

1 HOUSE BILL 134

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO DELINQUENCY; AMENDING THE DELINQUENCY ACT;
12 EXPANDING THE DEFINITIONS FOR "SERIOUS YOUTHFUL OFFENDER" AND
13 "YOUTHFUL OFFENDER"; PROVIDING FOR TRANSPORT OF A SERIOUS
14 YOUTHFUL OFFENDER TO A DISTRICT COURT WHEN ORDERED AND FOR THAT
15 OFFENDER TO BE SEGREGATED FROM ADULTS; REMOVING THE REQUIREMENT
16 THAT A CHILDREN'S COURT ATTORNEY CONSULT PROBATION SERVICES
17 BEFORE FILING A DELINQUENCY PETITION; REMOVING THE REQUIREMENT
18 THAT A DETENTION RISK ASSESSMENT BE COMPLETED BEFORE A CHILD IS
19 PLACED IN DETENTION; PROVIDING THAT A DETAINED CHILD BE
20 TRANSFERRED TO AN ADULT FACILITY IF THE CHILD REACHES EIGHTEEN
21 YEARS OF AGE; EXPANDING THE COURT'S DISCRETION TO HOLD A
22 DETENTION HEARING BY MEANS OF ELECTRONIC COMMUNICATION;
23 PROVIDING THAT A SERIOUS YOUTHFUL OFFENDER FOURTEEN YEARS OF
24 AGE OR OLDER MAY WAIVE THE SERIOUS YOUTHFUL OFFENDER'S RIGHT TO
25 AN AMENABILITY HEARING; PROVIDING THE CHILDREN, YOUTH AND

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

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

19 SECTION 1. Section 32A-2-2 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 31, as amended) is amended to read:

21 "32A-2-2. PURPOSE OF ACT.--The purpose of the Delinquency
22 Act is:

23 A. consistent with the protection of the public
24 interest, to remove from children committing delinquent acts
25 the adult consequences of criminal behavior, but to still hold

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1 children committing delinquent acts accountable for their
2 actions to the extent of the child's age, education, mental and
3 physical condition, background and all other relevant factors,
4 and to provide a program of supervision, care and
5 rehabilitation, including rehabilitative restitution by the
6 child to the victims of the child's delinquent act to the
7 extent that the child is reasonably able to do so;

8 B. to provide effective deterrents to acts of
9 juvenile delinquency, if deterrents are appropriate, including
10 an emphasis on community-based alternatives;

11 C. to strengthen families and to successfully
12 reintegrate children into homes and communities;

13 D. to foster and encourage collaboration between
14 government agencies and communities with regard to juvenile
15 justice policies and procedures;

16 E. to develop juvenile justice policies and
17 procedures that are supported by data;

18 F. to develop objective risk assessment instruments
19 to be used for admission to juvenile detention centers;

20 G. to encourage efficient processing of cases;

21 H. to develop community-based alternatives to
22 detention, if alternatives are appropriate;

23 I. to eliminate or reduce disparities based upon
24 race or gender;

25 J. to improve conditions of confinement in juvenile

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1 detention centers; and

2 K. to achieve reductions in the number of warrants
3 issued, the number of probation violations and the number of
4 youth awaiting placements."

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

7 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

8 A. "delinquent act" means an act committed by a
9 child that would be designated as a crime under the law if
10 committed by an adult, not including a violation of Section
11 30-9-2 NMSA 1978, including the following offenses:

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

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

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

18 (c) unlawful taking of a vehicle or
19 motor vehicle;

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

22 [~~(e) homicide by vehicle;~~

23 ~~(f)] (e) injuring or tampering with a
24 vehicle;~~

25 [~~(g)] (f) altering or changing of an~~

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1 engine number or other vehicle identification numbers;

2 [~~(h)~~] (g) altering or forging of a
3 driver's license or permit or any making of a fictitious
4 license or permit;

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

6 [~~(j)~~] (i) driving with a suspended or
7 revoked license; or

8 [~~(k)~~] (j) an offense punishable as a
9 felony;

