be construed to
abridge the rights of Indian children pursuant to the federal

Section 39. Section 32A-4-19 NMSA 1978 (being Laws
1993, Chapter 77, Section 113, as amended) is amended to
32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

A. The adjudicatory hearing in a neglect or abuse proceeding shall be commenced within sixty days after the date of service on the respondent.

B. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest.

C. The children's court attorney shall represent the state at the adjudicatory hearing.

D. When the adjudicatory hearing on any petition is not commenced within the time period specified in Subsection A of this section or within the period of any extension granted, the petition shall be dismissed with prejudice."

Section 40. Section 32A-4-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 114, as amended) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed
to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. The foster parent, preadoptive parent or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code. A child who is the subject of an abuse and neglect proceeding and is present at a hearing may object to the presence of the media. The court may exclude the media if it finds that the presence of the media is contrary to the best interests of the child.

E. If the court finds that it is in the best interest of a child under fourteen years of age, the child
may be excluded from a hearing under the Abuse and Neglect Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

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

G. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence bearing on the allegations of neglect or abuse, shall make and record its findings on whether the child is a neglected child, an abused child or both. If the petition alleges that the parent, guardian or custodian has subjected the child to aggravated circumstances, then the court shall also make and record its findings on whether the aggravated circumstances have been proven.

H. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find
that the child is neglected or abused, the court shall
dismiss the petition and may refer the family to the
department for appropriate services.

I. In that part of the hearings held under the
Children's Code on dispositional issues, all relevant and
material evidence helpful in determining the questions
presented, including oral and written reports, may be
received by the court and may be relied upon to the extent of
its probative value even though not competent had it been
offered during the part of the hearings on adjudicatory
issues.

J. On the court's motion or that of a party, the
court may continue the hearing on the petition for a period
not to exceed thirty days to receive reports and other
evidence in connection with disposition. The court shall
continue the hearing pending the receipt of the
predisposition study and report if that document has not been
prepared and received. During any continuances under this
subsection, the court shall make an appropriate order for
legal custody."

Section 41. Section 32A-4-21 NMSA 1978 (being Laws
1993, Chapter 77, Section 115, as amended) is amended to
read:

"32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES,
REPORTS AND EXAMINATIONS.--
A. Prior to holding a dispositional hearing, the court shall direct that a predisposition study and report be submitted in writing to the court by the department.

B. The predisposition study required pursuant to Subsection A of this section shall contain the following information:

(1) a statement of the specific reasons for intervention by the department or for placing the child in the department's custody and a statement of the parent's ability to care for the child in the parent's home without causing harm to the child;

(2) a statement of how an intervention plan is designed to achieve placement of the child in the least restrictive setting available, consistent with the best interests and special needs of the child, including a statement of the likely harm the child may suffer as a result of being removed from the parent's home, including emotional harm that may result due to separation from the child's parents, and a statement of how the intervention plan is designed to place the child in close proximity to the parent's home without causing harm to the child due to separation from parents, siblings or any other person who may significantly affect the child's best interest;

(3) the wishes of the child as to the child's custodian;
(4) whether the child has a family member who, subsequent to study by the department, is determined to be qualified to care for the child;

(5) a description of services offered to the child, the child's family and the child's foster care family and a summary of reasonable efforts made to prevent removal of the child from the child's family or reasonable efforts made to reunite the child with the child's family;

(6) a description of the home or facility in which the child is placed and the appropriateness of the child's placement;

(7) the results of any diagnostic examination or evaluation ordered at the custody hearing;

(8) a statement of the child's medical and educational background;

(9) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties;

(10) a treatment plan that sets forth steps to ensure that the child's physical, medical, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parents to
facilitate permanent placement of the child in the parent's home;

(11) for children sixteen years of age and older, a plan for developing the specific skills the child requires for successful transition into independent living as an adult, regardless of whether the child is returned to the child's parent's home; and

(12) a treatment plan that sets forth steps to ensure that the child's educational needs are met and, for a child fourteen years of age or older, a treatment plan that specifically sets forth the child's educational and post-secondary goals; and

(13) a description of the child's foster care placement and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child to remain in the school in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

C. A copy of the predisposition report shall be provided by the department to counsel for all parties five days before the dispositional hearing.

D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the court has received and considered the predispositional study.
at the dispositional hearing."

Section 42. Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116, as amended) is amended to read:

"32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED CHILD.--

A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be commenced within thirty days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

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

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

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

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

(5) the wishes of the child's parent, guardian or custodian 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 treatment plan prepared as a part of the
predisposition study in accordance with the provisions of
Section 32A-4-21 NMSA 1978;

(8) the ability of the parent to care for
the child in the home so that no harm will result to the
child;

(9) whether reasonable efforts were used by
the department to prevent removal of the child from the home
prior to placement in substitute care and whether reasonable
efforts were used to attempt reunification of the child with
the natural parent;

(10) whether reasonable efforts were made by
the department to place siblings in custody together, unless
such joint placement would be contrary to the safety or
well-being of any of the siblings in custody, and whether any
siblings not jointly placed have been provided reasonable
visitation or other ongoing interaction, unless visitation or
other ongoing interaction would be contrary to the safety or
well-being of any of the siblings; and

(11) if the child is an Indian child,
whether the placement preferences set forth in the federal
Indian Child Welfare Act of 1978 or the placement preferences
of the child's Indian tribe have been followed and whether
the Indian child's treatment plan provides for maintaining
the Indian child's cultural ties. When placement preferences
have not been followed, good cause for noncompliance shall be
clearly stated and supported.

