

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 165

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

AN ACT

RELATING TO DELINQUENCY; REQUIRING THE CHILDREN, YOUTH AND
FAMILIES DEPARTMENT TO IMPRISON A CONVICTED SERIOUS YOUTHFUL
OFFENDER UNTIL THE OFFENDER IS TRANSFERRED TO A CORRECTIONS
FACILITY UPON REACHING TWENTY-ONE YEARS OF AGE AND PROVIDING
EXCEPTIONS; AMENDING THE DELINQUENCY ACT; CHANGING THE
DEFINITIONS FOR "SERIOUS YOUTHFUL OFFENDER" AND "YOUTHFUL
OFFENDER"; PROVIDING THAT A CHILDREN'S COURT ATTORNEY MAY REFER
A CHILD BACK TO JUVENILE PROBATION SERVICES IF A DELINQUENCY
PETITION IS NOT FILED AGAINST THE CHILD; REQUIRING VALIDATION
OF AND REPORTING ON THE DETENTION RISK ASSESSMENT INSTRUMENT;
EXTENDING THE TERMS OF COMMITMENT FOR DELINQUENT OFFENDERS;
EXTENDING THE TERMS OF COMMITMENT FOR YOUTHFUL OFFENDERS
SUBJECT TO JUVENILE SANCTIONS; REQUIRING THE CHILDREN, YOUTH
AND FAMILIES DEPARTMENT TO IMPRISON A YOUTHFUL OFFENDER GIVEN
AN ADULT SENTENCE UNTIL THE OFFENDER IS TRANSFERRED TO A

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underscoring material = new
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1 CORRECTIONS FACILITY UPON REACHING TWENTY-ONE YEARS OF AGE AND
2 PROVIDING EXCEPTIONS; REQUIRING TOLLING OF A SUPERVISED RELEASE
3 TERM IF A CHILD ABSCONDS FROM SUPERVISED RELEASE; AMENDING THE
4 JUVENILE COMMUNITY CORRECTIONS ACT; DEFINING NEW TERMS;
5 CLARIFYING THAT QUALIFIED GRANTEEES MAY PROVIDE SERVICES TO
6 PERSONS OTHER THAN PERSONS ADJUDICATED PURSUANT TO THE
7 DELINQUENCY ACT; PROVIDING THAT QUALIFIED GRANTEEES SHALL
8 PRIORITIZE SERVICES FOR JUSTICE-INVOLVED YOUTH; REQUIRING THAT
9 A GRANTEE'S COMMUNITY CORRECTIONS PROGRAM BE EVIDENCE- OR
10 RESEARCH-BASED AND INCORPORATE BEST PRACTICES IN RISK
11 REDUCTION; MAKING TECHNICAL AND CONFORMING AMENDMENTS.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 1, as amended) is amended to read:

16 "31-18-15.2. DEFINITIONS.--As used in the Criminal
17 Sentencing Act:

18 A. "serious youthful offender" means [~~an individual~~
19 ~~fifteen to eighteen years of age who is charged with and~~
20 ~~indicted or bound over for trial for first degree murder; and]~~
21 a person alleged to be a serious youthful offender in
22 accordance with the Delinquency Act;

23 B. "serious youthful offender offense" means:

24 (1) murder in the first degree, as provided in
25 Section 30-2-1 NMSA 1978;

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

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

7 [B.] C. "youthful offender" means ~~[a delinquent~~
8 ~~child subject to adult or juvenile sanctions who is:~~

9 ~~(1) fourteen to eighteen years of age at the~~
10 ~~time of the offense and who is adjudicated for at least one of~~
11 ~~the following offenses:~~

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

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

16 ~~(c) kidnapping, as provided in Section~~
17 ~~30-4-1 NMSA 1978;~~

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

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

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

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1 ~~(g) dangerous use of explosives, as~~
2 ~~provided in Section 30-7-5 NMSA 1978;~~

3 ~~(h) criminal sexual penetration, as~~
4 ~~provided in Section 30-9-11 NMSA 1978;~~

5 ~~(i) robbery, as provided in Section~~
6 ~~30-16-2 NMSA 1978;~~

7 ~~(j) aggravated burglary, as provided in~~
8 ~~Section 30-16-4 NMSA 1978;~~

9 ~~(k) aggravated arson, as provided in~~
10 ~~Section 30-17-6 NMSA 1978; or~~

11 ~~(l) abuse of a child that results in~~
12 ~~great bodily harm or death to the child, as provided in Section~~
13 ~~30-6-1 NMSA 1978;~~

14 ~~(2) fourteen to eighteen years of age at the~~
15 ~~time of the offense and adjudicated for any felony offense and~~
16 ~~who has had three prior, separate felony adjudications within a~~
17 ~~three-year time period immediately preceding the instant~~
18 ~~offense. The felony adjudications relied upon as prior~~
19 ~~adjudications shall not have arisen out of the same transaction~~
20 ~~or occurrence or series of events related in time and location.~~
21 ~~Successful completion of consent decrees is not considered a~~
22 ~~prior adjudication for the purposes of this paragraph; or~~

23 ~~(3) fourteen years of age and adjudicated for~~
24 ~~first degree murder, as provided in Section 30-2-1 NMSA 1978] a~~
25 ~~person adjudicated as a youthful offender in accordance with~~

1 the Delinquency Act."

