

HOUSE BILL 142

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Tim D. Lewis

AN ACT

RELATING TO THE DELINQUENCY ACT; PROHIBITING SENTENCE OF LIFE WITHOUT THE POSSIBILITY FOR RELEASE OR PAROLE FOR SERIOUS YOUTHFUL OFFENDERS; REDUCING THE NUMBER OF SEPARATE FELONY ADJUDICATIONS TO MAKE A CHILD FROM FOURTEEN TO EIGHTEEN YEARS OF AGE A YOUTHFUL OFFENDER; INCLUDING VIOLATIONS OF CONDITIONS OF RELEASE AS A REASON TO HOLD A CHILD IN AN ADULT JAIL OR LOCKUP; PROVIDING FOR RELEASE IF THE CHILDREN'S COURT ATTORNEY FAILS TO FILE IN A TIMELY MANNER; CLARIFYING WHERE ALLEGED DELINQUENT CHILDREN OR YOUTHFUL OFFENDERS MAY BE DETAINED; CHANGING PARAMETERS OF ELECTRONIC HEARINGS; CLARIFYING ROLES AND RESPONSIBILITIES OF PARENTS, LEGAL GUARDIANS AND CUSTODIANS; PROHIBITING TIME REDUCTION FOR TIME SPENT IN DETENTION WHILE AWAITING ADJUDICATION; PROHIBITING CONSECUTIVE COMMITMENT; AMENDING DISPOSITIONS OF AN ADJUDICATED DELINQUENT OFFENDER; CHANGING TERMINOLOGY; AMENDING AND ENACTING SECTIONS

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1 OF THE NMSA 1978.

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

4 SECTION 1. Section 9-2A-14.1 NMSA 1978 (being Laws 2007,
5 Chapter 351, Section 1) is amended to read:

6 "9-2A-14.1. JUVENILE CONTINUUM GRANT FUND--CREATED--
7 PURPOSE--ADMINISTRATION--GRANT APPLICATIONS.--

8 A. The "juvenile continuum grant fund" is created
9 as a nonreverting fund in the state treasury. The fund shall
10 be administered by the children, youth and families department
11 and shall consist of appropriations, gifts, grants, donations
12 and bequests made to the fund.

13 B. Money in the juvenile continuum grant fund is
14 subject to appropriation by the legislature to the children,
15 youth and families department for awarding grants to juvenile
16 justice continuums for the provision of cost-effective services
17 and temporary, nonsecure alternatives to detention for
18 juveniles arrested or referred to juvenile probation [~~and~~
19 ~~parole~~] or at a risk of such referral.

20 C. A local or tribal government may apply for a
21 grant from the juvenile continuum grant fund for a juvenile
22 justice continuum within its jurisdiction. The amount of the
23 grant application shall not exceed sixty percent of the annual
24 cost of the continuum. A local match of forty percent may
25 consist of money, land, equipment or in-kind services.

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1 D. The children, youth and families department
2 shall adopt rules on qualifications for grants and specify the
3 format, procedure and deadlines for grant applications. The
4 juvenile justice advisory committee shall review all grant
5 applications and submit those applications recommended for
6 final approval to the secretary of children, youth and
7 families.

8 E. Disbursements from the juvenile continuum grant
9 fund shall be made upon vouchers issued and signed by the
10 secretary of children, youth and families or the secretary's
11 designee upon warrants drawn by the secretary of finance and
12 administration.

13 F. As used in this section, a "juvenile justice
14 continuum" is a system of services and sanctions for juveniles
15 arrested or referred to juvenile probation [~~and parole~~] or at
16 risk of such referral and consists of a formal partnership
17 among one or more units of local or tribal governments, the
18 children's court, the district attorney, the public defender,
19 local law enforcement agencies, the public schools and other
20 entities such as private nonprofit organizations, the business
21 community and religious organizations. A juvenile justice
22 continuum shall be established through a memorandum of
23 understanding and a continuum board."

24 SECTION 2. Section 9-2A-17 NMSA 1978 (being Laws 1993,
25 Chapter 120, Section 1) is amended to read:

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1 "9-2A-17. [~~CORRECTIONAL OFFICERS~~] YOUTH CARE
2 SPECIALISTS--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ACTING AS
3 PEACE OFFICERS.--

4 A. [~~Correctional officers~~] Youth care specialists
5 of the children, youth and families department who have
6 completed an appropriate [~~American correction association~~]
7 training course and who have at the particular time the
8 principal duty to hold in custody or supervise any person
9 accused or convicted of a delinquent act or criminal offense
10 shall have the power of a peace officer with respect to arrests
11 and enforcement of laws when:

12 (1) on the premises of a children, youth and
13 families department facility or while transporting a person
14 committed to or under the supervision of the children, youth
15 and families department;

16 (2) supervising any person committed to or
17 under the supervision of the children, youth and families
18 department anywhere within the state; or

19 (3) engaged in any effort to pursue or
20 apprehend any [~~such~~] person described in Paragraph (1) or (2)
21 of this subsection.