B. If a child is found to be neglected or abused,
the court may enter its judgment making any of the following
dispositions to protect the welfare of the child:

(1) permit the child to remain with the
child's parent, guardian or custodian, subject to those
conditions and limitations the court may prescribe;
(2) place the child under protective
supervision of the department; or
(3) transfer legal custody of the child to
any of the following:
   (a) the noncustodial parent, if it is
found to be in the child's best interest;
   (b) an agency responsible for the care
of neglected or abused children; or
   (c) a child-placement agency willing
and able to assume responsibility for the education, care and
maintenance of the child and licensed or otherwise authorized
by law to receive and provide care for the child.

C. If a child is found to be neglected or abused,
in its dispositional judgment the court shall also order the
the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The court may determine that reasonable efforts are not required to be made when the court finds that:

1. the efforts would be futile; or
2. the parent, guardian or custodian has subjected the child to aggravated circumstances.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.
G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

H. Prior to a child being placed in the custody or protective supervision of the department, 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.

I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, the department shall pursue the enrollment on the child's behalf.

J. When the court determines pursuant to Subsection C of this section that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to implement and finalize the permanency plan in a timely manner."

Section 43. A new Section 32A-4-23.1 NMSA 1978 is
enacted to read:

"32A-4-23.1. DISPOSITION OF AN UNDOCUMENTED IMMIGRANT
CHILD IN A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.--

A. Whenever the court adjudicates that a child is
abused or neglected, the department shall determine the
child's immigration status. At the first judicial review,
the department shall report the child's immigration status to
the court. Services to children alleged to have been abused,
neglected or abandoned must be provided without regard to the
immigration status of the child except where immigration
status is explicitly set forth as a statutory or regulatory
condition of coverage or eligibility.

B. If the child is an undocumented immigrant, the
department shall include in the treatment plan a
recommendation as to whether the permanency plan for the
child includes reuniting the child with the child's parents
and whether it is in the child's best interest to be returned
to the child's country of origin. If the permanency plan
does not include reunification and the department does not
recommend that the child be returned to the country of
origin, the department shall determine whether the child may
be eligible for special immigrant juvenile status under
federal law.

C. If the child is eligible for special immigrant
juvenile status, the department shall move the court for a
special immigrant juvenile status order containing the necessary findings to establish that the child meets the criteria for federal special immigrant juvenile status. The department's motion shall include a statement of the express wishes of the child, as expressed by the child or the child's guardian ad litem or attorney.

D. After consultation with the child and the child's guardian ad litem or attorney, the department shall determine whether the child's best interests would be served by the filing of a petition for special immigrant juvenile status and application for adjustment of status and if in the child's best interest, within sixty days after an entry of the special immigrant juvenile status order, the department shall file a petition for special immigrant juvenile status and an application for adjustment of status on behalf of the child.

E. If a petition and application have been filed and the petition and application have not been granted by the time the child reaches eighteen years of age, the court may retain jurisdiction over the case for the sole purpose of ensuring that the child continues to satisfy the requirements for classification as a special immigrant juvenile.

F. Review hearings for the child shall be set solely for the purpose of confirming that the child continues to satisfy such requirements and determining the status of
the petition and application.

G. The court's jurisdiction terminates upon the final decision of the federal authorities.

H. Retention of jurisdiction in this instance does not affect the transition services available to the child.

I. The court may not retain jurisdiction of the case after the immigrant child's twenty-first birthday.

J. In a judicial review report provided to the court for a child for whom the court has granted the special immigrant juvenile status order described in Subsection C of this section, the court shall be advised of the status of the petition and application process concerning the child.

Section 44. Section 32A-4-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 118) is amended to read:

"32A-4-24. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered.

B. A judgment vesting legal custody of a child in an individual, other than the child's parent or permanent guardian, shall remain in force for two years from the date entered, unless sooner terminated by court order.

C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in
force for an indeterminate period from the date entered until
terminated by court order or until the child is emancipated
or reaches the age of majority.

D. At any time prior to expiration, a judgment
vesting legal custody or granting protective supervision may
be modified, revoked or extended on motion by any party,
including the child by and through the child's guardian ad
litem.

E. Prior to the expiration of a judgment
transferring legal custody to an agency, the court may extend
the judgment for additional periods of one year if it finds
that the extension is necessary to safeguard the welfare of
the child or the public interest.

F. When a child reaches eighteen years of age, all
neglect and abuse orders affecting the child then in force
automatically terminate except as provided in Section
32A-4-23.1 NMSA 1978 and Subsection D of Section 32A-4-25.3
NMSA 1978. The termination of the orders shall not
disqualify a child from eligibility for transitional
services."

Section 45. Section 32A-4-25 NMSA 1978 (being Laws
1993, Chapter 77, Section 119, as amended) is amended to
read:

"32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL
JUDGMENTS.--"
A. The initial judicial review shall be held within sixty days of the disposition. At the initial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. A representative of the local substitute care review board shall be permitted to attend and comment to the court.

B. Subsequent periodic reviews of dispositional orders shall be held within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. Prior to the review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. Prior to any judicial review by the court pursuant to this section, the local
substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master appointed by the court; provided, however, that the court approve any findings made by the special master.

C. The children's court attorney shall give notice to all parties, including the child by and through the child's guardian ad litem or attorney, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A or B of this section.

