

1 SENATE BILL 403

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO JUVENILE JUSTICE; CREATING THE JUVENILE PAROLE
12 BOARD; PROVIDING FOR MEMBERSHIP, POWERS AND DUTIES; PROVIDING
13 STANDARDS FOR PAROLE ELIGIBILITY; MAKING TECHNICAL AND
14 CONFORMING CHANGES; AMENDING, REPEALING AND ENACTING SECTIONS
15 OF THE NMSA 1978.

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

18 SECTION 1. A new section of the Children's Code is
19 enacted to read:

20 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this
21 act may be cited as the "Juvenile Parole Act"."

22 SECTION 2. A new section of the Children's Code is
23 enacted to read:

24 "[NEW MATERIAL] JUVENILE PAROLE BOARD--TERMS--DIRECTOR.--

25 A. The "juvenile parole board" is created,

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1 consisting of three members appointed by the governor. The
2 juvenile parole board is administratively attached to the
3 department. The terms of board members shall be six years, and
4 members shall serve until replaced. A board member may serve
5 multiple terms.

6 B. The governor shall appoint a director as the
7 administrative officer of the juvenile parole board. The
8 director shall employ other staff as is necessary to carry out
9 the duties of the board. Employees shall be employed in
10 classified positions and shall be subject to the provisions of
11 the Personnel Act."

12 SECTION 3. A new section of the Children's Code is
13 enacted to read:

14 "[NEW MATERIAL] REMOVAL--VACANCIES.--Members of the
15 juvenile parole board may be removed by the governor as
16 provided in Article 5, Section 5 of the constitution of New
17 Mexico. Vacancies shall be filled by the governor for the
18 remainder of the unexpired term."

19 SECTION 4. A new section of the Children's Code is
20 enacted to read:

21 "[NEW MATERIAL] QUALIFICATIONS OF BOARD.--Members of the
22 juvenile parole board shall be persons qualified by education
23 or professional training in such fields as criminology,
24 education, psychology, psychiatry, law, social work or
25 sociology. No board member shall be an official or employee of

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1 any federal, state or local governmental entity."

2 SECTION 5. A new section of the Children's Code is
3 enacted to read:

4 "[NEW MATERIAL] CHAIR.--The governor shall designate one
5 juvenile parole board member to serve as chair."

6 SECTION 6. A new section of the Children's Code is
7 enacted to read:

8 "[NEW MATERIAL] POWERS AND DUTIES OF THE BOARD.--

9 A. The juvenile parole board shall:

10 (1) grant, deny or revoke parole for children;

11 (2) conduct or cause to be conducted
12 investigations, examinations, interviews, hearings and other
13 proceedings as necessary for the effectual discharge of the
14 duties of the board;

15 (3) serve as an ombudsman to receive
16 complaints concerning department personnel or facilities
17 entrusted with the detention, care or rehabilitation of
18 children pursuant to the Children's Code;

19 (4) report bimonthly to the governor on the
20 state of facilities entrusted with the detention, care or
21 rehabilitation of children pursuant to the Children's Code;

22 (5) maintain records of its acts, decisions
23 and orders and notify each agency affected by its decisions;

24 (6) adopt an official seal of which the courts
25 shall take judicial notice; and

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1 (7) adopt a written policy specifying the
2 criteria to be considered by the board in determining whether
3 to grant, deny or revoke parole or to discharge a child from
4 parole.

5 B. The juvenile parole board may:

6 (1) summon witnesses, books, papers, reports,
7 documents or tangible things and administer oaths as necessary
8 for the effectual discharge of the duties of the board;

9 (2) adopt rules and regulations as necessary
10 for the effectual discharge of the duties of the board; and

11 (3) contract or otherwise provide for
12 services, supplies, equipment, office space and other
13 provisions as necessary to effectively discharge the duties of
14 the board.