2 SECTION 2. Section 31-18-15.3 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 3, as amended) is amended to read:

4 "31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

5 A. [~~An alleged~~] A serious youthful offender may be
6 detained in any of the following places, prior to arraignment
7 in metropolitan, magistrate or district court:

8 (1) a detention facility for delinquent
9 children, licensed by the children, youth and families
10 department;

11 (2) any other suitable place, other than a
12 facility for the care and rehabilitation of delinquent
13 children, that meets standards for detention facilities, as set
14 forth in the Children's Code and federal law; or

15 (3) a county jail, only if a facility
16 described in Paragraph (1) or (2) of this subsection is not
17 appropriate.

18 B. [~~When an alleged~~] If a serious youthful offender
19 is detained in a juvenile detention facility prior to trial,
20 the time spent in the juvenile detention facility shall count
21 toward completion of any sentence imposed.

22 C. At arraignment, [~~when~~] if a metropolitan or
23 district court judge or a magistrate determines that an alleged
24 serious youthful offender should remain in custody, the
25 [~~alleged~~] serious youthful offender may be detained in an adult

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1 or juvenile detention facility, subject to the facility's
2 accreditation and the provisions of applicable federal law.

3 D. [~~When an alleged~~] If a serious youthful offender
4 is [~~found guilty of first degree murder~~] convicted of a serious
5 youthful offender offense, the court shall sentence the
6 offender pursuant to the provisions of the Criminal Sentencing
7 Act; provided that a serious youthful offender given an adult
8 sentence shall not be sentenced to life imprisonment without
9 the possibility of release or parole. The court may sentence
10 the offender to less than, but not exceeding, the mandatory
11 term for an adult. The determination of guilt becomes a
12 conviction for purposes of the Criminal Sentencing Act.

13 E. Prior to the sentencing of [~~an alleged~~] a
14 serious youthful offender who is convicted of [~~first degree~~
15 ~~murder~~] a serious youthful offender offense, adult probation
16 services shall prepare a presentence report and submit the
17 report to the court and the parties five days prior to the
18 sentencing hearing.

19 F. [~~When the alleged~~] If a serious youthful
20 offender is convicted of a lesser offense than [~~first degree~~
21 ~~murder~~] a serious youthful offender offense, the court shall
22 provide for disposition of the offender pursuant to the
23 provisions of Section 32A-2-19 or 32A-2-20 NMSA 1978. [~~When~~]
24 If an offender is adjudicated as a delinquent child, the
25 [~~conviction~~] adjudication shall not be used as a conviction for

1 purposes of the Criminal Sentencing Act.

2 G. A serious youthful offender who is convicted of
3 a serious youthful offender offense and sentenced to
4 imprisonment shall be imprisoned at a facility for the care and
5 rehabilitation of adjudicated delinquent children operated by
6 the children, youth and families department until the serious
7 youthful offender reaches twenty-one years of age, at which
8 time the serious youthful offender shall be transferred to a
9 corrections facility operated by the corrections department for
10 the remainder of the sentence; provided that a serious youthful
11 offender who is eighteen years of age or older may be
12 transferred to a corrections facility before the age of twenty-
13 one if the serious youthful offender commits a violent offense
14 while imprisoned at the facility for the care and
15 rehabilitation of adjudicated delinquent children and the
16 children, youth and families department has conducted a review
17 of the commission of the violent offense, held a hearing with
18 sufficient procedural safeguards and determined that the:

19 (1) serious youthful offender poses a
20 substantial and continuing danger to the children at the
21 facility for the care and rehabilitation of adjudicated
22 delinquent children; and

23 (2) children, youth and families department
24 has no alternative safe placements for or safety interventions
25 to provide the serious youthful offender.

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1 H. The children, youth and families department and
2 the corrections department shall promulgate rules for the
3 transfer of a serious youthful offender to a corrections
4 facility in accordance with Subsection G of this section."