10 (2) buying, attempting to buy, receiving,
11 possessing or being served any alcoholic liquor or being
12 present in a licensed liquor establishment, other than a
13 restaurant or a licensed retail liquor establishment, except in
14 the presence of the child's parent, guardian, custodian or
15 adult spouse. As used in this paragraph, "restaurant" means an
16 establishment where meals are prepared and served primarily for
17 on-premises consumption and that has a dining room, a kitchen
18 and the employees necessary for preparing, cooking and serving
19 meals. "Restaurant" does not include an establishment, as
20 defined in regulations promulgated by the director of the
21 special investigations unit of the New Mexico state police
22 division of the department of public safety, that serves only
23 hamburgers, sandwiches, salads and other fast foods;

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

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1 other chemical substance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 J. "youthful offender" means a delinquent child
21 subject to adult or juvenile sanctions who is ~~[(1)]~~ fourteen to
22 eighteen years of age ~~[at the time of the offense and who is~~
23 ~~adjudicated for at least one of the following offenses:~~

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

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

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

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

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

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

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

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

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

22 [~~(i)~~] (h) criminal sexual penetration,
23 as provided in Section 30-9-11 NMSA 1978;

24 [~~(j)~~] (i) robbery, as provided in
25 Section 30-16-2 NMSA 1978;

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1 [~~(k)~~] (j) aggravated burglary, as
2 provided in Section 30-16-4 NMSA 1978;

3 [~~(l)~~] (k) aggravated arson, as provided
4 in Section 30-17-6 NMSA 1978; [~~or~~

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

8 (m) unlawful possession of a handgun by
9 a person, as provided in Section 30-7-2.2 NMSA 1978;

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

12 (o) involuntary manslaughter, as
13 provided in Section 30-2-3 NMSA 1978; or

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

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

22 (a) the felony adjudications relied upon
23 as prior adjudications shall not have arisen out of the same
24 transaction or occurrence or series of events related in time
25 and location; and

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1 (b) successful completion of a consent
2 [decrees is] decree shall not be considered a prior
3 adjudication for the purposes of this paragraph [~~or~~
4 ~~(3) fourteen years of age and who is~~
5 ~~adjudicated for first degree murder, as provided in Section~~
6 ~~30-2-1 NMSA 1978]."~~

7 SECTION 3. Section 32A-2-4.1 NMSA 1978 (being Laws 2009,
8 Chapter 239, Section 12) is amended to read:

9 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
10 HOLDING FACILITIES--REPORTS.--

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

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

23 C. A serious youthful offender shall be transported
24 to a district court when the serious youthful offender's
25 appearance is ordered by the district court; provided, however,

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1 that the serious youthful offender shall be physically
2 segregated from adult offenders and segregated by sight and
3 sound from adult offenders to the fullest extent possible."

4 SECTION 4. Section 32A-2-8 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 37) is amended to read:

6 "32A-2-8. PETITION--AUTHORIZATION TO FILE.--A petition
7 alleging delinquency shall not be filed [~~in~~] to initiate
8 delinquency proceedings unless the children's court attorney
9 [~~after consulting with probation services~~] has determined and
10 endorsed upon the petition that the filing of the petition is
11 in the best interest of the public and the child. The
12 children's court attorney shall furnish legal services in
13 connection with the authorization and preparation of the
14 petition."

15 SECTION 5. Section 32A-2-11 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 40, as amended) is amended to read:

17 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

18 A. [~~Unless~~] Except as otherwise ordered by the
19 court pursuant to the provisions of the Delinquency Act, a
20 child taken into custody for an alleged delinquent act shall
21 not be placed in detention unless [~~a detention risk assessment~~
22 ~~instrument is completed and~~] a determination is made that the
23 child:

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

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

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

5 B. The criteria for detention provided for in this
6 section shall [~~govern~~] apply to the decisions of all persons
7 responsible for determining whether detention is appropriate
8 prior to a detention hearing. [~~based upon review of the~~
9 ~~detention risk assessment instrument.~~

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

17 SECTION 6. Section 32A-2-12 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 41, as amended) is amended to read:

19 "32A-2-12. PLACEMENT OR DETENTION.--

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

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

25 (2) a facility operated by a licensed child

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1 welfare services agency;

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

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

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

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

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

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

23 (2) any other suitable place, other than a
24 facility for the long-term care and rehabilitation of
25 delinquent children to which children adjudicated as delinquent

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1 children may be confined pursuant to Section 32A-2-19 NMSA
2 1978, designated by the court [~~and~~] that meets the standards
3 for detention facilities pursuant to the Children's Code and
4 federal law.