22 B. No [~~correctional officer~~] youth care specialist
23 of the children, youth and families department shall be
24 convicted or held liable for any act performed pursuant to this
25 section if a peace officer could lawfully have performed the

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1 same act in the same circumstances.

2 C. Crimes against a [~~correctional officer~~] youth
3 care specialist of the children, youth and families department
4 while in the lawful discharge of duties that confer peace
5 officer status pursuant to this section shall be deemed the
6 same crimes and shall bear the same penalties as crimes against
7 a peace officer."

8 SECTION 3. Section 9-2A-18 NMSA 1978 (being Laws 1997,
9 Chapter 110, Section 1) is amended to read:

10 "9-2A-18. [~~CORRECTIONAL OFFICERS~~] YOUTH CARE
11 SPECIALISTS--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--
12 QUALIFICATIONS.--[~~Correctional officers~~] Youth care specialists
13 of the children, youth and families department shall:

- 14 A. be citizens of the United States;
15 B. be eighteen years of age or older;
16 C. possess a high school education or its
17 equivalent;
18 D. be of good moral character and not have been
19 convicted of a felony offense by a court of this state, any
20 other state or the United States; and
21 E. successfully pass a physical examination and an
22 aptitude examination administered by the department."

23 SECTION 4. Section 9-3-13 NMSA 1978 (being Laws 2003 (1st
24 S.S.), Chapter 1, Section 1, as amended) is amended to read:

25 "9-3-13. SEX OFFENDER MANAGEMENT BOARD--CREATION--
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1 MEMBERSHIP--DUTIES.--

2 A. There is created within the New Mexico
3 sentencing commission the "sex offender management board".
4 Members of the sex offender management board who are not
5 members of the New Mexico sentencing commission, whose
6 membership is set forth in Section 9-3-10 NMSA 1978, shall not
7 be voting members of the New Mexico sentencing commission.

8 B. The sex offender management board shall be
9 composed of the following members:

- 10 (1) the attorney general or designee;
- 11 (2) a district attorney appointed by the
12 district attorneys association of New Mexico;
- 13 (3) the chief public defender or designee;
- 14 (4) a district court judge appointed by the
15 district court judge's association of New Mexico;
- 16 (5) the secretary of corrections or designee;
- 17 (6) the secretary of health or designee;
- 18 (7) the secretary of children, youth and
19 families or designee;
- 20 (8) the secretary of public safety or
21 designee;
- 22 (9) the secretary of public education or
23 designee;
- 24 (10) the secretary of Indian affairs or
25 designee;

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1 (11) one public member appointed by the
2 governor who is a board member of a New Mexico victims
3 organization;

4 (12) two representatives appointed by the
5 governor who are mental health professionals licensed to
6 practice in New Mexico. One of the mental health professionals
7 shall be a member of the association for the treatment of
8 sexual abusers and one shall be a juvenile sex offender
9 treatment specialist;

10 (13) a representative appointed by the
11 governor from the adult probation and parole division of the
12 corrections department who has expertise in the supervision of
13 sex offenders;

14 (14) a representative appointed by the
15 governor from the law enforcement community who has expertise
16 regarding sex offender community notification, registration,
17 tracking and monitoring;

18 (15) a representative appointed by the
19 governor who is affiliated with a civil liberties organization;
20 and

21 (16) a representative appointed by the
22 governor who is affiliated with a faith-based organization.

23 C. The sex offender management board shall report
24 its findings and recommendations to the New Mexico sentencing
25 commission on a quarterly basis. The New Mexico sentencing

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1 commission shall vote to approve, disapprove or revise the
2 recommendations of the board.