5 SECTION 3. 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) injuring or tampering with a
24 vehicle;

25 (g) altering or changing of an engine

1 number or other vehicle identification numbers;

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

5 (i) reckless driving;

6 (j) driving with a suspended or revoked
7 license; or

8 (k) an offense punishable as a felony;

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

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

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

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

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

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

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

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

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

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

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

25 F. "misdemeanor" means an act that would be a

1 misdemeanor or petty misdemeanor if committed by an adult;

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

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

24 (1) murder in the first degree, as provided in
25 Section 30-2-1 NMSA 1978;

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

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

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

16 J. "youthful offender" means a delinquent child
17 subject to adult or juvenile sanctions who is:

18 (1) fourteen to eighteen years of age at the
19 time of the offense and who is adjudicated for at least one of
20 the following offenses:

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

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

25 ~~(c)]~~ (b) kidnapping, as provided in

1 Section 30-4-1 NMSA 1978;

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

4 ~~[(e)]~~ (d) aggravated battery against a
5 household member, as provided in Subsection C of Section
6 30-3-16 NMSA 1978;

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

10 ~~[(g)]~~ (f) shooting at a dwelling or
11 occupied building that does not result in great bodily harm to
12 another person or shooting at or from a motor vehicle that does
13 not result in great bodily harm to another person, as provided
14 in Section 30-3-8 NMSA 1978;

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

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

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

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

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

25 ~~[(m)]~~ (l) abuse of a child that results

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1 in great bodily harm or death to the child, as provided in
2 Section 30-6-1 NMSA 1978; or

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

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

15 (3) fourteen years of age and who is
16 adjudicated for [~~first degree murder, as provided in Section~~
17 ~~30-2-1 NMSA 1978~~]:

18 (a) murder in the first degree, as
19 provided in Section 30-2-1 NMSA 1978;

20 (b) murder in the second degree, as
21 provided in Section 30-2-1 NMSA 1978; or

22 (c) shooting at a dwelling or occupied
23 building that results in great bodily harm to another person or
24 shooting at or from a motor vehicle that results in great
25 bodily harm to another person, as provided in Section 30-3-8

1 NMSA 1978."

2 SECTION 4. Section 32A-2-7 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 36, as amended) is amended to read:

4 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
5 NOTICE--TIME WAIVER.--

6 A. Complaints alleging delinquency shall be
7 referred to probation services, which shall conduct a
8 preliminary inquiry to determine the best interests of the
9 child and of the public with regard to any action to be taken.

10 B. During the preliminary inquiry on a delinquency
11 complaint, the matter may be referred to another appropriate
12 agency and conferences may be conducted for the purpose of
13 effecting adjustments or agreements that will obviate the
14 necessity for filing a petition. At the commencement of the
15 preliminary inquiry, the parties shall be advised of their
16 basic rights pursuant to Section 32A-2-14 NMSA 1978, and no
17 party may be compelled to appear at any conference, to produce
18 any papers or to visit any place. The child shall be informed
19 of the child's right to remain silent. The preliminary inquiry
20 shall be completed within the time limits set forth in the
21 Children's Court Rules.

22 C. Prior to a preliminary inquiry being conducted
23 with a child who is detained, the child's parent, guardian or
24 custodian or the child's attorney shall be given reasonable
25 notice by the juvenile probation and parole officer and an

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1 opportunity to be present at the preliminary inquiry. If a
2 child is not detained, the preliminary inquiry shall be
3 conducted within thirty days of receipt of the referral from
4 law enforcement. The thirty-day time period may be extended
5 upon a determination by the department that an extension is
6 necessary to conduct a thorough preliminary inquiry and that
7 the extension is not prejudicial to the best interests of the
8 child.

9 D. When a child is in detention or custody and the
10 children's court attorney does not file a petition within the
11 time limits authorized by the Children's Court Rules, the child
12 shall be released immediately. If a child is not detained and
13 a determination is made to file a petition, the petition shall
14 be filed within sixty days of completion of the preliminary
15 inquiry, unless a motion is granted to extend the time limit
16 for good cause shown. If a child is not in custody or
17 detention, a petition shall not be dismissed for failure to
18 comply with the time limit set forth in this subsection unless
19 there is a showing of prejudice to the child.

20 E. After completion of the preliminary inquiry on a
21 delinquency complaint involving a misdemeanor, probation
22 services may notify the children's court attorney and recommend
23 an appropriate disposition for the case. If the child has been
24 referred for three or more prior misdemeanors within two years
25 of the instant offense, probation services shall notify the

1 children's court attorney and recommend an appropriate
2 disposition for the case.

3 F. Probation services shall notify the children's
4 court attorney of the receipt of any complaint involving an act
5 that constitutes a felony under the applicable criminal law.
6 Probation services shall also recommend a disposition to the
7 children's court attorney.

8 G. The child, through counsel, and the children's
9 court attorney may agree, without judicial approval, to a
10 waiver of time limitations imposed after a petition is filed.
11 A time waiver defers adjudication of the charges. The
12 children's court attorney may place restrictions on a child's
13 behavior as a condition of a time waiver. If the child
14 completes the agreed upon conditions and no new charges are
15 filed against the child, the pending petition shall be
16 dismissed. If the children's court attorney files a new
17 petition against the child, the children's court attorney may
18 proceed on both the original petition and the new charges. The
19 department shall become a party if probation services are
20 requested as a condition of the time waiver.

21 H. After a preliminary inquiry, if the children's
22 court attorney reviews a case and decides not to file a
23 delinquency petition, the children's court attorney may refer
24 the case back to juvenile probation services and recommend an
25 appropriate disposition."