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

16 D. A child who has previously been incarcerated as
17 an adult [~~or a person eighteen years of age or older~~] shall not
18 be detained in a juvenile detention facility or a facility for
19 the long-term care and rehabilitation of delinquent children
20 but may be detained in a county jail. A child [~~shall not~~] who
21 reaches eighteen years of age while in a juvenile detention
22 facility shall be transferred to a county jail [~~solely on the~~
23 ~~basis of attaining the age of eighteen while detained in a~~
24 ~~juvenile detention facility~~]. In the event that a child is
25 detained in a jail, the director of the jail shall presume that

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1 the child is vulnerable to victimization by inmates within the
2 adult population because of the child's age, and shall take
3 measures to provide protection to the child. However,
4 provision of protective measures shall not result in
5 diminishing a child's civil rights to less than those existing
6 for an incarcerated adult.

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

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

13 (2) any other suitable place, other than a
14 facility for the long-term care and rehabilitation of
15 delinquent children to which children adjudicated as delinquent
16 children may be confined pursuant to Section 32A-2-19 NMSA
17 1978, designated by the court that meets the standards for
18 detention facilities pursuant to the Children's Code and
19 federal law; or

20 (3) a county jail, if a facility in Paragraph
21 (1) or (2) of this subsection is not appropriate. In the event
22 that a child is detained in a jail, the director of the jail
23 shall presume that the child is vulnerable to victimization by
24 inmates within the adult population because of the child's age
25 and shall take measures to provide protection to the child.

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

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

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

20 SECTION 7. Section 32A-2-13 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 42, as amended) is amended to read:

22 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED
23 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--
24 DISPOSITION.--

25 A. [~~When~~] If a child who has been taken into

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1 custody is not released but is detained:

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

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

19 (3) a detention hearing shall be held within
20 twenty-four hours, excluding Saturdays, Sundays and legal
21 holidays, from the time of filing the petition to determine
22 whether continued detention is required pursuant to the
23 criteria established by the Children's Code. At the court's
24 discretion or at the request of any party, the court may permit
25 a detention hearing to be conducted by appropriate means of

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1 electronic communication. ~~[provided that all hearings~~
2 ~~conducted by electronic means shall be recorded and preserved~~
3 ~~as part of the record, the child shall have legal~~
4 ~~representation present with the child, no plea shall be allowed~~
5 ~~to be taken via electronic communication and the court finds:~~

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

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

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

19 G.] B. Notice of the detention hearing, either oral
20 or written, stating the time, place and purpose of the hearing
21 shall be given by the person designated by the court to the
22 child's parents, guardian or custodian, if they can be found,
23 and to the child. The department shall be provided with
24 reasonable oral or written notification and an opportunity to
25 be heard. At any hearing held pursuant to this subsection, the

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1 department may appear as a party.

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

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

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

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

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

23 (3) impose any other condition deemed
24 reasonably necessary and consistent with the criteria for
25 detaining children established by the Children's Code,

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1 including a condition requiring that the child return to
2 custody as required.

3 ~~[G.]~~ F. An order releasing a child on any
4 conditions specified in this section may at any time be amended
5 to impose additional or different conditions of release or to
6 return the child to custody or detention for failure to conform
7 to the conditions originally imposed.

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

12 ~~[I.]~~ H. If the child is not released at the
13 detention hearing and a parent, guardian or custodian was not
14 notified of the hearing and did not appear or waive appearance
15 at the detention hearing, the judge ~~[or special master]~~ shall
16 rehear the detention matter without unnecessary delay upon the
17 filing of an affidavit stating the facts and a motion for
18 rehearing.