D. At any judicial review hearing held pursuant to Subsection B of this section, the department, the child's guardian ad litem or attorney and all parties given notice pursuant to Subsection C of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it
has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

E. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

F. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

G. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the
child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this section, the court shall order one of the following dispositions:

(1) dismiss the action and return the child to the child's parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

(2) permit the child to remain with the child's parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(3) return the child to the child's parent and place the child under the protective supervision of the department;

(4) transfer or continue legal custody of the child to:

(a) the noncustodial parent, if that is found to be in the child's best interests;

(b) a relative or other individual who, after study by the department or other agency designated by
the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or

(c) the department, subject to the provisions of Paragraph (6) of this subsection;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety unless the court finds that such efforts are not required. The court may determine that reasonable efforts are not required to be made when the court finds that:

(a) the efforts would be futile; or

(b) the parent, guardian or custodian has subjected the child to aggravated circumstances;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or

(7) if during a judicial review the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may
order:

(a) the child's parent, guardian or custodian to show cause why the parent, guardian or custodian should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

I. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

J. The report of the local substitute care review board submitted to the court pursuant to Subsection B of this section shall become a part of the child's permanent court record.

K. When the court determines, pursuant to Paragraph (5) of Subsection H of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

Section 46. Section 32A-4-25.1 NMSA 1978 (being Laws 1997, Chapter 34, Section 8, as amended) is amended to read:
"32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW HEARINGS.--

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months of a child entering foster care pursuant to Subsection D of this section, whichever occurs first. Prior to the initial permanency hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the permanency hearing and develop a proposed treatment plan that serves the child's best interest. Prior to the initial permanency hearing, the department shall submit a progress report regarding the child to the local substitute care review board for that judicial district. The local substitute care review board may review the child's dispositional order, any continuation of that order and the department's progress report and report its findings and recommendations to the court.

B. At the permanency hearing, all parties shall have the opportunity to present evidence and to cross-examine witnesses. At the conclusion of the permanency hearing, the court shall order one of the following permanency plans for the child:

(1) reunification;

(2) placement for adoption after the
parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child.

C. If the court adopts a permanency plan of reunification, the court shall adopt a plan for transitioning the child home and schedule a permanency review hearing within three months. If the child is reunified, the subsequent hearing may be vacated.

D. If the court adopts a permanency plan other than reunification, the court shall determine whether the department has made reasonable efforts to identify and locate all grandparents and other relatives. The court shall also determine whether the department has made reasonable efforts to conduct home studies on any appropriate relative expressing an interest in providing permanency for the child. The court must ensure the consideration has been given to the child's familial identity and connections. If the court
finds that reasonable efforts have not been made to identify or locate grandparents and other relatives or to conduct home studies on appropriate and willing relatives, the court shall schedule a permanency review within sixty days to determine whether an appropriate relative placement has been made. If a relative placement is made, the subsequent hearing may be vacated.

E. At the permanency review hearing, all parties and the child's guardian ad litem or attorney shall have the opportunity to present evidence and cross-examine witnesses. Based on the evidence, the court shall:

1. change the plan from reunification to one of the alternative plans provided in Subsection B of this section;

2. dismiss the case and return custody of the child to the child's parent, guardian or custodian; or

3. return the child to the custody of the child's parent, guardian or custodian, subject to any conditions or limitations as the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six months, after which the case shall be dismissed. The department may seek removal of a child from the home by obtaining an order in the pending case or by seeking emergency removal under Section 32A-4-6 NMSA 1978.
during the period of protective supervision if the child's
best interest requires such action. When a child is removed
in this situation, a permanency hearing shall be scheduled
within thirty days of the child coming back into the
department's legal custody.

F. The court shall hold a permanency hearing and
adopt a permanency plan for a child within twelve months of
the child entering foster care. For purposes of this
section, a child shall be considered to have entered foster
care on the earlier of:

(1) the date of the first judicial finding
that the child has been abused or neglected; or

(2) sixty days after the date on which the
child was removed from the home.

G. The court shall hold permanency hearings every
twelve months when a child is in the legal custody of the
department.

H. The children's court attorney shall give notice
to all parties, including the child by and through the
child's guardian ad litem or attorney, the child's CASA, a
contractor administering the local substitute care review
board and the child's foster parent or substitute care
provider of the time, place and purpose of any permanency
hearing or permanency review hearing held pursuant to this
section.
I. The rules of evidence shall not apply to permanency hearings. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to cross-examination."

Section 47. A new Section 32A-4-25.2 NMSA 1978 is enacted to read:

"32A-4-25.2. TRANSITION SERVICES.--

A. Prior to a child's reaching seventeen years of age, the department shall meet with the child, the child's attorney and others of the child's choosing, including biological family members, to develop a transition plan. The department shall assist the child in identifying and planning to meet the child's needs after the child's eighteenth birthday, including housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services.

B. The department shall present the child's proposed transition plan to the court at the first hearing scheduled after the child's seventeenth birthday.

C. The court shall order a transition plan for the child. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing."

Section 48. A new Section 32A-4-25.3 NMSA 1978 is
enacted to read:

"32A-4-25.3. DISCHARGE HEARING.--

A. At the last review or permanency hearing held prior to the child's eighteenth birthday, the court shall review the transition plan and shall determine whether the department has made reasonable efforts to implement the requirements of Subsection B of this section.

B. The court shall determine:

(1) whether written information concerning the child's family history, the whereabouts of any sibling if appropriate and education and health records have been provided to the child;

(2) whether the child's social security card, certified birth certificate, state-issued identification card, death certificate of a parent and proof of citizenship or residence have been provided to the child;

(3) whether assistance in obtaining medicaid has been provided to the child, unless the child is ineligible for medicaid; and

(4) whether referral for a guardianship or limited guardianship if the child is incapacitated has been made.