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

3 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

4 A. Unless otherwise ordered by the court pursuant
5 to the provisions of the Delinquency Act, a child taken into
6 custody for an alleged delinquent act [~~shall not~~] may be placed
7 in detention [~~unless~~] only if a detention risk assessment
8 [~~instrument~~] is completed and a determination is made that the
9 child:

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

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

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

16 B. [~~The criteria for detention in this section~~
17 ~~shall govern the decisions of all persons responsible for~~
18 ~~determining whether detention is appropriate prior to a~~
19 ~~detention hearing, based upon review of the detention risk~~
20 ~~assessment instrument~~] The provisions of Subsection A of this
21 section apply to all circumstances in which a child may be
22 detained before a detention hearing.

23 C. The department shall develop, validate and
24 implement a detention risk assessment instrument. The
25 department shall collect and analyze data regarding the

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1 application [~~of the detention risk assessment instrument. On~~
 2 ~~January 1, 2004, the department shall provide the legislature~~
 3 ~~with a written report with respect to its collection and~~
 4 ~~analysis of data regarding the application]~~ and effectiveness
 5 of the detention risk assessment instrument. At least once
 6 every three years, the department shall update the detention
 7 risk assessment instrument based on the collected data, as
 8 necessary.

9 D. On or before September 1 of each year, the
 10 department shall provide a written report to the legislature on
 11 the application and effectiveness of the detention risk
 12 assessment instrument. If applicable, the report shall explain
 13 the validation of the instrument and updates made to the
 14 instrument."

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

17 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
 18 OFFENDER.--

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

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

25 (2) the child's adjustment to the child's

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1 home, school and community;

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

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

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

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

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

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

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

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

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1 rehabilitation program for the child. The judge may include
2 recommendations for placement of the child. Commitments are
3 subject to limitations and modifications set forth in Section
4 32A-2-23 NMSA 1978. The types of commitments include:

5 (a) a short-term commitment [~~of one~~
6 ~~year~~] for no more than eighteen months in a facility for the
7 care and rehabilitation of adjudicated delinquent children;
8 provided that no more than [~~nine~~] twelve months shall be served
9 at the facility and no less than [~~ninety~~] one hundred eighty
10 days shall be served on supervised release, unless: 1) a
11 petition to extend the commitment has been filed prior to the
12 commencement of supervised release; 2) the commitment has been
13 extended pursuant to Section 32A-2-23 NMSA 1978; or 3)
14 supervised release is revoked pursuant to Section 32A-2-25 NMSA
15 1978;

16 (b) a long-term commitment for no more
17 than [~~two years~~] thirty months in a facility for the care and
18 rehabilitation of adjudicated delinquent children; provided
19 that no more than [~~twenty-one~~] twenty-four months shall be
20 served at the facility and no less than [~~ninety~~] one hundred
21 eighty days shall be served on supervised release, unless: 1)
22 supervised release is revoked pursuant to Section 32A-2-25 NMSA
23 1978; or 2) the commitment is extended pursuant to Section
24 32A-2-23 NMSA 1978;

25 (c) if the child is a delinquent

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1 offender who committed one of the criminal offenses set forth
2 in Subsection J of Section 32A-2-3 NMSA 1978, a commitment to
3 age twenty-one, unless sooner discharged; or

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

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

8 (3) place the child in a local detention
9 facility that has been certified in accordance with the
10 provisions of Section 32A-2-4 NMSA 1978 for a period not to
11 exceed fifteen days within a three hundred sixty-five day time
12 period; or if a child is found to be delinquent solely on the
13 basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA
14 1978, the court shall only enter a judgment placing the child
15 on probation or ordering restitution or both; or

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

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1 child and that the treatment is likely to be beneficial.

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

6 D. A child found to be delinquent shall not be
7 committed or transferred to a penal institution or other
8 facility used for the execution of sentences of persons
9 convicted of crimes.

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

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

19 G. In addition to any other disposition pursuant to
20 Subsection B of this section, the court may make an abuse or
21 neglect report for investigation and proceedings as provided
22 for in the Abuse and Neglect Act. The report may be made to a
23 local law enforcement agency, the department or a tribal law
24 enforcement or social service agency for an Indian child
25 residing in Indian country.

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1 H. In addition to any other disposition pursuant to
2 this section or any other penalty provided by law, if a child
3 who is fifteen years of age or older is adjudicated delinquent
4 on the basis of Paragraph (2), (3) or (4) of Subsection A of
5 Section 32A-2-3 NMSA 1978, the child's driving privileges may
6 be denied or the child's driver's license may be revoked for a
7 period of ninety days. For a second or a subsequent
8 adjudication, the child's driving privileges may be denied or
9 the child's driver's license revoked for a period of one year.
10 Within twenty-four hours of the dispositional judgment, the
11 court may send to the motor vehicle division of the taxation
12 and revenue department the order adjudicating delinquency.
13 Upon receipt of an order from the court adjudicating
14 delinquency, the director of the motor vehicle division of the
15 taxation and revenue department may revoke or deny the
16 delinquent's driver's license or driving privileges. Nothing
17 in this section may prohibit the delinquent from applying for a
18 limited driving privilege pursuant to Section 66-5-35 NMSA 1978
19 or an ignition interlock license pursuant to the Ignition
20 Interlock Licensing Act, and nothing in this section precludes
21 the delinquent's participation in an appropriate educational,
22 counseling or rehabilitation program.