19 ~~[J.]~~ I. If a child is not released at the detention
20 hearing, the child's detention may be subsequently reviewed by
21 the court or the court may review the child's detention in
22 conjunction with a pretrial conference.

23 ~~[K.]~~ J. If a child is not placed within ten days
24 after a disposition hearing, the child may be released and
25 placed under appropriate supervision, so long as the child does

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1 not pose a flight risk or substantial risk of harm to the
2 child's self or others."

3 SECTION 8. Section 32A-2-14 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 43, as amended) is amended to read:

5 "32A-2-14. BASIC RIGHTS.--

6 A. In addition to the rights provided by the
7 Delinquency Act, a child subject to the provisions of the
8 Delinquency Act is entitled to the same basic rights as an
9 adult, [~~except as otherwise provided in the Children's Code,~~
10 ~~including rights provided by the Delinquency Act~~] except as
11 otherwise provided in the Children's Code.

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

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

25 D. Before any statement or confession may be

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

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

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

10 (2) whether the respondent is in custody;

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

13 (4) the length of questioning and
14 circumstances under which the respondent was questioned;

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

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

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

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

24 F. Notwithstanding any other provision to the
25 contrary, no confessions, statements or admissions may be

1 introduced against a child under the age of thirteen years on
2 the allegations of the petition. There is a rebuttable
3 presumption that any confessions, statements or admissions made
4 by a child thirteen or fourteen years old to a person in a
5 position of authority are inadmissible.

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

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

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

22 J. The court, at any stage of the proceeding on a
23 petition under the Children's Code, may appoint a guardian ad
24 litem for a child who is a party if the child has no parent,
25 guardian or custodian appearing on behalf of the child or if

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1 the parent's, guardian's or custodian's interests conflict with
2 those of the child. A party to the proceeding or an employee
3 or representative of a party shall not be appointed as guardian
4 ad litem.

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

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

16 M. A serious youthful offender who is detained
17 prior to trial in ~~[an adult]~~ a facility has a right to ~~[bail]~~ a
18 hearing to consider or address conditions of release as
19 provided ~~[under SCRA 1986, Rule 5-401]~~ by supreme court rule.
20 A child held in a juvenile facility designated as a place of
21 detention prior to adjudication ~~[does not have a right to bail~~
22 ~~but]~~ may be released pursuant to the provisions of the
23 Delinquency Act.

24 N. A child fourteen years of age or older who is
25 adjudicated as a youthful offender may waive the child's right

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1 to an amenability hearing and instead be sentenced as an adult.

2 [N-] O. The provisions of the Delinquency Act shall
3 not be interpreted to limit the right of a child to petition a
4 court for a writ of habeas corpus."

5 SECTION 9. Section 32A-2-17 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 46, as amended) is amended to read:

7 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
8 EXAMINATIONS.--

9 A. After a petition has been filed and either a
10 finding with respect to the allegations of the petition has
11 been made or a notice of intent to admit the allegations of the
12 petition has been filed, the court may direct that a
13 predisposition study and report to the court be made in writing
14 by the department or an appropriate agency designated by the
15 court concerning the child, the family of the child, the
16 environment of the child and any other matters relevant to the
17 need for treatment or to appropriate disposition of the case.

18 If directed by the court, the following predisposition reports
19 shall be provided to the parties and the court five days before
20 actual disposition or sentencing:

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

24 (2) the department shall prepare a
25 predisposition report for a serious youthful offender who is

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1 convicted of an offense other than first degree murder;

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

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

8 (b) the court makes the findings
9 necessary to impose an adult sentence pursuant to Section
10 32A-2-20 NMSA 1978, the adult probation and parole division of
11 the corrections department shall prepare a subsequent
12 predisposition report; and

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

16 B. ~~[Where]~~ If there are indications that the child
17 may have a mental disorder or developmental disability, the
18 court, on motion by the children's court attorney or that of
19 counsel for the child, may order the child to be examined at a
20 suitable place by a physician or psychiatrist, a licensed
21 psychologist, a licensed professional clinical counselor or a
22 licensed independent social worker prior to a hearing on the
23 merits of the petition. An examination made prior to the
24 hearing or as a part of the predisposition study and report
25 shall be conducted on an outpatient basis, unless the court

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1 finds that placement in a hospital or other appropriate
2 facility is necessary.