C. If the court finds that the department has not made reasonable efforts to meet all the requirements of Subsection B of this section and that termination of
jurisdiction would be harmful to the young adult, the court may continue to exercise its jurisdiction for a period not to exceed one year from the child's eighteenth birthday. The young adult must consent to continued jurisdiction of the court. The court may dismiss the case at any time after the child's eighteenth birthday for good cause."

Section 49. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) is amended to read:

"32A-4-29. TERMINATION PROCEDURE.--

A. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding by a party to the proceeding.

B. The motion for termination of parental rights shall set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the persons or authorized agency or agency officer to whom legal custody might be transferred;

(4) whether the child resides or has resided with a foster parent who desires to adopt this child;"
(5) whether the motion is in contemplation
of adoption;

(6) the relationship or legitimate interest
of the moving party to the child; and

(7) whether the child is subject to the
federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the
child's parents;

(b) the specific actions taken by the
moving party to notify the parents' tribes and the results of
the contacts, including the names, addresses, titles and
telephone numbers of the persons contacted. Copies of any
correspondence with the tribes shall be attached as exhibits
to the petition; and

(c) what specific efforts were made to
comply with the placement preferences set forth in the
federal Indian Child Welfare Act of 1978 or the placement
preferences of the appropriate Indian tribes.

C. Notice of the filing of the motion, accompanied
by a copy of the motion, shall be served by the moving party
on all other parties, the foster parent, preadoptive parent
or relative providing care for the child with whom the child
is residing, foster parents with whom the child has resided
for six months within the previous twelve months, the
custodian of the child, any person appointed to represent any
party and any other person the court orders. Service shall be in accordance with the Children's Court Rules for the service of motions, except that foster parents and attorneys of record in this proceeding shall be served by certified mail. The notice shall state specifically that the person served shall file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail to the tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6). Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

D. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date shall be at least thirty days, but no more than sixty days, after service is effected upon the parties entitled to service under this section. The moving party shall also file a motion for court-ordered mediation between the parent and any prospective adoptive parent to discuss an open adoption agreement. If an open adoption agreement is reached at any time before termination of parental rights, it shall be made a part of the court record.
E. In any action for the termination of parental rights brought by a party other than the department and involving a child in the legal custody of the department, the department may:

(1) litigate a motion for the termination of parental rights that was initially filed by another party; or

(2) move that the motion for the termination of parental rights be found premature and denied.

F. When a motion to terminate parental rights is filed, the department shall perform concurrent planning.

G. When a child has been in foster care for not less than fifteen of the previous twenty-two months, the department shall file a motion to terminate parental rights, unless:

(1) a parent has made substantial progress toward eliminating the problem that caused the child's placement in foster care; it is likely that the child will be able to safely return to the parent's home within three months; and the child's return to the parent's home will be in the child's best interests;

(2) the child has a close and positive relationship with a parent and a permanent plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child;

(3) the child is fourteen years of age or
older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place the child with an adoptive family;

(4) a parent is terminally ill, but in remission, and does not want parental rights to be terminated; provided that the parent has designated a guardian for the child;

(5) the child is not capable of functioning if placed in a family setting. In such a case, the court shall reevaluate the status of the child every ninety days unless there is a final court determination that the child cannot be placed in a family setting;

(6) grounds do not exist for termination of parental rights;

(7) the child is an unaccompanied, refugee minor and the situation regarding the child involves international legal issues or compelling foreign policy issues;

(8) adoption is not an appropriate plan for the child; or

(9) the parent's incarceration or participation in a court-ordered residential substance abuse treatment program constitutes the primary factor in the child's placement in substitute care and termination of parental rights is not in the child's best interest.
H. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

   (1) the date of the first judicial finding that the child has been abused or neglected; or

   (2) the date that is sixty days after the date on which the child was removed from the home.

I. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in 25 U.S.C. Section 1912(f).

J. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

K. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.

L. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A judgment of the court terminating
parental rights shall not affect the child's rights of
inheritance from and through the child's biological
parents.

M. When the court denies a motion to terminate
parental rights, the court shall issue appropriate orders
immediately. The court shall direct the parties to file a
stipulated order and interim plan or a request for hearing
within thirty days of the date of the hearing denying the
termination of parental rights."

Section 50. Section 32A-4-32 NMSA 1978 (being Laws
1993, Chapter 77, Section 126, as amended) is amended to
read:

"32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

A. A motion for permanent guardianship may be
filed by any party.

B. A motion for permanent guardianship shall set
forth:

(1) the date, place of birth and marital
status of the child, if known;

(2) the facts and circumstances supporting
the grounds for permanent guardianship;

(3) the name and address of the prospective
guardian and a statement that the person agrees to accept the
duties and responsibilities of guardianship;

(4) the basis for the court's jurisdiction;
(5) the relationship of the child to the
petitioner and the prospective guardian; and

(6) whether the child is subject to the
federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the
child's parents;

(b) the specific actions taken by the
petitioner to notify the parents' tribe and the results of
the contacts, including the names, addresses, titles and
telephone numbers of the persons contacted. Copies of any
correspondence with the tribes shall be attached as exhibits
to the petition; and

(c) what specific efforts were made to
comply with the placement preferences set forth in the
federal Indian Child Welfare Act of 1978 or the placement
preferences of the appropriate Indian tribes.