3 D. The sex offender management board shall:

4 (1) hold meetings at times and for periods as
5 the board deems necessary to accomplish its objectives, but
6 shall meet at least eight times a year;

7 (2) develop and prescribe a standard procedure
8 for the identification and evaluation of convicted sex
9 offenders. The procedure shall include behavior management,
10 monitoring, treatment and program compliance for sex offenders.
11 The board shall develop and recommend measures of success;

12 (3) develop and recommend guidelines and
13 standards for the treatment of sex offenders that can be
14 utilized by offenders who are placed on probation, incarcerated
15 with the corrections department, placed on parole or placed in
16 a community corrections program. The guidelines and standards
17 shall include a monitoring process and a plan for developing
18 treatment programs for sex offenders, including determining the
19 duration, terms and conditions of probation and parole for sex
20 offenders;

21 (4) create a risk assessment screening tool
22 and program to assist sentencing of sex offenders, including
23 determining the duration, terms and conditions of probation and
24 parole for sex offenders;

25 (5) develop guidelines and standards for

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1 monitoring sex offenders who are undergoing evaluation or
2 treatment, including behavioral monitoring;

3 (6) develop criteria for measuring a sex
4 offender's progress in treatment programs. The parole board
5 shall use the criteria approved by the New Mexico sentencing
6 commission to determine whether a sex offender may
7 appropriately be discharged from parole;

8 (7) develop a standardized procedure for the
9 identification and evaluation of juvenile sex offenders. The
10 procedure shall include behavior management, monitoring,
11 treatment and program compliance for juvenile sex offenders.
12 The board shall develop and implement measures of success;

13 (8) develop and recommend guidelines and
14 standards for the treatment of juvenile sex offenders who are
15 placed on probation, committed to a state agency, placed on
16 [~~parole~~] supervised release or placed in a community
17 corrections program;

18 (9) research and analyze safety issues raised
19 when sex offenders live in a community;

20 (10) study and consider the viability and
21 legality of a civil commitment program for sex offenders;

22 (11) research and determine the feasibility
23 and legality of implementing indeterminate sentencing for sex
24 offenders;

25 (12) study the use of clinical polygraph

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1 testing as a means to evaluate sex offenders;

2 (13) evaluate sex offender treatment programs
3 administered by state agencies and recommend changes, if
4 needed, in those treatment programs; and

5 (14) review the provisions of the Sex Offender
6 Registration and Notification [~~and Registration~~] Act and
7 recommend changes, if needed, to that act.

8 E. The members of the sex offender management board
9 shall be paid pursuant to the Per Diem and Mileage Act and
10 shall receive no other perquisite, compensation or allowance."

11 SECTION 5. Section 10-7-4.1 NMSA 1978 (being Laws 1990,
12 Chapter 29, Section 1, as amended) is amended to read:

13 "10-7-4.1. CHILDREN, YOUTH AND FAMILIES DEPARTMENT--GROUP
14 LIFE INSURANCE.--Notwithstanding the provisions of Section
15 10-7-4 NMSA 1978 and in addition to all other benefits provided
16 [~~juvenile correctional officers and correctional officer~~] youth
17 care specialists, the children, youth and families department
18 shall provide life insurance coverage in the amount of twenty-
19 five thousand dollars (\$25,000) for each [~~juvenile correctional~~
20 ~~officer and correctional officer~~] youth care specialist, to be
21 paid to [~~his~~] the specialist's designated beneficiary. The
22 coverage shall include double indemnity provisions for death
23 incurred in the line of duty. The coverage shall be provided
24 by a group term insurance policy, the premium for which shall
25 be paid out of state funds appropriated to the children, youth

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1 and families department."

2 SECTION 6. Section 31-18-15.3 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 3) is amended to read:

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

5 A. An alleged 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, if a facility described in
16 Paragraph (1) or (2) of this subsection is not appropriate.

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

21 C. At arraignment, when a metropolitan or district
22 court judge or a magistrate determines that an alleged serious
23 youthful offender should remain in custody, the alleged serious
24 youthful offender may be detained in an adult or juvenile
25 detention facility, subject to the facility's accreditation and

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1 the provisions of applicable federal law.

2 D. When an alleged serious youthful offender is
3 found guilty of first degree murder, the court shall sentence
4 the offender pursuant to the provisions of the Criminal
5 Sentencing Act. The court may sentence the offender to less
6 than, but not exceeding, the mandatory term for an adult. A
7 serious youthful offender shall not be sentenced to life
8 without the possibility of release or parole. The
9 determination of guilt becomes a conviction for purposes of the
10 Criminal Sentencing Act.

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

16 F. When the alleged serious youthful offender is
17 convicted of a lesser offense than first degree murder, the
18 court shall provide for disposition of the offender pursuant to
19 the provisions of Section [~~32-2-19 or 32-2-20~~] 32A-2-19 or
20 32A-2-20 NMSA 1978. When an offender is adjudicated as a
21 delinquent child, the conviction shall not be used as a
22 conviction for purposes of the Criminal Sentencing Act."