15 C. At least thirty days before ordering a parole,
16 the juvenile parole board shall notify the children's court
17 judge of the judicial district from which legal custody of the
18 child was transferred. The judge may express the judge's views
19 on the child's prospective parole, either in writing or
20 personally, to the board, but the final parole decision shall
21 be that of the board. A copy of the final parole decision
22 shall be filed with the court of original jurisdiction. In the
23 event venue has been transferred pursuant to Section 32A-1-9
24 NMSA 1978, a copy of the board's decision shall also be filed
25 with the children's court to which venue has been transferred.

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1 D. Before ordering the parole of any child, the
2 juvenile parole board shall personally interview the child.
3 The board shall furnish to each child paroled a written
4 statement of the conditions of parole, which conditions shall
5 be acknowledged by the child and the child's parent, custodian
6 or guardian.

7 E. The juvenile parole board shall provide the
8 child and the child's parent, custodian or guardian with a
9 written statement of the reason for denying parole within
10 forty-eight hours."

11 SECTION 7. A new section of the Children's Code is
12 enacted to read:

13 "[NEW MATERIAL] COMPENSATION.--The members of the juvenile
14 parole board shall receive per diem and mileage as provided for
15 nonsalaried public officers in the Per Diem and Mileage Act and
16 shall receive no other compensation, perquisite or allowance."

17 SECTION 8. A new section of the Children's Code is
18 enacted to read:

19 "[NEW MATERIAL] PAROLE ELIGIBILITY.--

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

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1 B. If parole is denied, the child shall be eligible
2 for review sixty days after the date of the denial.

3 C. If parole is denied, and the department
4 recommended parole, within ten days after the denial of parole,
5 the department shall transmit all of the child's records to
6 district court of the judicial district from which legal
7 custody of the child was transferred for review. The court
8 shall review the matter without a formal hearing and shall
9 affirm the juvenile parole board's decision or grant the child
10 parole. If the juvenile parole board's decision is affirmed,
11 the child shall be eligible for review sixty days after the
12 date of the district court's order affirming the juvenile
13 parole board's decision.

14 D. Except as provided in Subsection C of this
15 section, the juvenile parole board may review the case of any
16 child upon its own motion at any time after parole is denied."

17 SECTION 9. A new section of the Children's Code is
18 enacted to read:

19 "[NEW MATERIAL] ACCESS.--The juvenile parole board shall
20 have access at all reasonable times to any child over whom the
21 board has jurisdiction under the Juvenile Parole Act and any
22 records pertaining to the child. The agency to which legal
23 custody of a child was transferred shall also provide the board
24 with facilities for communicating with and interviewing the
25 child."

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1 **SECTION 10.** Section 22-13-33 NMSA 1978 (being Laws 2017,
2 Chapter 64, Section 1) is amended to read:

3 "22-13-33. APPOINTING A POINT OF CONTACT PERSON FOR
4 CERTAIN STUDENTS.--

5 A. As used in this section:

6 (1) "foster care" means twenty-four-hour
7 substitute care for a student placed away from the student's
8 parents or guardians and for whom the children, youth and
9 families department has placement and care responsibility,
10 including placements in foster family homes, foster homes of
11 relatives, group homes, emergency shelters, treatment foster
12 homes, residential facilities, child care institutions and
13 preadoptive homes. For the purposes of this section, a student
14 is in foster care regardless of whether the foster care
15 facility is licensed and payments are made by the state, tribal
16 or local agency for the care of the student, whether adoption
17 subsidy payments are being made prior to the finalization of an
18 adoption or whether there is federal matching of any payments
19 that are made; and

20 (2) "involved in the juvenile justice system"
21 means a student who has been referred to the children, youth
22 and families department due to allegations that the student has
23 committed a delinquent offense and voluntary or involuntary
24 conditions have been imposed on the student, including a
25 student who is participating in a diversion program, is under a

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1 consent decree or time waiver, is currently supervised by the
2 children, youth and families department, has recently entered
3 or left a juvenile or criminal justice placement or is on
4 ~~[supervised release or]~~ parole.