C. If the motion is not filed by the prospective
guardian, the motion shall be verified by the prospective
guardian.

D. Notice of the filing of the motion, accompanied
by a copy of the motion, shall be served by the moving party
on any parent who has not previously been made a party to the
proceeding, the parents of the child, foster parents with
whom the child is residing, the foster parent, preadoptive
parent or relative providing care for the child with whom the
child has resided for six months, the child's custodian, the
department, any person appointed to represent any party,
including the child's guardian ad litem, and any other person
the court orders provided with notice. Service shall be in
accordance with the Children's Court Rules for the service of
motions. In a case involving a child subject to the federal
Indian Child Welfare Act of 1978, notice shall also be sent
by certified mail to the Indian tribes of the child's parents
and to any "Indian custodian" as that term is defined in 25
U.S.C. Section 1903(6). Further notice shall not be required
to a parent who has been provided notice previously pursuant
to Section 32A-4-17 NMSA 1978 and who failed to make an
appearance.

E. The grounds for permanent guardianship shall be
proved by clear and convincing evidence. The grounds for
permanent guardianship shall be proved beyond a reasonable
doubt and meet the requirements of 25 U.S.C. Section 1912(f)
in any proceeding involving a child subject to the federal

F. A judgment of the court vesting permanent
guardianship with an individual divests the biological or
adoptive parent of legal custody or guardianship of the
child, but is not a termination of the parent's rights. A
child's inheritance rights from and through the child's
biological or adoptive parents are not affected by this
G. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.

H. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

I. Any party may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances, including:

(1) the child's parent is able and willing to properly care for the child; or

(2) the child's guardian is unable to properly care for the child.

J. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship if the child is under the age of fourteen. The court shall appoint an attorney for the child in all proceedings for the revocation of permanent guardianship if the child is fourteen years of age or older at the inception of the proceedings.

K. The court may revoke the order granting guardianship when a significant change of circumstances has
been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship."

Section 51. Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127, as amended) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be disclosed only to the parties and:

(1) court personnel;
(2) court-appointed special advocates;
(3) the child's guardian ad litem;
(4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code;
(5) department personnel;
(6) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(7) law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(8) district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;

(9) any state government social services agency in any state or when, in the opinion of the department it is in the best interest of the child, a governmental social services agency of another country;

(10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(11) 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 and the records concern the social, medical, psychological or educational needs of the child;

(12) school personnel involved with the child if the records concern the child's social or educational needs;

(13) health care or mental health
professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;

(14) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(15) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department; 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. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely
to endanger the life or safety of any person providing
information to the department.

D. Whoever intentionally and unlawfully releases
any information or records closed to the public pursuant to
the Abuse and Neglect Act or releases or makes other unlawful
use of records in violation of that act is guilty of a petty
misdemeanor and shall be sentenced pursuant to the provisions
of Section 31-19-1 NMSA 1978.

E. The department shall promulgate rules for
implementing disclosure of records pursuant to this section
and in compliance with state and federal law and the
Children's Court Rules."

Section 52. A new Section 32A-4-33.1 NMSA 1978 is
enacted to read:

"32A-4-33.1. RECORDS RELEASE WHEN A CHILD DIES.--

A. After learning that a child fatality has
occurred and that there is reasonable suspicion that the
fatality was caused by abuse or neglect, the department
shall, upon written request to the secretary of the
department, release the following information, if in the
department's possession, within five business days:

(1) the age and gender of the child;

(2) the date of death;

(3) whether the child was in foster care or

in the home of the child's parent or guardian at the time of
death; and

(4) whether an investigation is being conducted by the department.

B. If an investigation is being conducted by the department, then a request for further information beyond that listed in Subsection A of this section shall be answered with a statement that a report is under investigation.

C. Upon completion of a child abuse or neglect investigation into a child's death, if it is determined that abuse or neglect caused the child's death, the following documents shall be released upon request:

(1) a summary of the department's investigation;

(2) a law enforcement investigation report, if in the department's possession; and

(3) a medical examiner's report, if in the department's possession.

D. Prior to releasing any document pursuant to Subsection C of this section, the department shall consult with the district attorney and shall redact:

(1) information that would, in the opinion of the district attorney, jeopardize a criminal investigation or proceeding;

(2) identifying information related to a reporting party or any other party providing information; and
(3) information that is privileged, confidential or not subject to disclosure pursuant to any other state or federal law.

E. Once documents pursuant to this section have been released by the department, the department may comment on the case within the scope of the release.

F. Information released by the department consistent with the requirements of this section does not require prior notice to any other individual.

G. Nothing in this section shall be construed as requiring the department to obtain documents not in the abuse and neglect case file.

H. A person disclosing abuse and neglect case file information as required by this section shall not be subject to suit in civil or criminal proceedings for complying with the requirements of this section."

Section 53. Section 32A-5-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 135, as amended) is amended to read:

"32A-5-8. CONFIDENTIALITY OF RECORDS.--

A. Unless the petitioner agrees to be contacted or agrees to the release of the petitioner's identity to the parent and the parent agrees to be contacted or agrees to the release of the parent's identity to the petitioner, the attorneys, the court, the agency and the department shall maintain confidentiality regarding the names of the parties,
unless the information is already otherwise known. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the attorney for the petitioner, the department or the agency, any attorney appointed as a guardian ad litem or attorney for the adoptee, any attorney retained by the adoptee or other persons upon order of the court for good cause shown.