23 I. In addition to any other disposition pursuant to
24 this section or any other penalty provided by law, when a child
25 is adjudicated delinquent on the basis of Paragraph (6) of

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1 Subsection A of Section 32A-2-3 NMSA 1978, the child shall
2 perform the mandatory community service set forth in Section
3 30-15-1.1 NMSA 1978. When a child fails to completely perform
4 the mandatory community service, the name and address of the
5 child's parent or legal guardian shall be published in a
6 newspaper of general circulation, accompanied by a notice that
7 the parent or legal guardian is the parent or legal guardian of
8 a child adjudicated delinquent for committing graffiti."

9 SECTION 7. Section 32A-2-20 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 49, as amended) is amended to read:

11 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

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

24 B. If the children's court attorney has filed a
25 notice of intent to [~~invoke~~] request an adult sentence and the

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1 child is adjudicated as a youthful offender, the court shall
2 make the following findings in order to [~~invoke~~] impose an
3 adult sentence:

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

6 (2) the child is not eligible for commitment
7 to an institution for children with developmental disabilities
8 or mental disorders.

9 C. In making the findings set forth in Subsection B
10 of this section, the [~~judge~~] court shall consider the following
11 factors:

12 (1) the seriousness of the alleged offense;

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

15 (3) whether a firearm was used to commit the
16 alleged offense;

17 (4) whether the alleged offense was against
18 persons or against property, greater weight being given to
19 offenses against persons, especially if personal injury
20 resulted;

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

25 (6) the record and previous history of the

1 child;

2 (7) the prospects for adequate protection of
3 the public and the likelihood of reasonable rehabilitation of
4 the child by the use of procedures, services and facilities
5 currently available; and

6 (8) any other relevant factor, provided that
7 factor is stated on the record.

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

12 E. If the court [~~invokes~~] imposes an adult
13 sentence, the court may sentence the child to less than, but
14 shall not exceed, the mandatory adult sentence. A youthful
15 offender given an adult sentence [~~shall be treated as an adult~~
16 ~~offender and shall be transferred to the legal custody of an~~
17 ~~agency responsible for incarceration of persons sentenced to~~
18 ~~adult sentences. This transfer terminates the jurisdiction of~~
19 ~~the court over the child with respect to the delinquent acts~~
20 ~~alleged in the petition. A child given an adult sentence]~~
21 shall not be sentenced to life imprisonment without the
22 possibility of release or parole.

23 F. A youthful offender who is given an adult
24 sentence of imprisonment shall be imprisoned at a facility for
25 the care and rehabilitation of adjudicated delinquent children

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1 until the youthful offender reaches twenty-one years of age, at
2 which time the youthful offender shall be transferred to a
3 corrections facility operated by the corrections department for
4 the remainder of the sentence; provided that a youthful
5 offender who is eighteen years of age or older may be
6 transferred to a corrections facility before the age of twenty-
7 one if the youthful offender commits a violent offense while
8 imprisoned at the facility for the care and rehabilitation of
9 adjudicated delinquent children and the department has
10 conducted a review of the commission of the violent offense,
11 held a hearing with sufficient procedural safeguards and
12 determined that the:

13 (1) youthful offender poses a substantial and
14 continuing danger to the children at the facility for the care
15 and rehabilitation of adjudicated delinquent children; and

16 (2) department has no alternative safe
17 placements for or safety interventions to provide the youthful
18 offender.

19 G. The transfer of a youthful offender to a
20 corrections facility terminates the court's jurisdiction over
21 the youthful offender's case.

22 ~~[F.]~~ H. If a juvenile disposition is appropriate,
23 the court shall follow the provisions set forth in Section
24 32A-2-19 NMSA 1978. A youthful offender may be subject to
25 extended commitment in the care of the department until the age

1 of twenty-one, pursuant to the provisions of Section 32A-2-23
2 NMSA 1978.

3 ~~[G.]~~ I. A child fourteen years of age or older,
4 charged with first degree murder, but not convicted of first
5 degree murder and found to have committed a youthful offender
6 offense as set forth in Subsection J of Section 32A-2-3 NMSA
7 1978, is subject to the dispositions set forth in this section.

8 ~~[H.]~~ J. A child fourteen years of age or older
9 charged with first degree murder, but found to have committed a
10 delinquent act that is neither first degree murder nor a
11 youthful offender offense as set forth in Subsection J of
12 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
13 subject to the dispositions set forth in Section 32A-2-19 NMSA
14 1978.

15 K. The department and the corrections department
16 shall promulgate rules for the transfer of a youthful offender
17 to a corrections facility in accordance with Subsection F of
18 this section."

