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HOUSE BILL 439

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rob Burpo

AN ACT

**RELATING TO JUVENILE JUSTICE; REQUIRING DISPOSITIONAL HEARINGS
AT LEAST ONCE EVERY SIX MONTHS THAT A DELINQUENT CHILD IS
SUBJECT TO THE COURT'S JURISDICTION; AMENDING A SECTION OF THE
CHILDREN'S CODE.**

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**

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1 person who may significantly affect the child's best
2 interests;

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

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

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

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

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

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

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

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

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

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1 juvenile probation and parole officer shall initiate a
2 dispositional hearing for the child at least once every six
3 months that the child remains subject to the jurisdiction of
4 the court. Prior to each dispositional hearing, the child's
5 juvenile probation and parole officer shall prepare a
6 predisposition report pursuant to the provisions of Section
7 32A-4-21 NMSA 1978;

8 (2) transfer legal custody to the department,
9 an agency responsible for the care and rehabilitation of
10 delinquent children, which shall receive the child at a
11 facility designated by the secretary of the department as a
12 juvenile reception facility. The department shall thereafter
13 determine the appropriate placement, supervision and
14 rehabilitation program for the child. The judge may include
15 recommendations for placement of the child. Commitments are
16 subject to limitations and modifications set forth in Section
17 32A-2-23 NMSA 1978. The types of commitments include:

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

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

23 (c) if the child is a delinquent
24 offender who committed one of the criminal offenses set forth
25 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to

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1 age twenty-one, unless sooner discharged; or

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

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

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

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

19 (6) if a child is found to be delinquent
20 solely on the basis of Paragraph (2), (4) or (5) of Subsection
21 A of Section 32A-2-3 NMSA 1978, the court may make any
22 disposition provided by this section and may enter its
23 judgment placing the child on probation and, as a condition of
24 probation, transfer custody of the child to the department for
25 a period not to exceed six months without further order of the

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1 court; provided that this transfer shall not be made unless
2 the court first determines that the department is able to
3 provide or contract for adequate and appropriate treatment for
4 the child and that the treatment is likely to be beneficial.

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

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

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

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

22 G. In addition to any other disposition pursuant
23 to this section or any other penalty provided by law, if a
24 child fifteen years of age or older is adjudicated delinquent
25 on the basis of Paragraph (2), (4) or (5) of Subsection A of

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1 Section 32A-2-3 NMSA 1978, the child's driving privileges may
2 be denied or the child's driver's license may be revoked for a
3 period of ninety days. For a second or a subsequent
4 adjudication, the child's driving privileges may be denied or
5 the child's driver's license revoked for a period of one year.
6 Within twenty-four hours of the dispositional judgment, the
7 court may send to the motor vehicle division of the taxation
8 and revenue department the order adjudicating delinquency.
9 Upon receipt of an order from the court adjudicating
10 delinquency, the director of the motor vehicle division of the
11 taxation and revenue department may revoke or deny the
12 delinquent's driver's license or driving privileges. Nothing
13 in this section may prohibit the delinquent from applying for
14 a limited driving privilege pursuant to Section 66-5-35 NMSA
15 1978, and nothing in this section precludes the delinquent's
16 participation in an appropriate educational, counseling or
17 rehabilitation program.

18 H. In addition to any other disposition pursuant
19 to this section or any other penalty provided by law, when a
20 child is adjudicated delinquent on the basis of Paragraph (7)
21 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall
22 perform the mandatory community service set forth in Section
23 30-15-1.1 NMSA 1978. When a child fails to completely perform
24 the mandatory community service, the name and address of the
25 child's parent or legal guardian shall be published in a

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1 newspaper of general circulation, accompanied by a notice that
2 he is the parent or legal guardian of a child adjudicated
3 delinquent for committing graffiti."

4 Section 2. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 1999.

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