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

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

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

24 **SECTION 10.** Section 32A-2-18 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 47, as amended) is amended to read:

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1 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--
2 NONADMISSIBILITY.--

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

20 B. If a judgment resulting from a youthful offender
21 or serious youthful offender proceeding under the Delinquency
22 Act results in an adult sentence, a record of the judgment
23 shall be admissible in any other case or proceeding in any
24 other court involving the youthful offender or serious youthful
25 offender.

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1 C. If a judgment on a proceeding under the
2 Delinquency Act results in an adult sentence, the determination
3 of guilt at trial becomes a conviction for purposes of the
4 Criminal Code."

5 SECTION 11. Section 32A-2-19 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 48, as amended) is amended to read:

7 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
8 OFFENDER.--

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

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

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

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

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

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

25 (6) whether there exists a relative of the

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1 child or other individual who, after study by the department,
2 is found to be qualified to receive and care for the child;

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

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

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

10 (1) transfer legal custody to the department
11 or an agency responsible for the care and rehabilitation of
12 delinquent children, which shall receive the child at a
13 facility designated by the secretary of the department as a
14 juvenile reception facility. The department shall thereafter
15 determine the appropriate placement, supervision and
16 rehabilitation program for the child. The judge may include
17 recommendations for placement of the child. Commitments are
18 subject to limitations and modifications set forth in Section
19 32A-2-23 NMSA 1978. The court has discretion to consider the
20 child's unique circumstances and history when imposing
21 probation or commitment and may impose probation or commitment
22 for any period up to the date the child reaches twenty-five
23 years of age; [~~The types of commitments include:~~

24 ~~(a) a short-term commitment of one year~~
25 ~~in a facility for the care and rehabilitation of adjudicated~~

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

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

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

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

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

24 ~~(3)]~~ (2) place the child in a local detention
25 facility that has been certified in accordance with the

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

8 [~~(4)~~] (3) if a child is found to be delinquent
9 solely on the basis of Paragraph (2), (3) or (4) of Subsection
10 A of Section 32A-2-3 NMSA 1978, the court may make any
11 disposition provided by this section and may enter its judgment
12 placing the child on probation and, as a condition of
13 probation, transfer custody of the child to the department for
14 a period not to exceed six months without further order of the
15 court; provided that this transfer shall not be made unless the
16 court first determines that the department is able to provide
17 or contract for adequate and appropriate treatment for the
18 child and that the treatment is likely to be beneficial.

19 C. [~~When~~] If the child is an Indian child, the
20 Indian child's cultural needs shall be considered in the
21 dispositional judgment and reasonable access to cultural
22 practices and traditional treatment shall be provided.

23 D. A child found to be delinquent shall not be
24 committed or transferred to a penal institution or other
25 facility used for the execution of sentences of persons

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1 convicted of crimes, unless the child reaches eighteen years of
2 age.

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

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

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

19 H. In addition to any other disposition pursuant to
20 this section or any other penalty provided by law, if a child
21 who is fifteen years of age or older is adjudicated delinquent
22 on the basis of Paragraph (2), (3) or (4) of Subsection A of
23 Section 32A-2-3 NMSA 1978, the child's driving privileges may
24 be denied or the child's driver's license may be revoked for a
25 period of ninety days. For a second or a subsequent

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1 adjudication, the child's driving privileges may be denied or
2 the child's driver's license revoked for a period of one year.
3 Within twenty-four hours of the dispositional judgment, the
4 court may send to the motor vehicle division of the taxation
5 and revenue department the order adjudicating delinquency.
6 Upon receipt of an order from the court adjudicating
7 delinquency, the director of the motor vehicle division of the
8 taxation and revenue department may revoke or deny the
9 delinquent's driver's license or driving privileges. Nothing
10 in this section may prohibit the delinquent from applying for a
11 limited driving privilege pursuant to Section 66-5-35 NMSA 1978
12 or an ignition interlock license pursuant to the Ignition
13 Interlock Licensing Act, and nothing in this section precludes
14 the delinquent's participation in an appropriate educational,
15 counseling or rehabilitation program.