19 **SECTION 8.** Section 32A-2-23 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 52, as amended) is amended to read:

21 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
22 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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

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

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

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

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

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

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

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

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

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

9 SECTION 9. Section 32A-2-25 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 54, as amended) is amended to read:

11 "32A-2-25. [~~PAROLE~~] SUPERVISED RELEASE REVOCATION--
12 PROCEDURES--TOLLING.--

13 A. A child on [~~parole from an agency that has legal~~
14 ~~eustody~~] supervised release who violates a [~~term of parole~~]
15 condition of the supervised release may be proceeded against in
16 a [~~parole~~] supervised release revocation proceeding conducted
17 by the department or the supervising agency or by a hearing
18 officer contracted by the department who is neutral to the
19 child and the agency in accordance with procedures established
20 by the department in cooperation with the juvenile [~~parole~~]
21 public safety advisory board. A juvenile probation [~~and~~
22 ~~parole~~] officer may detain a child on [~~parole status~~]
23 supervised release who is alleged to have violated a term or
24 condition of [~~parole~~] the supervised release until the
25 completion and review of a preliminary [~~parole~~] supervised

1 release revocation hearing. A child may waive the right to a
 2 preliminary [~~parole~~] supervised release revocation hearing
 3 after consultation with the child's attorney, parent, guardian
 4 or custodian.

5 B. If a retake warrant is issued by the department
 6 upon the completion of the preliminary [~~parole~~] supervised
 7 release revocation hearing, the juvenile institution to which
 8 the warrant is issued shall promptly transport the child to
 9 that institution at the expense of the department. If a child
 10 absconds from [~~parole-supervision~~] supervised release and is
 11 apprehended in another state after the issuance of a retake
 12 warrant by the department, the juvenile justice division of the
 13 department shall cause the return of the child to this state at
 14 the expense of the department.

15 C. The issuance of a warrant pursuant to Subsection
 16 B of this section shall toll the child's supervised release
 17 term. After a hearing upon return of the warrant or a hearing
 18 to quash the warrant, if the court finds that the child
 19 knowingly and willfully absconded from supervised release, the
 20 period between the date of the violation and the date the child
 21 is apprehended or the date the warrant is quashed shall not be
 22 counted as time served on supervised release and the tolled
 23 period shall be added to the supervised release term."

24 SECTION 10. Section 33-9A-2 NMSA 1978 (being Laws 1988,
 25 Chapter 101, Section 40, as amended) is amended to read:

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1 "33-9A-2. DEFINITIONS.--As used in the Juvenile Community
2 Corrections Act:

3 ~~[A. "delinquent" means a child adjudicated~~
4 ~~delinquent pursuant to the Children's Code;~~

5 ~~B.]~~ A. "department" means the children, youth and
6 families department;

7 ~~[C.]~~ B. "fund" means the juvenile community
8 corrections grant fund;

9 C. "justice-involved youth" means:

10 (1) persons adjudicated pursuant to the
11 Delinquency Act;

12 (2) children subject to a delinquency
13 complaint or delinquency petition for a delinquent act that
14 would be a felony if committed by an adult, who have not yet
15 been adjudicated or who will not be adjudicated pursuant to the
16 Delinquency Act; or

17 (3) persons involved in the juvenile justice
18 system or criminal justice system who are at least eighteen
19 years old but less than twenty-five years old;

20 D. "secretary" means the secretary of children,
21 youth and families; and

22 E. "volunteer services" means services provided by
23 individuals or organizations without compensation."

24 SECTION 11. Section 33-9A-3 NMSA 1978 (being Laws 1988,
25 Chapter 101, Section 41, as amended) is amended to read:

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1 "33-9A-3. JUVENILE COMMUNITY CORRECTIONS GRANT FUND
2 CREATED--PURPOSE--ADMINISTRATION--REPORT.--

3 A. ~~[There is created in the state treasury]~~ The
4 "juvenile community corrections grant fund" ~~[to be administered~~
5 ~~by the department. All balances in the fund are appropriated~~
6 ~~to the department to carry out the purposes of the fund, and]~~
7 is created in the state treasury. The fund consists of
8 distributions, appropriations, gifts, grants, donations and
9 income from investment of the fund. Money in the fund is
10 appropriated to the department to carry out the provisions of
11 the Juvenile Community Corrections Act. No money shall be
12 transferred to another fund or be encumbered or disbursed in
13 any manner except as provided in the Juvenile Community
14 Corrections Act. ~~[Disbursements]~~ Expenditures from the fund
15 shall be ~~[made only upon warrant drawn]~~ by warrant of the
16 secretary of finance and administration pursuant to vouchers
17 signed by the secretary of children, youth and families or the
18 secretary's authorized representative.

