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HOUSE BILL 517

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO JUVENILE JUSTICE; EXPANDING THE PURPOSE OF THE  
DELINQUENCY ACT; REQUIRING THAT CERTAIN CHILDREN PLACED IN  
ALTERNATIVE DETENTION PROGRAMS HAVE THEIR CASES PROCESSED IN A  
CERTAIN TIME PERIOD; PROVIDING FOR ADDITIONAL FINDINGS BY THE  
COURT AT THE CONCLUSION OF A CHILD'S DISPOSITIONAL HEARING.

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

Section 1. Section 32A-2-1 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 30) is amended to read:

"32A-2-1. SHORT TITLE.--Chapter [~~32~~] 32A, Article 2 NMSA  
1978 may be cited as the "Delinquency Act"."

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

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

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1           A. consistent with the protection of the public  
2 interest, to remove from children committing delinquent acts  
3 the adult consequences of criminal behavior, but to still hold  
4 children committing delinquent acts accountable for their  
5 actions to the extent of the child's age, education, mental and  
6 physical condition, background and all other relevant factors,  
7 and to provide a program of supervision, care and  
8 rehabilitation, including rehabilitative restitution by the  
9 child to the victims of the child's delinquent act to the  
10 extent that the child is reasonably able to do so;

11           B. to provide effective deterrents to acts of  
12 juvenile delinquency, including an emphasis on community-based  
13 alternatives; [~~and~~]

14           C. to strengthen families and to successfully  
15 reintegrate children into homes and communities;

16           D. to foster and encourage collaboration between  
17 government agencies and communities with regard to juvenile  
18 justice policies and procedures;

19           E. to develop juvenile justice policies and  
20 procedures that are supported by data;

21           F. to develop objective risk assessment instruments  
22 to be used for pre-adjudication and post-adjudication  
23 admissions to juvenile detention centers;

24           G. to encourage efficient processing of cases;

25           H. to develop community-based alternatives to

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1 detention;

2 I. to eliminate or reduce disparities based upon  
3 race or gender;

4 J. to improve conditions of confinement in juvenile  
5 detention centers; and

6 K. to achieve reductions in the number of warrants  
7 issued, the number of probation violations and the number of  
8 youth awaiting placements."

9 Section 3. Section 32A-2-11 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 40, as amended) is amended to read:

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

12 A. Unless ordered by the court by issuing a warrant  
13 pursuant to the provisions of the Delinquency Act, a child  
14 taken into custody for an alleged delinquent act shall not be  
15 placed in detention unless a detention risk assessment  
16 instrument is completed and a determination is made that the  
17 child:

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

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

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

24 B. The criteria for detention in this section shall  
25 govern the decisions of all persons responsible for determining

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1 whether detention is appropriate prior to a detention hearing,  
2 based upon review of the detention risk assessment instrument.

3 C. The department shall develop and implement a  
4 detention risk assessment instrument. The department shall  
5 collect and analyze data regarding the application of the  
6 detention risk assessment instrument. [~~On January 1, 2004, the~~  
7 ~~department shall provide the legislature with a written report~~  
8 ~~with respect to its collection and analysis of data regarding~~  
9 ~~the application of the detention risk assessment instrument.~~"]

10 Section 4. Section 32A-2-13 NMSA 1978 (being Laws 1993,  
11 Chapter 77, Section 42, as amended) is amended to read:

12 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED  
13 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--  
14 DISPOSITION.--

15 A. When a child who has been taken into custody is  
16 not released but is detained:

17 (1) a judicial determination of probable cause  
18 shall be made by a judge or special master or magistrate within  
19 forty-eight hours, including Saturdays, Sundays and legal  
20 holidays, except for children taken into custody under an  
21 arrest warrant pursuant to the Children's Court Rules. A  
22 statement by a law enforcement officer, which shall include the  
23 charges, may be the basis of a probable cause determination.  
24 The probable cause determination shall be nonadversarial, may  
25 be held in the absence of the child and counsel and may be

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1 conducted by telephone. If the court finds no probable cause  
2 to believe the child committed an offense, the child shall be  
3 released;

4 (2) a petition shall be filed within twenty-  
5 four hours from the time the child is taken into custody,  
6 excluding Saturdays, Sundays and legal holidays, and if not  
7 filed within the stated time, the child shall be released; and

8 (3) a detention hearing shall be held within  
9 twenty-four hours, excluding Saturdays, Sundays and legal  
10 holidays, from the time of filing the petition to determine  
11 whether continued detention is required pursuant to the  
12 criteria established by the Children's Code.

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

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

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1 be heard. At any hearing held pursuant to this subsection, the  
2 department may appear as a party.

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

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

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

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

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

24 (3) impose any other condition deemed  
25 reasonably necessary and consistent with the criteria for

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1     detaining children established by the Children's Code,  
2     including a condition requiring that the child return to  
3     custody as required.