B. All records, whether on file with the court, an agency, the department, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to the provisions of the Adoption Act. All information and documentation provided for the purpose of full disclosure is confidential. Documentation provided for the purpose of full disclosure shall remain the property of the person making full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing full disclosure. A prospective adoptive parent shall not disclose any confidential information received during the full disclosure process, except as necessary to make a placement decision or to provide information to a child's guardian ad litem or attorney or the court.
C. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties and their counsel.

D. A person who intentionally and unlawfully releases any information or records closed to the public pursuant to the Adoption Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. Prior to the entry of the decree of adoption, the parent consenting to the adoption or relinquishing parental rights to an agency or the department shall execute an affidavit stating whether the parent will permit contact or the disclosure of the parent's identity to the adoptee or the adoptee's prospective adoptive parents."

Section 54. Section 32A-5-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 143, as amended) is amended to read:

"32A-5-16. TERMINATION PROCEDURES.--

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated
by any of the following:

(1) the department;

(2) an agency; or

(3) any other person having a legitimate interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem or attorney in another action, a foster parent, a relative of the child or the child.

B. A petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;

(4) the basis for the court's jurisdiction;

(5) that the petition is in contemplation of adoption;

(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is an Indian child.
and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, the individuals with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served shall file a written response to the petition within twenty days if the
person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication or an order stating that service by publication is not required. A motion for an order granting service by publication shall be supported by the affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication or order that publication is not required because the parent's consent is not required pursuant to the provisions of Section 32A-5-19 NMSA 1978.

E. The court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court's discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court.
court of New Mexico for court-appointed attorneys.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights. If the child is fourteen years of age or older and in the custody of the department, the child's attorney appointed pursuant to the Abuse and Neglect Act shall represent the child in any proceedings for termination of parental rights under this section.

G. Within thirty days after the filing of a petition to terminate parental rights, the petitioner shall request a hearing on the petition. The hearing date shall be at least thirty days after service is effected upon the parent of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978.

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. In any
termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

Section 55. Section 32A-5-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 151, as amended) is amended to read:

"32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

A. When a parent elects to relinquish parental rights to the department, a petition to accept the relinquishment shall be filed, unless an abuse or neglect proceeding is pending. If an abuse or neglect proceeding is pending, the relinquishment shall be heard in the context of that proceeding.

B. In all hearings regarding relinquishment of parental rights to the department, the child shall be represented by a guardian ad litem. If the child is fourteen years of age or older and in the custody of the department, the child's attorney appointed pursuant to the Abuse and Neglect Act shall represent the child in any proceeding for termination of parental rights under this section.
C. If a proposed relinquishment of parental rights is not in contemplation of adoption, the court shall not allow the relinquishment of parental rights unless it finds that good cause exists, that the department has made reasonable efforts to preserve the family and that relinquishment of parental rights is in the child's best interest. Whenever a parent relinquishes the parent's rights pursuant to this subsection, the parent shall remain financially responsible for the child. The court may order the parent to pay the reasonable costs of support and maintenance of the child. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

D. When a parent relinquishes the parent's rights under this section, the parent shall be notified that no contact will be enforced by the court, regardless of any informal agreement, unless the parties have agreed to an open adoption pursuant to Section 32A-5-35 NMSA 1978. The consent for relinquishment shall be in writing and shall state that the parties understand that any informal agreement allowing contact will not be enforced by the courts."

Section 56. Section 32A-5-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 160) is amended to read:

"32A-5-33. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY FOR THE ADOPTEE OR OTHER PARTY.--Upon the motion of any party
or upon the court's own motion, the court may appoint a
guardian ad litem for the adoptee or for any person found to
be incompetent or a child who is a party to the proceeding.
In any contested proceeding, the court shall appoint a
guardian ad litem for the adoptee. The court may appoint the
child's attorney appointed pursuant to the Abuse and Neglect
Act if the child is fourteen years of age or older and in the
custody of the department."

Section 57. Section 32A-5-35 NMSA 1978 (being Laws
1993, Chapter 77, Section 162, as amended) is amended to
read:

"32A-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner
may agree to contact between the parents and the petitioner
or contact between the adoptee and one or more of the parents
or contact between the adoptee and relatives of the parents.
An agreement shall, absent a finding to the contrary, be
presumed to be in the best interests of the child and shall
be included in the decree of adoption. The agreement may
also include contact between siblings and the adoptee based
on a finding that it is in the best interests of the adoptee
and the adoptee's siblings and a determination that the
siblings' parent, guardian or custodian has consented to the
agreement. The contact may include exchange of identifying
or nonidentifying information or visitation between the
parents or the parents' relatives or the adoptee's siblings
and the petitioner or visitation between the parents or the
parents' relatives or the adoptee's siblings and the adoptee.
An agreement entered into pursuant to this section shall be
considered an open adoption.

B. The court may appoint a guardian ad litem for
the adoptee. The court shall adopt a presumption in favor of
appointing a guardian ad litem for the adoptee when
visitation between the biological family and the adoptee is
included in an agreement; however, this requirement may be
waived by the court for good cause shown. When an adoptive
placement is made voluntarily through an agency or pursuant
to Section 32A-5-13 NMSA 1978, the court may, in its
discretion, appoint a guardian ad litem. If the child is
fourteen years of age or older, the court may appoint an
attorney for the child. In all adoptions other than those in
which the child is placed by the department, the court may
assess the parties for the cost of services rendered by the
guardian ad litem or the child's attorney. The duties of the
guardian ad litem or child's attorney end upon the filing of
the decree, unless otherwise ordered by the court.