5 B. Each school district and charter school
6 authorized by the department shall designate an individual to
7 serve as a point of contact for students in foster care and
8 students involved in the juvenile justice system. Charter
9 schools authorized by school districts shall use the district's
10 point of contact. Multiple school districts or charter schools
11 authorized by the department may share a single designated
12 point of contact with approval from the department and from the
13 children, youth and families department.

14 C. For students transferring into the school
15 district or charter school authorized by the department, the
16 point of contact person shall be responsible for:

17 (1) ensuring that a student is immediately
18 enrolled regardless of whether the records normally required
19 for enrollment are produced by the last school the student
20 attended or by the student;

21 (2) ensuring that the enrolling school
22 communicates with the last school attended by a transferring
23 student to obtain relevant academic and other records within
24 two business days of the student's enrollment;

25 (3) ensuring that the enrolling school

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1 performs a timely transfer of credits that the student earned
2 in the last school attended; and

3 (4) collaborating with the education program
4 staff in a juvenile or criminal justice placement and the
5 educational decision maker appointed by the children's court to
6 create and implement a plan for assisting the transition of a
7 student to the school district or charter school authorized by
8 the department to minimize disruption to the student's
9 education.

10 D. For students transferring out of the school
11 district or charter school authorized by the department, the
12 point of contact person shall be responsible for providing all
13 records to the new school within two business days of receiving
14 a request from the receiving school.

15 E. For students in foster care, the point of
16 contact person shall be responsible for:

17 (1) complying with state policies and
18 developing school district or charter school policies in
19 collaboration with the children, youth and families department
20 for:

21 (a) best interest determinations about
22 whether the student will remain in the school of origin;

23 (b) transportation policies to ensure
24 that students receive transportation to their school of origin
25 if it is in their best interest to remain in the school of

1 origin; and

2 (c) dispute resolution;

3 (2) convening or participating in best
4 interest determination meetings in collaboration with the
5 children, youth and families department pursuant to state
6 policies and the school district's or charter school authorized
7 by the department's policies; and

8 (3) ensuring that transportation occurs to the
9 student's school of origin pursuant to the school district's or
10 charter school authorized by the department's policies and in
11 compliance with state policies.

12 F. For students in foster care and students
13 involved in the juvenile justice system, the point of contact
14 person shall be responsible for:

15 (1) ensuring that a student has equal
16 opportunity to participate in sports and other extracurricular
17 activities, career and technical programs or other special
18 programs for which the student qualifies;

19 (2) ensuring that a student in high school
20 receives timely and ongoing assistance and advice from
21 counselors to improve the student's college and career
22 readiness;

23 (3) ensuring that a student receives all
24 special education services and accommodations to which the
25 student is entitled under state and federal law;

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1 (4) identifying school staff at each school
2 site who can ensure that students are appropriately supported
3 throughout their enrollment;

4 (5) supporting communication among the school;
5 the children, youth and families department; the student; the
6 student's educational decision maker appointed by the
7 children's court; caregivers; and other supportive individuals
8 that the student identifies to ensure that the responsibilities
9 listed in this subsection are implemented; and

10 (6) ensuring that other school staff and
11 teachers have access to training and resources about the
12 educational challenges and needs of system-involved youth,
13 including trauma-informed practices and the impact of trauma on
14 learning.

15 G. The children, youth and families department
16 shall notify a school when a student in the school enters
17 foster care or a student in foster care enrolls in a school.

18 H. The student or the student's educational
19 decision maker may notify a school that the student is involved
20 in the juvenile justice system to obtain support and services
21 from the point of contact."