4             G. An order releasing a child on any conditions  
5     specified in this section may at any time be amended to impose  
6     additional or different conditions of release or to return the  
7     child to custody or detention for failure to conform to the  
8     conditions originally imposed. A child who is released at the  
9     detention hearing to an alternative detention program in which  
10    the supervision exceeds parental supervision and the child's  
11    freedom of movement is substantially restricted by electronic  
12    monitoring, direct staff contact or other means shall have the  
13    child's case processed under the same time frames as if the  
14    child were placed in detention.

15            H. At the detention hearing, all relevant and  
16    material evidence helpful in determining the need for detention  
17    may be admitted by the judge or special master even though it  
18    would not be admissible in a hearing on the petition.

19            I. If the child is not released at the detention  
20    hearing and a parent, guardian or custodian was not notified of  
21    the hearing and did not appear or waive appearance at the  
22    detention hearing, the judge or special master shall rehear the  
23    detention matter without unnecessary delay upon the filing of  
24    an affidavit stating the facts and a motion for rehearing.

25            J. If a child is not released at the detention

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1 hearing, the child's detention may be subsequently reviewed by  
2 the court or the court may review the child's detention in  
3 conjunction with a pretrial conference.

4 K. If a child is not placed within ten days after a  
5 disposition hearing, the child may be released and placed under  
6 appropriate supervision, so long as the child does not pose a  
7 flight risk or substantial risk of harm to [~~himself~~] the  
8 child's self or others."

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

11 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT  
12 OFFENDER.--

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

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

19 (2) the child's adjustment to [~~his~~] the  
20 child's home, school and community;

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

23 (4) the wishes of the child as to [~~his~~] the  
24 child's custodian;

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

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1 the child's custody;

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

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

7 (8) the ability of the parents to care for the  
8 child in the home; and

9 (9) whether to give the child credit for any  
10 portion of time the child served in a juvenile detention  
11 facility pending adjudication of the child's case.

12 B. If a child is found to be delinquent, the court  
13 may impose a fine not to exceed the fine that could be imposed  
14 if the child were an adult and may enter its judgment making  
15 any of the following dispositions for the supervision, care and  
16 rehabilitation of the child:

17 (1) transfer legal custody to the department,  
18 an agency responsible for the care and rehabilitation of  
19 delinquent children, which shall receive the child at a  
20 facility designated by the secretary of the department as a  
21 juvenile reception facility. The department shall thereafter  
22 determine the appropriate placement, supervision and  
23 rehabilitation program for the child. The judge may include  
24 recommendations for placement of the child. Commitments are  
25 subject to limitations and modifications set forth in Section

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1 32A-2-23 NMSA 1978. The types of commitments include:

2 (a) a short-term commitment of one year  
3 in a facility for the care and rehabilitation of adjudicated  
4 delinquent children. No more than nine months shall be served  
5 at the facility and no less than ninety days shall be served on  
6 parole, unless: 1) a petition to extend the commitment has  
7 been filed prior to the commencement of parole; 2) the  
8 commitment has been extended pursuant to Section 32A-2-23 NMSA  
9 1978; or 3) parole is revoked pursuant to Section 32A-2-25 NMSA  
10 1978;

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

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

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

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

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1 (3) place the child in a local detention  
2 facility that has been certified in accordance with the  
3 provisions of Section 32A-2-4 NMSA 1978 for a period not to  
4 exceed fifteen days [~~within a three hundred sixty-five day time~~  
5 ~~period~~] for a probation or program violation during the child's  
6 term of probation; or if a child is found to be delinquent  
7 solely on the basis of Paragraph (3) of Subsection A of Section  
8 32A-2-3 NMSA 1978, the court shall only enter a judgment  
9 placing the child on probation or ordering restitution or  
10 imposing a fine not to exceed the fine that could be imposed if  
11 the child were an adult or any combination of these  
12 dispositions; or

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

24 C. When the child is an Indian child, the Indian  
25 child's cultural needs shall be considered in the dispositional

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1 judgment and reasonable access to cultural practices and  
2 traditional treatment shall be provided.

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

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

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

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

23 H. In addition to any other disposition pursuant to  
24 this section or any other penalty provided by law, if a child  
25 fifteen years of age or older is adjudicated delinquent on the

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

20 I. In addition to any other disposition pursuant to  
21 this section or any other penalty provided by law, when a child  
22 is adjudicated delinquent on the basis of Paragraph (6) of  
23 Subsection A of Section 32A-2-3 NMSA 1978, the child shall  
24 perform the mandatory community service set forth in Section  
25 30-15-1.1 NMSA 1978. When a child fails to completely perform

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1 the mandatory community service, the name and address of the  
2 child's parent or legal guardian shall be published in a  
3 newspaper of general circulation, accompanied by a notice that  
4 ~~[he]~~ the parent or legal guardian is the parent or legal  
5 guardian of a child adjudicated delinquent for committing  
6 graffiti."

7 Section 6. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2007.

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