19 B. Money in the fund shall be used by the
20 department to make grants to counties, municipalities or
21 private organizations, individually or jointly, to provide
22 community corrections programs ~~[and services for the diversion~~
23 ~~of adjudicated delinquents to community-based settings. No~~
24 ~~grant shall be made to a private organization that is not a~~
25 ~~nonprofit organization]~~ for justice-involved youth. A grant

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1 shall not be made to a private, for-profit or commercial
2 organization without the approval of the secretary. The
3 department may also use money in the fund to [~~contract directly~~
4 ~~for or operate juvenile community corrections programs~~] operate
5 or contract for the operation of a community corrections
6 program for justice-involved youth.

7 C. No more than [~~ten~~] twelve percent of the money
8 in the fund shall be used by the department for administration
9 and program monitoring by the department. No more than [~~ten~~]
10 twelve percent of any grant from the fund shall be used for
11 administrative costs incurred by the grantee.

12 D. [~~After notice and public hearing as required by~~
13 ~~law, the secretary shall adopt regulations that provide~~
14 ~~standards for~~] The secretary shall promulgate rules for the
15 qualifications [for grants] of grantees, priorities for
16 awarding of grants and other standards [regarding juvenile] for
17 community corrections programs [deemed necessary] for justice-
18 involved youth; provided that at minimum, eligible programs or
19 services shall be evidence- or research-based. The department
20 shall review and approve or disapprove all grant applications
21 submitted pursuant to the Juvenile Community Corrections Act
22 [~~for a grant of funds from the fund~~].

23 E. On or before December 15 of each year, the
24 department shall submit an annual report to the governor and
25 legislature [~~not later than December 15 providing information~~

1 ~~on grant awards]~~ that provides information on grants awarded,
 2 program effectiveness, ~~[and]~~ the department's monitoring
 3 efforts and ~~[making]~~ the department's recommendations, ~~[as~~
 4 ~~necessary to carry out the purpose of the fund]~~ if applicable.

5 F. The department may accept donations, payments,
 6 contributions, gifts or grants from whatever source for the
 7 benefit of the fund."

8 SECTION 12. Section 33-9A-4 NMSA 1978 (being Laws 1988,
 9 Chapter 101, Section 42, as amended) is amended to read:

10 "33-9A-4. APPLICATIONS--CRITERIA.--

11 A. Counties, municipalities or private
 12 organizations ~~[individually or jointly]~~ may apply for grants
 13 from the fund ~~[including grants for counties or municipalities~~
 14 ~~to purchase contractual services from private organizations;~~
 15 ~~provided]~~ individually or jointly. At minimum, an applicant
 16 shall certify that:

17 (1) the ~~[application is for funding a program~~
 18 ~~with priority use being for delinquents selected pursuant to~~
 19 ~~the provisions of Section 33-9A-5 NMSA 1978]~~ applicant will use
 20 a grant award for a community corrections program that
 21 prioritizes services to justice-involved youth;

22 (2) the applicant ~~[certifies that it is~~
 23 ~~willing and able to]~~ or the applicant's agents or contractors
 24 will operate the program according to standards ~~[provided]~~
 25 adopted by the department ~~[which may include the negotiation of~~

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1 a contract between the delinquent and program staff with
2 provisions such as deductions from employment income for
3 applicable victim restitution, family support, room and board,
4 savings and weekly allowance. In addition to monetary
5 restitution, to the extent practical, or if monetary
6 restitution is not applicable, the contract may include
7 provision for community service restitution for a specific
8 number of hours];

9 (3) the [applicant demonstrates the support of
10 key components of the criminal justice system] applicant's
11 community corrections program is evidence- or research-based
12 and incorporates best practices in risk reduction for justice-
13 involved youth;

14 (4) [the applicant, if a private organization,
15 demonstrates the support of the county and municipality where
16 the program will provide services] if the applicant is a
17 private organization, the applicant has the support of the
18 county or municipality where the program is operated; and

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

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

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

7 C. The department may expend money from the fund to
8 place persons who are eligible for supervised release or parole
9 or who are within twelve months of such eligibility. The
10 department may require participation in a community corrections
11 program as a condition of supervised release for persons
12 adjudicated pursuant to the Delinquency Act. If applicable,
13 the department may also require a community corrections program
14 to assist those persons in making income deductions for victim
15 restitution, family support, room and board, savings and weekly
16 allowances or in completing community service restitution.

17 ~~[G.]~~ D. The department may ~~[utilize not more than]~~
18 expend up to twenty-five percent of the fund to contract
19 directly for community corrections programs or to establish
20 community corrections programs operated by the department;
21 provided ~~[however]~~ that the department may ~~[utilize]~~ expend up
22 to an additional ten percent of the fund to operate juvenile
23 community corrections programs if, after a reasonable effort to
24 solicit proposals, there are no satisfactory proposals from a
25 community where ~~[it is determined that]~~ a program is necessary

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1 or if it becomes necessary to cancel a program as provided in
2 the contract.