22 SECTION 11. Section 32A-2-3 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 32, as amended) is amended to read:

24 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

25 A. "delinquent act" means an act committed by a

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1 child that would be designated as a crime under the law if
2 committed by an adult, including the following offenses:

3 (1) any of the following offenses pursuant to
4 municipal traffic codes or the Motor Vehicle Code:

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

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

9 (c) unlawful taking of a vehicle or
10 motor vehicle;

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

13 (e) homicide by vehicle;

14 (f) injuring or tampering with a
15 vehicle;

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

18 (h) altering or forging of a driver's
19 license or permit or any making of a fictitious license or
20 permit;

21 (i) reckless driving;

22 (j) driving with a suspended or revoked
23 license; or

24 (k) an offense punishable as a felony;

25 (2) buying, attempting to buy, receiving,

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

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

17 (4) a violation of the Controlled Substances
18 Act;

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

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

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1 (7) a violation of an order of protection
2 issued pursuant to the provisions of the Family Violence
3 Protection Act;

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

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

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

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

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

17 G. "restitution" means financial reimbursement by
18 the child to the victim or community service imposed by the
19 court and is limited to easily ascertainable damages for injury
20 to or loss of property, actual expenses incurred for medical,
21 psychiatric and psychological treatment for injury to a person
22 and lost wages resulting from physical injury, which are a
23 direct and proximate result of a delinquent act. "Restitution"
24 does not include reimbursement for damages for mental anguish,
25 pain and suffering or other intangible losses. As used in this

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1 subsection, "victim" means a person who is injured or suffers
2 damage of any kind by an act that is the subject of a complaint
3 or referral to law enforcement officers or juvenile probation
4 authorities. Nothing contained in this definition limits or
5 replaces the provisions of Subsections A and B of Section
6 32A-2-27 NMSA 1978;

7 H. "serious youthful offender" means an individual
8 fifteen to eighteen years of age who is charged with and
9 indicted or bound over for trial for first degree murder. A
10 "serious youthful offender" is not a delinquent child as
11 defined pursuant to the provisions of this section; and

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

21 ~~J.]~~ I. "youthful offender" means a delinquent child
22 subject to adult or juvenile sanctions who is:

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

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

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

5 (c) kidnapping, as provided in Section
6 30-4-1 NMSA 1978;

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

9 (e) aggravated battery against a
10 household member, as provided in Subsection C of Section
11 30-3-16 NMSA 1978;

12 (f) aggravated battery upon a peace
13 officer, as provided in Subsection C of Section 30-22-25 NMSA
14 1978;

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

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

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

22 (j) robbery, as provided in Section
23 30-16-2 NMSA 1978;

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

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

3 (m) abuse of a child that results in
4 great bodily harm or death to the child, as provided in Section
5 30-6-1 NMSA 1978;

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

16 (3) fourteen years of age and who is
17 adjudicated for first degree murder, as provided in Section
18 30-2-1 NMSA 1978."

19 **SECTION 12.** Section 32A-2-5 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 34, as amended) is amended to read:

21 "32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
22 ESTABLISHMENT--JUVENILE PROBATION AND PAROLE OFFICERS--POWERS
23 AND DUTIES.--

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

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

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

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

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

13 (4) supervise and assist a child placed on
14 probation or [~~supervised release~~] parole or under supervision
15 by court order or by the department;

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

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

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

25 (8) identify an Indian child for the purpose

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1 of contacting the Indian child's tribe in delinquency cases;
2 and

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

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

21 SECTION 13. Section 32A-2-19 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 48, as amended) is amended to read:

23 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
24 OFFENDER.--

25 A. At the conclusion of the dispositional hearing,

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1 the court may make and include in the dispositional judgment
2 its findings on the following:

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

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

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

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

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

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

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

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

23 B. If a child is found to be delinquent, the court
24 may impose a fine not to exceed the fine that could be imposed
25 if the child were an adult and may enter its judgment making

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1 any of the following dispositions for the supervision, care and
2 rehabilitation of the child:

3 (1) transfer legal custody to the department,
4 an agency responsible for the care and rehabilitation of
5 delinquent children, which shall receive the child at a
6 facility designated by the secretary of the department as a
7 juvenile reception facility. The department shall thereafter
8 determine the appropriate placement, supervision and
9 rehabilitation program for the child. The judge may include
10 recommendations for placement of the child. Commitments are
11 subject to limitations and modifications set forth in Section
12 32A-2-23 NMSA 1978. The types of commitments include:

