

AN ACT

RELATING TO JUVENILE JUSTICE; ADDING TO THE COURT'S AUTHORITY WHEN ENTERING A DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER; EXTENDING THE JUDGMENT FOR JUVENILES ADJUDICATED TO A SHORT-TERM COMMITMENT; ESTABLISHING MINIMUM PAROLE PERIODS; REDEFINING CONFIDENTIAL RECORDS.

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

Section 1. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The

judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year;

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

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

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

(3) place the child on probation under those conditions and limitations as the court may prescribe provided that a condition or limitation shall not violate the provisions of Paragraph (4) of this subsection;

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

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

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

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

D. No child found to be delinquent shall be committed or transferred to a penal institution or other

facility used for the execution of sentences of persons convicted of crimes.

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

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

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle

division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

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

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

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

A. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the

court of jurisdiction at the time of transfer of custody, unless the transfer of legal custody is for a commitment not exceeding fifteen days pursuant to the provisions of Section 32A-2-19 NMSA 1978, in which case the court retains jurisdiction, and:

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act has the exclusive power to parole or release the child;

(2) the supervision of a child after release under Paragraph (1) of this subsection may be conducted by the juvenile parole board in conjunction with the department or any other suitable state agency or under any contractual arrangements the juvenile parole board deems appropriate; and

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

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

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

supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

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

E. Prior to the expiration of a short- or long-term commitment, as provided in Section 32A-2-19 NMSA 1978, the child shall be released on parole for a minimum period of ninety days to further the child's reintegration into the community.

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

G. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter

should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

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

Section 3. Section 32A-2-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 61) is amended to read:

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

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

B. The records described in Subsection A of this

section shall be open to inspection only by:

- (1) court personnel;
- (2) court appointed special advocates;
- (3) the child's guardian ad litem;
- (4) department personnel;
- (5) any local substitute care review board

or any agency contracted to implement local substitute care review boards;

- (6) corrections department personnel;
- (7) law enforcement officials;
- (8) district attorneys;
- (9) any state government social services

agency in any state;

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

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

(12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent when the records concern the social, medical, psychological or educational needs of the child;

- (13) school personnel involved with the

child if the records concern the child's social or educational needs;

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

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

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Upon satisfactory verification of his identity, the parent, guardian or legal custodian of a child shall, in person, through counsel or through his authorized agent, be entitled to review and obtain a copy of all law enforcement records pertaining to the child.

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