C. In determining whether the agreement is in the
adoptee's best interests, the court shall consider the
adoptee's wishes, but the wishes of the adoptee shall not
control the court's findings as to the best interests of the
adoptee.

D. Every agreement entered into pursuant to provisions of this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee.

E. The court shall retain jurisdiction after the decree of adoption is entered, if the decree contains an agreement for contact, for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests."

Section 58. A new Section 32A-7A-1 NMSA 1978 is enacted to read:

"32A-7A-1. SHORT TITLE.--Chapter 32A, Article 7A NMSA 1978 may be cited as the "Juvenile Public Safety Advisory Board Act"."

Section 59. A new Section 32A-7A-2 NMSA 1978 is enacted to read:
"32A-7A-2. JUVENILE PUBLIC SAFETY ADVISORY BOARD--TERMS--DIRECTOR.--

A. The "juvenile public safety advisory board" is created, consisting of seven members appointed by the governor. The board is administratively attached to the department. The terms of members of the board shall be six years.

B. A director shall be appointed by the governor as the administrative officer of the juvenile public safety advisory board. The director shall employ other staff as necessary to carry out the duties of the board. Employees shall be employed in classified positions and shall be subject to the provisions of the Personnel Act."

Section 60. A new Section 32A-7A-3 NMSA 1978 is enacted to read:

"32A-7A-3. BOARD--REMOVAL--VACANCIES.--A member of the juvenile public safety advisory board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by the governor for the remainder of the unexpired term."

Section 61. A new Section 32A-7A-4 NMSA 1978 is enacted to read:

"32A-7A-4. BOARD--QUALIFICATIONS.--Members of the juvenile public safety advisory board shall be persons qualified by education or professional training in such
fields as criminology, education, health, psychology, psychiatry, law, social work or sociology for children and youth. The membership shall be reasonably representative of the various geographic regions of the state."

Section 62. A new Section 32A-7A-5 NMSA 1978 is enacted to read:

"32A-7A-5. BOARD--CHAIR.--

A. The governor shall designate one member of the juvenile public safety advisory board to serve as chair.

B. The chair may designate two members of the board to serve as regional vice chairs."

Section 63. A new Section 32A-7A-6 NMSA 1978 is enacted to read:

"32A-7A-6. BOARD--POWERS AND DUTIES.--

A. The juvenile public safety advisory board shall:

(1) advise the department on release decisions, including the criteria to be used to grant release and participation in decisions to grant or deny release;

(2) meet with the secretary of children, youth and families or the secretary's designee a minimum of twice each year for the purpose of reviewing the activities of the department;

(3) visit each facility for adjudicated delinquent children operated by the department at least once
each year and on or before June 30 of each year, submit a written report to the governor and the secretary regarding conditions relating to the care and treatment of youth assigned to the facilities and any other matters pertinent in the judgment of the board;

(4) make recommendations to the secretary of children, youth and families and the director of the juvenile justice division of the department concerning programs and facilities for adjudicated delinquent children; and

(5) adopt rules and regulations as may be necessary for the effectual discharge of duties of the board.

B. Within forty days of a juvenile's arrival at a facility, the juvenile public safety advisory board shall conduct an initial assessment of the juvenile. At regularly scheduled intervals thereafter, the board shall conduct administrative reviews to assess the juvenile's progress or lack thereof. After each administrative review, the board shall prepare a report of the juvenile offender's progress with recommendations as to readiness for release or appropriateness of programming."

Section 64. A new Section 32A-7A-7 NMSA 1978 is enacted to read:

"32A-7A-7. BOARD--COMPENSATION.--The members of the juvenile public safety advisory board shall receive per diem and mileage as provided for nonsalaried public officers in
the Per Diem and Mileage Act and shall receive no other
compensation, perquisite or allowance."

Section 65. A new Section 32A-7A-8 NMSA 1978 is enacted
to read:

"32A-7A-8. ACCESS.--The juvenile public safety advisory
board shall have access at reasonable times to any
adjudicated delinquent child and any records pertaining to
the child for whom the department is considering release or
who has requested release pursuant to procedures established
by the department. The agency or facility to which legal
custody was transferred shall also provide the board with
facilities for communicating with and interviewing children."

Section 66. Section 32A-18-1 NMSA 1978 (being Laws
1993, Chapter 77, Section 224, as amended) is amended to
read:

"32A-18-1. CULTURAL RECOGNITION.--

A. A person who serves as a judge, prosecutor,
child's attorney, guardian ad litem, treatment guardian,
court appointed attorney, court appointed special advocate,
foster parent, mental health commissioner or mental health
treatment service provider for a child subject to an abuse or
neglect petition, a family in need of services petition or a
mental health placement shall receive periodic training, to
the extent of available resources, to develop his knowledge
about children, the physical and psychological formation of
children and the impact of ethnicity on a child's needs.
Institutions that serve children and their families shall,
considering available resources, provide similar training to
institutional staff.

B. The training shall include study of:
   (1) cross-cultural dynamics and sensitivity;
   (2) child development;
   (3) family composition and dynamics;
   (4) parenting skills and practices;
   (5) culturally appropriate treatment plans;
   and
   (6) alternative health practices."