16 I. In addition to any other disposition pursuant to
17 this section or any other penalty provided by law, when a child
18 is adjudicated delinquent on the basis of Paragraph (6) of
19 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
20 perform the mandatory community service set forth in Section
21 30-15-1.1 NMSA 1978. When a child fails to completely perform
22 the mandatory community service, the name and address of the
23 child's parent or legal guardian shall be published in a
24 newspaper of general circulation, accompanied by a notice that
25 the parent or legal guardian is the parent or legal guardian of

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1 a child adjudicated delinquent for committing graffiti."

2 SECTION 12. Section 32A-2-20 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 49, as amended) is amended to read:

4 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER AND SERIOUS
5 YOUTHFUL OFFENDER.--

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

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

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

24 (2) the child is not eligible for commitment
25 to an institution for children with developmental disabilities

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1 or mental disorders.

2 C. In making the findings set forth in Subsection B
3 of this section, the judge shall consider the following
4 factors, but may not weigh one factor more heavily than
5 another:

6 (1) the seriousness of the alleged offense;

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

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

11 (4) whether the alleged offense was against
12 persons or against property [~~greater weight being given to~~
13 ~~offenses against persons, especially if personal injury~~
14 ~~resulted~~];

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

19 (6) the record and previous history of the
20 child;

21 (7) the prospects for adequate protection of
22 the public and the likelihood of reasonable rehabilitation of
23 the child by the use of procedures, services and facilities
24 currently available; and

25 (8) any other relevant factor; provided that

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1 factor is stated on the record.

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

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

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

23 G. A child fourteen years of age or older who was
24 charged [~~with first degree murder~~] as a serious youthful
25 offender but [~~not convicted of first degree murder and~~] was

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1 found to have committed a youthful offender offense as set
2 forth in Subsection J of Section 32A-2-3 NMSA 1978 is subject
3 to the dispositions set forth in this section.

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

14 SECTION 13. Section 32A-2-22 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 51, as amended) is amended to read:

16 "32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT
17 JUDGMENT--CONSENT DECREE--DISPOSITION.--

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

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

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

13 C. A consent decree shall remain in force for six
14 months unless the child is discharged sooner by probation
15 services. Prior to the expiration of the six-month period and
16 upon the application of probation services or any other agency
17 supervising the child under a consent decree, the court may
18 extend the decree for an additional six months in the absence
19 of objection to extension by the child. If the child objects
20 to the extension, the court shall hold a hearing and make a
21 determination on the issue of extension; provided that a
22 consent decree shall not be available to a child charged as a
23 youthful offender or serious youthful offender.

24 D. If either prior to discharge by probation
25 services or expiration of the consent decree the child

1 allegedly fails to fulfill the terms of the decree, the
2 children's court attorney may file a petition to revoke the
3 consent decree. Proceedings on the petition shall be conducted
4 in the same manner as proceedings on petitions to revoke
5 probation. If the child is found to have violated the terms of
6 the consent decree, the court may:

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

8 or

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

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

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

24 (1) a consent decree is denied and the
25 allegations in the petition remain to be decided in a hearing

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1 where the child denies the allegations; or