3 ~~[D.]~~ E. The department shall ~~[establish additional~~
4 ~~guidelines for allocation of funds under]~~ adopt guidelines for
5 allocating funds pursuant to the Juvenile Community Corrections
6 Act. ~~[An]~~

7 F. A grant award applicant shall retain the
8 authority to accept or reject the placement of any ~~[delinquent]~~
9 person in a program."

10 SECTION 13. Section 33-9A-5 NMSA 1978 (being Laws 1988,
11 Chapter 101, Section 43, as amended) is amended to read:

12 "33-9A-5. SELECTION PANELS.--

13 A. The department shall establish a state panel
14 ~~[whose duties shall be to immediately screen and identify~~
15 ~~delinquents sentenced to a juvenile correctional facility of~~
16 ~~the department and transferred to the legal custody of the~~
17 ~~department, except individuals who are sentenced or transferred~~
18 ~~from a judicial district that has established a local panel to~~
19 ~~exercise these duties pursuant to the provisions of this~~
20 ~~section and who meet the following criteria]~~ to determine
21 eligibility for community corrections programs created or
22 funded pursuant to the Juvenile Community Corrections Act;
23 provided that if a local panel is created in accordance with
24 Subsection D of this section, the local panel shall determine
25 eligibility for persons adjudicated in or transferred to the

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1 local panel's community. The state panel shall identify a
2 person adjudicated pursuant to the Delinquency Act immediately
3 upon the person's transfer to the legal custody of the
4 department for commitment to a facility for the care and
5 rehabilitation of adjudicated delinquent children. The state
6 panel shall screen each identified person for eligibility using
7 the following criteria:

8 (1) ~~[the offense involved]~~ the person's
9 adjudicated offense is one for which community service or
10 reasonable restitution may be made using a payment schedule
11 compatible with the total amount of restitution to be paid and
12 the time the ~~[offender is to]~~ person would participate in a
13 program; and

14 (2) the ~~[child]~~ person is willing to enter
15 into a contract that establishes objectives ~~[that shall be~~
16 ~~achieved]~~ the person shall achieve before release from the
17 program.

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

23 C. If the state panel determines that a ~~[child]~~
24 person is suitable for placement in a program, ~~[a~~
25 ~~recommendation to that effect and for modification of~~

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1 ~~disposition shall be presented as soon as possible to the~~
2 ~~sentencing judge or the department, which may, notwithstanding~~
3 ~~any provision of law, accept, modify or reject the~~
4 ~~recommendation]~~ the panel shall refer the person for
5 participation in a program and, if applicable, request a
6 modification to the person's disposition in accordance with the
7 Delinquency Act. The ~~[determination]~~ referral shall be
8 presented to the county, municipality or private nonprofit
9 organization, as applicable, for approval or rejection.

10 D. A county, municipality or private nonprofit
11 organization, individually or jointly, may establish a local
12 panel to exercise the duties and responsibilities of the state
13 panel ~~[pursuant to the provisions of Subsection A of this~~
14 ~~section and, using the same criteria as the state panel, the~~
15 ~~local panel may screen and identify delinquents]~~. The local
16 panel shall use the criteria provided in Subsection A of this
17 section to screen for eligibility to participate in a community
18 corrections program. The composition of a local panel shall
19 include, to the maximum extent possible, representatives of the
20 judiciary, the administrative office of the district attorneys,
21 the public defender department, the children, youth and
22 families department, the county sheriff or the municipal police
23 department, ~~[individuals]~~ persons representing local programs
24 and private citizens."

25 SECTION 14. Section 33-9A-6 NMSA 1978 (being Laws 1988,

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1 Chapter 101, Section 44) is amended to read:

2 "33-9A-6. SENTENCING.--

3 A. In every case [~~where the commitment to the~~
4 ~~authority of a child adjudicated delinquent is contemplated by~~
5 ~~a judge]~~ pursuant to the Delinquency Act where an adjudicated
6 person is subject to a potential disposition that includes
7 transfer to the custody of the department for commitment to a
8 facility for the care and rehabilitation of adjudicated
9 delinquent children, a predisposition report shall be prepared
10 containing the recommendation of the juvenile probation officer
11 regarding a community corrections placement, or a diagnostic
12 evaluation shall be completed by the [authority] department
13 containing the recommendation of the [authority] department
14 regarding that placement, and the judge shall consider that
15 report or evaluation prior to [~~making that commitment]~~ ordering
16 a disposition. A juvenile probation officer shall consult with
17 the [authority] department prior to making a recommendation
18 pursuant to this subsection.

19 [~~B. At a sentencing hearing, if a judge of a court~~
20 ~~of competent jurisdiction determines placement in community~~
21 ~~corrections is appropriate, he shall defer or suspend the~~
22 ~~sentence and, as a condition of probation, require an~~
23 ~~individual to serve a period of time in a community corrections~~
24 ~~program.]~~

25 B. At a disposition hearing held pursuant to the

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1 Delinquency Act, if the court determines that the adjudicated
2 person's participation in a community corrections program is
3 appropriate, the court shall order such participation as part
4 of the disposition."

underscoring material = new
[bracketed material] = delete

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