Section 67. Section 33-9A-4 NMSA 1978 (being Laws 1988,
Chapter 101, Section 42, as amended) is amended to read:

"33-9A-4. APPLICATIONS--CRITERIA.--
A. Counties, municipalities or private
organizations, individually or jointly, may apply for grants
from the fund, including grants for counties or
municipalities to purchase contractual services from private
organizations; provided that:
   (1) the application is for funding a program
   with priority use being for delinquents selected pursuant to
   the provisions of Section 33-9A-5 NMSA 1978;
   (2) the applicant certifies that it is
   willing and able to operate the program according to
standards provided by the department, which may include the negotiation of a contract between the delinquent and program staff with provisions such as deductions from employment income for applicable victim restitution, family support, room and board, savings and weekly allowance. In addition to monetary restitution, to the extent practical, or if monetary restitution is not applicable, the contract may include provision for community service restitution for a specific number of hours;

(3) the applicant demonstrates the support of key components of the criminal justice system;

(4) the applicant, if a private organization, demonstrates the support of the county and municipality where the program will provide services;

(5) the applicant certifies that it will utilize volunteer services as an integral portion of the program to the maximum extent feasible; and

(6) no class A county alone or in conjunction with any municipality within a class A county shall receive more than forty-nine percent of any money appropriated to the fund.

B. Notwithstanding the provisions of Subsection A of this section, the department may utilize the fund to place individuals eligible, or within twelve months of eligibility, for parole in community-based settings. The department may,
in its discretion, require participation by a delinquent in a program as a condition of supervised release.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for community corrections programs or to establish programs operated by the department; provided, however, that the department may utilize up to an additional ten percent of the fund to operate juvenile community corrections programs if, after a reasonable effort to solicit proposals, there are no satisfactory proposals from a community where it is determined that a program is necessary or if it becomes necessary to cancel a program as provided in the contract.

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

Section 68. Section 33-9A-5 NMSA 1978 (being Laws 1988, Chapter 101, Section 43, as amended) is amended to read:

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

A. The department shall establish a state panel whose duties shall be to immediately screen and identify delinquents sentenced to a juvenile correctional facility of the department and transferred to the legal custody of the department, except individuals who are sentenced or
transferred from a judicial district that has established a
local panel to exercise these duties pursuant to the
provisions of this section and who meet the following
criteria:

(1) the offense involved is one for which
community service or reasonable restitution may be made using
a payment schedule compatible with the total amount of
restitution to be paid and the time the offender is to
participate in a program; and

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

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

C. If the state panel determines that a child is
suitable for placement in a program, a recommendation to that
effect and for modification of disposition shall be presented
as soon as possible to the sentencing judge or the
department, which may, notwithstanding any provision of law,
accept, modify or reject the recommendation. The
determination shall be presented to the county, municipality
or private nonprofit organization, as applicable, for
approval or rejection.

D. A county, municipality or private nonprofit organization, individually or jointly, may establish a local panel to exercise the duties and responsibilities of the state panel pursuant to the provisions of Subsection A of this section and, using the same criteria as the state panel, the local panel may screen and identify delinquents. The composition of a local panel shall include, to the maximum extent possible, representatives of the judiciary, the administrative office of the district attorneys, the public defender department, the children, youth and families department, the county sheriff or the municipal police department, individuals representing local programs and private citizens."

Section 69. Section 66-5-11 NMSA 1978 (being Laws 1978, Chapter 35, Section 233, as amended) is amended to read:

"66-5-11. APPLICATION OF MINORS.--

A. The application of any person under the age of eighteen years for an instruction permit, provisional license or driver's license shall be signed and verified by the father, mother or guardian or, in the event there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this article upon a person signing the application of a minor.

B. The application of a minor who is in the...
custody of the state may be signed and verified by a
grandparent; a sibling over the age of eighteen years; an
aunt; an uncle; a foster parent with whom the minor resides;
or as authorized by the secretary of children, youth and
families, a child protective services worker or juvenile
probation officer; provided that the child protective
services worker or juvenile probation officer first notifies
a foster parent or other responsible party of the intent to
sign.

C. Any negligence or willful misconduct of a minor
under the age of eighteen years when driving a motor vehicle
upon a highway shall be imputed to the person who has signed
the application of the minor for a permit or license, which
person shall be jointly and severally liable with the minor
for damages caused by the negligence or willful misconduct
except as otherwise provided in Subsection D of this section.

D. In the event a minor deposits or there is
deposited upon the minor's behalf proof of financial
responsibility in respect to the operation of a motor vehicle
owned by the minor or, if not the owner of a motor vehicle,
with respect to the operation of any motor vehicle, in form
and in amounts as required under the motor vehicle financial
responsibility laws of this state, the division may accept
the application of the minor when signed by one parent or the
guardian of the minor, and, while such proof is maintained,
the parent or guardian is not subject to the liability
imposed under Subsection C of this section. Liability shall
not be imposed under this section or under the Mandatory
Financial Responsibility Act on the state or the secretary of
children, youth and families or on a juvenile probation
officer or child protective services worker for damages
caused by the negligence or willful misconduct of a minor
driver whose application for an instruction permit,
provisional license or driver's license was signed by the
child protective services worker or juvenile probation
officer with the authorization of the children, youth and
families department while the minor was in the custody of the
state."

Section 70. REPEAL.--Sections 9-2A-5 and 32A-7-1
through 32A-7-9 NMSA 1978 (being Laws 1992, Chapter 57,
Section 5 and Laws 1993, Chapter 77, Sections 194 through
202, as amended) are repealed.

Section 71. APPLICABILITY.--The provisions of this act
apply to all children who, on July 1, 2009, are on release or
are otherwise eligible to be placed on release as if the
Juvenile Public Safety Advisory Board Act had been in effect
at the time they were placed on release or became eligible to
be released.

Section 72. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2009.