13 (a) a short-term commitment of one year
14 in a facility for the care and rehabilitation of adjudicated
15 delinquent children. No more than nine months shall be served
16 at the facility and no less than ninety days shall be served on
17 [~~supervised release~~] parole, unless: 1) a petition to extend
18 the commitment has been filed prior to the commencement of
19 [~~supervised release~~] parole; 2) the commitment has been
20 extended pursuant to Section 32A-2-23 NMSA 1978; or 3)
21 [~~supervised release~~] parole is revoked pursuant to Section
22 32A-2-25 NMSA 1978;

23 (b) a long-term commitment for no more
24 than two years in a facility for the care and rehabilitation of
25 adjudicated delinquent children. No more than twenty-one

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1 months shall be served at the facility and no less than ninety
2 days shall be served on [~~supervised release~~] parole, unless:

3 1) [~~supervised release~~] parole is revoked pursuant to Section
4 32A-2-25 NMSA 1978; or 2) the commitment is extended pursuant
5 to Section 32A-2-23 NMSA 1978;

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

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

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

14 (3) place the child in a local detention
15 facility that has been certified in accordance with the
16 provisions of Section 32A-2-4 NMSA 1978 for a period not to
17 exceed fifteen days within a three hundred sixty-five day time
18 period; or if a child is found to be delinquent solely on the
19 basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA
20 1978, the court shall only enter a judgment placing the child
21 on probation or ordering restitution or imposing a fine not to
22 exceed the fine that could be imposed if the child were an
23 adult or any combination of these dispositions; or

24 (4) if a child is found to be delinquent
25 solely on the basis of Paragraph (2), (3) or (4) of Subsection

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

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

14 D. A child found to be delinquent shall not be
15 committed or transferred to a penal institution or other
16 facility used for the execution of sentences of persons
17 convicted of crimes.

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

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

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1 be heard.

2 G. In addition to any other disposition pursuant to
3 Subsection B of this section, the court may make an abuse or
4 neglect report for investigation and proceedings as provided
5 for in the Abuse and Neglect Act. The report may be made to a
6 local law enforcement agency, the department or a tribal law
7 enforcement or social service agency for an Indian child
8 residing in Indian country.

9 H. In addition to any other disposition pursuant to
10 this section or any other penalty provided by law, if a child
11 who is fifteen years of age or older is adjudicated delinquent
12 on the basis of Paragraph (2), (3) or (4) of Subsection A of
13 Section 32A-2-3 NMSA 1978, the child's driving privileges may
14 be denied or the child's driver's license may be revoked for a
15 period of ninety days. For a second or a subsequent
16 adjudication, the child's driving privileges may be denied or
17 the child's driver's license revoked for a period of one year.
18 Within twenty-four hours of the dispositional judgment, the
19 court may send to the motor vehicle division of the taxation
20 and revenue department the order adjudicating delinquency.
21 Upon receipt of an order from the court adjudicating
22 delinquency, the director of the motor vehicle division of the
23 taxation and revenue department may revoke or deny the
24 delinquent's driver's license or driving privileges. Nothing
25 in this section may prohibit the delinquent from applying for a

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1 limited driving privilege pursuant to Section 66-5-35 NMSA 1978
2 or an ignition interlock license pursuant to the Ignition
3 Interlock Licensing Act, and nothing in this section precludes
4 the delinquent's participation in an appropriate educational,
5 counseling or rehabilitation program.

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

17 **SECTION 14.** Section 32A-2-23 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 52, as amended) is amended to read:

19 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
20 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

21 A. A judgment transferring legal custody of an
22 adjudicated delinquent child to an agency responsible for the
23 care and rehabilitation of delinquent children divests the
24 court of jurisdiction at the time of transfer of custody,
25 unless the transfer of legal custody is for a commitment not

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1 exceeding fifteen days pursuant to the provisions of Section
2 32A-2-19 NMSA 1978, in which case the court retains
3 jurisdiction.