23 SECTION 7. Section 31-26-12 NMSA 1978 (being Laws 1994,
24 Chapter 144, Section 12, as amended) is amended to read:

25 "31-26-12. PROCEDURES WHEN AN INMATE IS RELEASED FROM
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1 INCARCERATION--ADULT PAROLE BOARD--CORRECTIONS DEPARTMENT--
2 PROCEDURES WHEN A DELINQUENT CHILD IS RELEASED FROM CUSTODY--
3 [~~JUVENILE PAROLE BOARD~~] CHILDREN, YOUTH AND FAMILIES
4 DEPARTMENT--DISTRICT ATTORNEYS.--

5 A. The adult parole board and the children, youth
6 and families department shall provide a copy of their
7 respective regular release dockets to each district attorney in
8 the state at least ten working days before the docket is
9 considered. The district attorney shall notify any person
10 known to reside in the district who was a victim of the
11 criminal offense for which the inmate was incarcerated or the
12 delinquent child was committed.

13 B. The adult parole board or the children, youth
14 and families department shall provide a copy of a supplemental,
15 addendum or special docket to each district attorney at least
16 five working days before the release docket is considered.

17 C. Following consideration of a release docket by
18 the adult parole board or the children, youth and families
19 department, the board and department shall promptly notify each
20 district attorney of recommendations for release of an inmate
21 from incarceration or a delinquent child from custody. The
22 district attorney shall notify any person known to reside in
23 the district attorney's district who was a victim of the
24 criminal offense for which the inmate was incarcerated or the
25 delinquent child was committed.

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1 D. In the case of an inmate scheduled to be
2 released from incarceration without parole or prior to parole
3 for any reason, or a delinquent child scheduled to be released
4 from custody, the corrections department or the children, youth
5 and families department shall notify each district attorney at
6 least fifteen working days before the inmate's or delinquent
7 child's release. The district attorney shall notify any person
8 known to reside in the district who was a victim of the
9 criminal offense for which the inmate was incarcerated or the
10 delinquent child was committed."

11 **SECTION 8.** Section 32A-2-2 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 31, as amended) is amended to read:

13 "32A-2-2. PURPOSE OF ACT.--The purpose of the Delinquency
14 Act is:

15 A. consistent with the protection of the public
16 interest, to remove from children committing delinquent acts
17 the adult consequences of criminal behavior, but to still hold
18 children committing delinquent acts accountable for their
19 actions [~~to the extent of~~] taking into account the child's age,
20 education, mental and physical condition, background and all
21 other relevant factors, and to provide a program of
22 supervision, care and rehabilitation, including rehabilitative
23 restitution by the child to the victims of the child's
24 delinquent act to the extent that the child is reasonably able
25 to do so;

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1 B. to provide effective deterrents to acts of
2 juvenile delinquency, including an emphasis on community-based
3 [~~alternatives~~] programming;

4 C. to strengthen families and to successfully
5 reintegrate children into homes and communities;

6 D. to foster and encourage collaboration between
7 government agencies and communities with regard to juvenile
8 justice policies and procedures;

9 E. to develop juvenile justice policies and
10 procedures that are supported by data;

11 F. to develop objective risk assessment instruments
12 to be used for admission to juvenile detention centers;

13 G. to encourage efficient processing of cases;

14 H. to develop community-based alternatives to
15 detention;

16 I. to eliminate or reduce disproportionate minority
17 contact and disparities based upon race or gender;

18 J. to improve conditions of confinement in juvenile
19 detention centers; and

20 K. to achieve reductions in the number of warrants
21 issued, the number of probation violations and the number of
22 youth awaiting placements."

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

25 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

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1 A. "delinquent act" means an act committed by a
2 child that would be designated as a crime under the law if
3 committed by an adult, including the following offenses:

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

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

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

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

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

14 (e) homicide by vehicle;

15 (f) [~~injuring~~] damaging or tampering
16 with a vehicle;

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

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

22 (i) reckless driving;

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

25 (k) an offense punishable as a felony;

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

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

18 (4) a violation of the Controlled Substances
19 Act;

20 (5) escape from the custody of a law
21 enforcement officer or a juvenile probation ~~[or parole]~~ officer
22 or from any placement made by the department by a child who has
23 been adjudicated a delinquent child;

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

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1 or

2 (7) a violation of an order of protection
3 issued pursuant to the provisions of the Family Violence
4 Protection Act;

5 B. "delinquent child" means a child who has
6 committed a delinquent act;

7 C. "delinquent offender" means a delinquent child
8 who is subject to juvenile sanctions only and who is not a
9 youthful offender or a serious youthful offender;