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

4 G. If a consent decree has been entered pursuant to
5 the filing of a delinquency petition based on Paragraph (2),
6 (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978 for a
7 child who is fifteen years of age or older, a condition of the
8 consent decree agreement may be the denial of the child's
9 driving privileges or the revocation of the child's driver's
10 license for a period of ninety days. For the second or
11 subsequent adjudication, the child's driving privileges may be
12 denied or the child's driver's license revoked for a period of
13 one year. Within twenty-four hours of the entry by the court
14 of a decree consenting to the revocation or denial of the
15 child's driver's license or driving privileges, the court shall
16 send the decree to the motor vehicle division of the taxation
17 and revenue department. Upon receipt of the decree from the
18 court consenting to the denial or revocation of the child's
19 driving privileges or driver's license, the director of the
20 motor vehicle division of the taxation and revenue department
21 shall revoke or deny the delinquent child's driver's license or
22 driving privileges. Nothing in this section shall prohibit the
23 delinquent child from applying for a limited driving privilege
24 pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock
25 license pursuant to the Ignition Interlock Licensing Act, and

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1 nothing in this section precludes the delinquent child's
2 participation in an appropriate educational, counseling or
3 rehabilitation program."

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

6 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
7 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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

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

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

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1 releasing authority.

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

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

21 ~~F.]~~ D. Prior to the expiration of a judgment of
22 probation or commitment, the court may exercise discretion and
23 extend the judgment, based on the child's unique circumstances
24 and history, for an additional period [~~of one year until~~] up to
25 the date the child reaches [~~the age of twenty-one~~] twenty-five

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1 years of age if the court finds that the extension is necessary
2 to protect the community or to safeguard the welfare of the
3 child.

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

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

21 ~~[I.]~~ G. The department may seek a bench warrant
22 from the court when the child absconds from supervised
23 release."

24 **SECTION 15.** Section 32A-2-23.1 NMSA 1978 (being Laws
25 2009, Chapter 239, Section 23) is amended to read:

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1 "32A-2-23.1. RELEASE ELIGIBILITY.--

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

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

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

22 D.] B. In the event release for a child is denied
23 by the department after release is recommended for the child by
24 the juvenile public safety advisory board, or release is
25 approved by the department after the board has recommended that

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

16 ~~[E-]~~ C. The secretary of children, youth and
17 families or the secretary's designee may review the case of any
18 child upon the child's or the juvenile public safety advisory
19 board's reasonable request at any time after release is
20 denied."

21 **SECTION 16.** Section 32A-2-24 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 53, as amended) is amended to read:

23 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

24 A. A child on probation incident to an adjudication
25 as a delinquent child who violates a term of the probation may

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1 be proceeded against in a probation revocation proceeding. A
2 proceeding to revoke probation shall be begun by filing in the
3 original proceeding a petition styled as a "petition to revoke
4 probation". Petitions to revoke probation shall be screened,
5 reviewed and prepared in the same manner and shall contain the
6 same information as petitions alleging delinquency. Procedures
7 of the Delinquency Act regarding taking into custody and
8 detention shall apply. The petition shall state the terms of
9 probation alleged to have been violated and the factual basis
10 for these allegations.

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

21 SECTION 17. Section 32A-2-26 NMSA 1978 (being Laws 1993,
22 Chapter 77, Section 55, as amended) is amended to read:

23 "32A-2-26. SEALING OF RECORDS.--

24 A. On motion by or on behalf of a person who has
25 been the subject of a delinquency petition or on the court's

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1 own motion, the court shall vacate its findings, orders and
2 judgments on the petition and order the legal and social files
3 and records of the court, probation services and any other
4 agency in the case sealed. If requested in the motion, the
5 court shall also order law enforcement files and records
6 sealed. An order sealing records and files shall be entered if
7 the court finds that:

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

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

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

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

22 (1) the children's court attorney;

23 (2) the authority granting the release;

24 (3) the law enforcement officer, department
25 and central depository having custody of the law enforcement

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1 files and records; and

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

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

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

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

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

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

25 F. A court may set aside a sealing order for the

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

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

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

21 I. Youthful offender records sealed pursuant to
22 Subsection H of this section may be unsealed by the court along
23 with any evidence given in a hearing in court for a youthful
24 offender for the purpose of considering the setting of bail or
25 other conditions of release of a person charged with a felony,

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1 whether charged as an adult or juvenile.

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

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

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

21 SECTION 18. REPEAL.--Section 32A-2-32.1 NMSA 1978 (being
22 Laws 2007, Chapter 96, Section 1) is repealed.

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25