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HOUSE BILL 491

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

INTRODUCED BY

W. Ken Martinez

AN ACT

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

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

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

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

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

- (1) the interaction and interrelationship of**

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1 the child with the child's parents, siblings and any other
2 person who may significantly affect the child's best
3 interests;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 provide or contract for adequate and appropriate treatment for
2 the child and that the treatment is likely to be beneficial.

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

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

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

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

20 G. In addition to any other disposition pursuant
21 to this section or any other penalty provided by law, if a
22 child fifteen years of age or older is adjudicated delinquent
23 on the basis of Paragraph (2), (4) or (5) of Subsection A of
24 Section 32A-2-3 NMSA 1978, the child's driving privileges may
25 be denied or the child's driver's license may be revoked for a

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

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

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1 delinquent for committing graffiti."

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

4 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
5 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

6 A. A judgment transferring legal custody of an
7 adjudicated delinquent child to an agency responsible for the
8 care and rehabilitation of delinquent children divests the
9 court of jurisdiction at the time of transfer of custody,
10 unless the transfer of legal custody is for a commitment not
11 exceeding fifteen days pursuant to the provisions of Section
12 32A-2-19 NMSA 1978, in which case the court retains
13 jurisdiction, and:

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

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

22 (3) the period of time a child absconds from
23 parole or probation supervision shall toll all time limits for
24 the requirement of filing a petition to revoke probation or
25 parole and shall toll the computation of the period of

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1 probation or parole supervision pursuant to the provisions of
2 the Delinquency Act.

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

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

14 D. Prior to the expiration of a short- or long-
15 term commitment, as provided for in Section 32A-2-19 NMSA
16 1978, the court may extend the judgment for additional periods
17 of one year until the child reaches the age of twenty-one if
18 the court finds that the extension is necessary to safeguard
19 the welfare of the child or the public interest.

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

25 [~~E.~~] F. Prior to the expiration of a judgment of

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1 probation, the court may extend the judgment for an additional
2 period of one year until the child reaches the age of twenty-
3 one if the court finds that the extension is necessary to
4 protect the community or to safeguard the welfare of the
5 child.

6 [F-] G. The court may dismiss a motion if it finds
7 after preliminary investigation that the motion is without
8 substance. If the court is of the opinion that the matter
9 should be reviewed, it may, upon notice to all necessary
10 parties, proceed to a hearing in the manner provided for
11 hearings on petitions alleging delinquency. The court may
12 terminate a judgment if it finds that the child is no longer
13 in need of care, supervision or rehabilitation or it may enter
14 a judgment extending or modifying the original judgment if it
15 finds that action necessary to safeguard the child or the
16 public interest.

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

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

25 "32A-2-32. CONFIDENTIALITY--RECORDS. --

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

8 B. The records described in Subsection A of this
9 section shall be open to inspection only by:

- 10 (1) court personnel;
- 11 (2) court appointed special advocates;
- 12 (3) the child's guardian ad litem;
- 13 (4) department personnel;
- 14 (5) any local substitute care review board or
15 any agency contracted to implement local substitute care
16 review boards;
- 17 (6) corrections department personnel;
- 18 (7) law enforcement officials;
- 19 (8) district attorneys;
- 20 (9) any state government social services
21 agency in any state;
- 22 (10) those persons or entities of a child's
23 Indian tribe specifically authorized to inspect such records
24 pursuant to the federal Indian Child Welfare Act of 1978 or
25 any regulations promulgated thereunder;

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

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

8 (13) school personnel involved with the child
9 if the records concern the child's social or educational
10 needs;

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

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

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

23 C. For purposes of this section, law enforcement
24 records shall be open to inspection by the parent, guardian or
25 legal custodian of the child.

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

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 26, 1999

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8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 491

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17 1. On page 2, line 20, strike "adjudicate the child
18 and enter an order suspending in" and insert in lieu thereof
19 "enter a judgment imposing or suspending in".

20
21 2. On page 11, line 23, after the subsection
22 designation "C." strike the remainder of the line, strike
23 lines 24 and 25 and insert in lieu thereof:

24 "Upon satisfactory verification of his identity, the parent,
25 guardian or legal custodian of a child shall, in person,
through counsel or through his authorized agent, be entitled

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to review and obtain a copy of all law enforcement records
pertaining to the child."

Respectfully submitted,

R. David Pederson, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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The roll call vote was 8 For 0 Against

Yes: 8

Excused: Luna, Mallory, Rios, Taylor, T.

Absent: None

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1 HJC/HB 491

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 14, 1999

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Mr. President:

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Your JUDICIARY COMMITTEE, to whom has been referred

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HOUSE BILL 491, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS.

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Respectfully submitted,

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Michael S. Sanchez, Chairman

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1 HJC/HB 491

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 5 For 0 Against

11

Yes: 5

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No: None

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Excused: Aragon, Davis, Lopez

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Absent: None

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