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AN ACT

RELATING TO CRIME; AMENDING THE DELINQUENCY ACT TO SPECIFICALLY EXCLUDE PROSTITUTION AS A DELINQUENT ACT; AMENDING THE FAMILY IN NEED OF COURT-ORDERED SERVICES ACT TO CONNECT HUMAN TRAFFICKING VICTIMS TO SERVICES.

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

SECTION 1. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32, as amended) is amended to read:

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

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

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

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

(b) failure to stop in the event of an accident causing death, personal injury or damage to property;

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

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

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(e) homicide by vehicle;

(f) injuring or tampering with a
vehicle;

(g) altering or changing of an engine
number or other vehicle identification numbers;

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

(i) reckless driving;

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

(k) an offense punishable as a felony;

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

1 salads and other fast foods;

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

5 (4) a violation of the Controlled Substances
6 Act;

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

11 (6) a violation of Section 30-15-1.1 NMSA
12 1978 regarding unauthorized graffiti on personal or real
13 property; or

14 (7) a violation of an order of protection
15 issued pursuant to the provisions of the Family Violence
16 Protection Act;

17 B. "delinquent child" means a child who has
18 committed a delinquent act;

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

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

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

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

5 G. "restitution" means financial reimbursement by
6 the child to the victim or community service imposed by the
7 court and is limited to easily ascertainable damages for
8 injury to or loss of property, actual expenses incurred for
9 medical, psychiatric and psychological treatment for injury
10 to a person and lost wages resulting from physical injury,
11 which are a direct and proximate result of a delinquent act.

12 "Restitution" does not include reimbursement for damages for
13 mental anguish, pain and suffering or other intangible
14 losses. As used in this subsection, "victim" means a person
15 who is injured or suffers damage of any kind by an act that
16 is the subject of a complaint or referral to law enforcement
17 officers or juvenile probation authorities. Nothing
18 contained in this definition limits or replaces the
19 provisions of Subsections A and B of Section 32A-2-27 NMSA
20 1978;

21 H. "serious youthful offender" means an individual
22 fifteen to eighteen years of age who is charged with and
23 indicted or bound over for trial for first degree murder. A
24 "serious youthful offender" is not a delinquent child as
25 defined pursuant to the provisions of this section;

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

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

12 (1) fourteen to eighteen years of age at the
13 time of the offense and who is adjudicated for at least one
14 of the following offenses:

15 (a) second degree murder, as provided
16 in Section 30-2-1 NMSA 1978;

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

19 (c) kidnapping, as provided in Section
20 30-4-1 NMSA 1978;

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

23 (e) aggravated battery against a
24 household member, as provided in Subsection C of Section
25 30-3-16 NMSA 1978;

1 (f) aggravated battery upon a peace
2 officer, as provided in Subsection C of Section 30-22-25 NMSA
3 1978;

4 (g) shooting at a dwelling or occupied
5 building or shooting at or from a motor vehicle, as provided
6 in Section 30-3-8 NMSA 1978;

7 (h) dangerous use of explosives, as
8 provided in Section 30-7-5 NMSA 1978;

9 (i) criminal sexual penetration, as
10 provided in Section 30-9-11 NMSA 1978;

11 (j) robbery, as provided in Section
12 30-16-2 NMSA 1978;

13 (k) aggravated burglary, as provided in
14 Section 30-16-4 NMSA 1978;

15 (l) aggravated arson, as provided in
16 Section 30-17-6 NMSA 1978; or

17 (m) abuse of a child that results in
18 great bodily harm or death to the child, as provided in
19 Section 30-6-1 NMSA 1978;

20 (2) fourteen to eighteen years of age at the
21 time of the offense, who is adjudicated for any felony
22 offense and who has had three prior, separate felony
23 adjudications within a three-year time period immediately
24 preceding the instant offense. The felony adjudications
25 relied upon as prior adjudications shall not have arisen out

1 of the same transaction or occurrence or series of events
2 related in time and location. Successful completion of
3 consent decrees is not considered a prior adjudication for
4 the purposes of this paragraph; or

5 (3) fourteen years of age and who is
6 adjudicated for first degree murder, as provided in Section
7 30-2-1 NMSA 1978."