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

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

15 D. Prior to the expiration of a short-term
16 commitment of one year, as provided for in Section 32A-2-19
17 NMSA 1978, the court may extend the judgment for up to one six-
18 month period if the court finds that the extension is necessary
19 to safeguard the welfare of the child or the public safety. If
20 a short-term commitment is extended, the mandatory ninety-day
21 [~~supervised release~~] parole, as required by Section 32A-2-19
22 NMSA 1978, shall be included in the extension. Notice and
23 hearing are required for any extension of a juvenile's
24 commitment.

25 E. Prior to the expiration of a long-term

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1 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
2 court may extend the judgment for additional periods of one
3 year until the child reaches the age of twenty-one if the court
4 finds that the extension is necessary to safeguard the welfare
5 of the child or the public safety. If a long-term commitment
6 is extended, the mandatory ninety-day [~~supervised release~~
7 parole], as required by Section 32A-2-19 NMSA 1978, shall be
8 included in the extension. Notice and hearing are required for
9 any extension of a juvenile's commitment.

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

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

25 H. A child may make a motion to modify a children's

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1 court or adult disposition within thirty days of the judge's
2 decision. If the court is of the opinion that the matter
3 should be reviewed, it may, upon notice to all necessary
4 parties, proceed to a hearing in the manner provided for
5 hearings on petitions alleging delinquency.

6 I. The department may seek a bench warrant from the
7 court when the child absconds from [~~supervised release~~]
8 parole."

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

11 "32A-2-32. CONFIDENTIALITY--RECORDS.--

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

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

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

- 7 (1) court personnel;
- 8 (2) the child's court appointed special
9 advocates;
- 10 (3) the child's attorney or guardian ad litem
11 representing the child in any matter;
- 12 (4) department personnel;
- 13 (5) corrections department personnel;
- 14 (6) law enforcement officials when the request
15 is related to the investigation of a crime;
- 16 (7) district attorneys or children's court
17 attorneys;
- 18 (8) a state government social services agency
19 in any state;
- 20 (9) those persons or entities of a child's
21 Indian tribe specifically authorized to inspect such records
22 pursuant to the federal Indian Child Welfare Act of 1978 or any
23 regulations promulgated under that act;
- 24 (10) tribal juvenile justice system and social
25 service representatives;

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1 (11) a foster parent, if the records are those
2 of a child currently placed with that foster parent or of a
3 child being considered for placement with that foster parent,
4 when the disclosure of the information is necessary for the
5 child's treatment or care and shall include only that
6 information necessary to provide for treatment and care of the
7 child;

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

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

16 (14) representatives of the protection and
17 advocacy system;

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

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

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1 and

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

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

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

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

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

19 "33-9A-4. APPLICATIONS--CRITERIA.--

20 A. Counties, municipalities or private
21 organizations, individually or jointly, may apply for grants
22 from the fund, including grants for counties or municipalities
23 to purchase contractual services from private organizations;
24 provided that:

25 (1) the application is for funding a program

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1 with priority use being for delinquents selected pursuant to
2 the provisions of Section 33-9A-5 NMSA 1978;

3 (2) the applicant certifies that it is willing
4 and able to operate the program according to standards provided
5 by the department, which may include the negotiation of a
6 contract between the delinquent and program staff with
7 provisions such as deductions from employment income for
8 applicable victim restitution, family support, room and board,
9 savings and weekly allowance. In addition to monetary
10 restitution, to the extent practical, or if monetary
11 restitution is not applicable, the contract may include
12 provision for community service restitution for a specific
13 number of hours;

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

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

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

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

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

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

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

21 **SECTION 17. REPEAL.**--Sections 32A-2-23.1, 32A-2-23.2 and
22 32A-7A-1 through 32A-7A-8 NMSA 1978 (being Laws 2009, Chapter
23 239, Sections 23, 24 and 58 through 65, as amended) are
24 repealed.

25 **SECTION 18. APPLICABILITY.**--The provisions of the

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1 Juvenile Parole Act apply to all children who, on July 1, 2019,
2 are on parole or eligible to be placed on parole with the same
3 effect as if that act had been in effect at the time they were
4 placed on parole or became eligible to be placed on parole.

5 SECTION 19. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2019.

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