8 SECTION 2. Section 32A-3B-2 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 74, as amended) is amended to read:

10 "32A-3B-2. DEFINITIONS.--As used in Chapter 32A,
11 Article 3B NMSA 1978, "family in need of court-ordered
12 services" means the child or the family has refused family
13 services or the department has exhausted appropriate and
14 available family services and court intervention is necessary
15 to provide family services to the child or family and it is a
16 family:

17 A. whose child, subject to compulsory school
18 attendance, is absent from school without an authorized
19 excuse more than ten days during a school year;

20 B. whose child is absent from the child's place of
21 residence for a time period of twelve hours or more without
22 consent of the child's parent, guardian or custodian;

23 C. whose child refuses to return home and there is
24 good cause to believe that the child will run away from home
25 if forced to return to the parent, guardian or custodian;

1 D. in which the child's parent, guardian or
2 custodian refuses to allow the child to return home and a
3 petition alleging neglect of the child is not in the child's
4 best interests; or

5 E. whose child is:

6 (1) alleged to be engaged in an act that
7 would be designated as prostitution if committed by an adult;
8 or

9 (2) a victim of human trafficking as defined
10 in Section 30-52-1 NMSA 1978."

11 **SECTION 3.** Section 32A-3B-3 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 75) is amended to read:

13 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH
14 PROTECTIVE CUSTODY--PENALTY.--

15 A. A child may be taken into protective custody by
16 a law enforcement officer without a court order when the
17 officer has reasonable grounds to believe that the child:

18 (1) has run away from the child's parent,
19 guardian or custodian;

20 (2) without parental supervision is
21 suffering from illness or injury;

22 (3) has been abandoned;

23 (4) is endangered by the child's
24 surroundings and removal from those surroundings is necessary
25 to ensure the child's safety;

1 (5) is engaged in an act that would be
2 designated as prostitution if committed by an adult; or

3 (6) is a victim of human trafficking as
4 defined in Section 30-52-1 NMSA 1978.

5 B. A child may be taken into protective custody
6 pursuant to a court order issued after an agency legally
7 charged with the supervision of the child has notified a law
8 enforcement agency that the child has run away from a
9 placement.

10 C. When a child is taken into protective custody,
11 the department shall make a reasonable effort to determine
12 whether the child is an Indian child.

13 D. Any person, other than the child taken into
14 protective custody, who interferes with placing the child in
15 protective custody is guilty of a petty misdemeanor and shall
16 be sentenced pursuant to the provisions of Section 31-19-1
17 NMSA 1978."

18 SECTION 4. Section 32A-3B-4 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 76, as amended) is amended to read:

20 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
21 LIMITATIONS.--

22 A. A law enforcement officer who takes a child
23 into protective custody shall, with all reasonable speed:

24 (1) inform the child of the reasons for the
25 protective custody; and

1 (2) contact the department.

2 B. When the department is contacted by a law
3 enforcement officer who has taken a child into protective
4 custody, the department shall refer the child to community
5 based services and may:

6 (1) accept custody of the child and
7 designate an appropriate placement in the community for the
8 child; or

9 (2) return the child to the child's parent,
10 guardian or custodian if the child's safety is assured.

11 C. A child taken into protective custody shall not
12 be placed in or transported in a law enforcement vehicle or
13 any other vehicle that contains an adult placed under arrest,
14 unless circumstances exist in which any delay in transporting
15 the child to an appropriate facility would be likely to
16 result in substantial danger to the child's physical safety.
17 When such circumstances exist, the circumstances shall be
18 described in writing by the driver of the vehicle and
19 submitted to the driver's supervisor within two days after
20 the driver transported the child.

21 D. A child taken into protective custody shall not
22 be held involuntarily for more than two days, unless a
23 petition to extend the custody is filed pursuant to the
24 provisions of the Family in Need of Court-Ordered Services
25 Act or the Abuse and Neglect Act.