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

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

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

18 G. "restitution" means financial reimbursement by
19 the child to the victim or community service imposed by the
20 court and is limited to easily ascertainable damages for injury
21 to or loss of property, actual expenses incurred for medical,
22 psychiatric and psychological treatment for injury to a person
23 and lost wages resulting from physical injury, which are a
24 direct and proximate result of a delinquent act. "Restitution"
25 does not include reimbursement for damages for mental anguish,

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1 pain and suffering or other intangible losses. As used in this
2 subsection, "victim" means a person who is injured or suffers
3 [~~damage~~] damages of any kind by an act that is the subject of a
4 complaint or referral to law enforcement officers or juvenile
5 probation authorities. Nothing contained in this definition
6 limits or replaces the provisions of Subsections A and B of
7 Section 32A-2-27 NMSA 1978;

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

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

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

24 (1) fourteen to eighteen years of age at the
25 time of the offense and who is adjudicated for at least one of

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1 the following offenses:

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

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

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

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

10 (e) aggravated battery against a
11 household member, as provided in Subsection C of Section
12 30-3-16 NMSA 1978;

13 (f) aggravated battery upon a peace
14 officer, as provided in Subsection C of Section 30-22-25 NMSA
15 1978;

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

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

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

23 (j) robbery, as provided in Section
24 30-16-2 NMSA 1978;

25 (k) aggravated burglary, as provided in

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1 Section 30-16-4 NMSA 1978;

2 (1) aggravated arson, as provided in
3 Section 30-17-6 NMSA 1978; or

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

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

17 (3) fourteen years of age and who is
18 adjudicated for first degree murder, as provided in Section
19 30-2-1 NMSA 1978."

20 SECTION 10. Section 32A-2-4 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 33, as amended) is amended to read:

22 "32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--
23 APPEALS.--

24 A. The department shall promulgate [~~updated~~] and
25 maintain standards for all detention facilities, including

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1 standards for site, design, construction, equipment, care,
2 program, personnel and clinical services. The department shall
3 certify as approved all detention facilities in the state
4 meeting the standards promulgated. The department may
5 establish by rule appropriate procedures for provisional
6 certification and the waiving of any of its standards for
7 facilities in existence at the time of the adoption of the
8 standards, except that it shall not allow waiver of any
9 standard pertaining to adequate health and safety protection of
10 the residents and staff of the facility. No child shall be
11 detained in a detention facility unless it is certified as
12 approved by the department, except as otherwise provided in
13 Chapter 32A, Article 2 NMSA 1978.

14 B. The department shall inspect all detention
15 facilities in the state at least once each twelve months and
16 shall require those reports it deems necessary from detention
17 facilities in a form and containing the information determined
18 by the department. If, as the result of an inspection, a
19 certified detention facility [~~is determined as failing to~~] does
20 not meet the required standards, its certification is subject
21 to revocation or refusal for renewal by the department.

22 C. The department shall promulgate rules
23 establishing procedures that provide for prior notice and
24 public hearings on the adoption of and changes to detention
25 facilities' standards [~~adoption and changes~~]. The department

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1 shall also promulgate rules establishing procedures for
2 facility certification, renewal of certification, refusal to
3 renew certification and revocation of certification. The
4 procedures adopted on these matters shall provide for adequate
5 prior notice of intended action by the department, opportunity
6 for the aggrieved person to have an administrative hearing and
7 written notification of the administrative decision. Rules
8 promulgated under this subsection shall not be effective unless
9 filed in accordance with the State Rules Act.

10 D. Any person aggrieved by an administrative
11 decision of the department rendered under the provisions of
12 this section may petition for the review of the administrative
13 decision by appealing to the district court pursuant to the
14 provisions of Section 39-3-1.1 NMSA 1978.

15 E. ~~[After January 1, 1994]~~ No state or county
16 detention facility shall hold juveniles sentenced by a federal
17 court, unless the facility meets state standards promulgated by
18 the department.

19 F. A juvenile detention facility certified by the
20 department shall comply with the daily reporting requirement
21 for children in detention, including reports on the length of
22 stay for each child. This information shall be reported as
23 required by the department."

24 SECTION 11. Section 32A-2-4.1 NMSA 1978 (being Laws 2009,
25 Chapter 239, Section 12) is amended to read:

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1 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
2 HOLDING FACILITIES--REPORTS.--

3 A. A child arrested and detained for an alleged
4 delinquent act or violations of conditions of release may be
5 temporarily held in an adult jail or lockup for no longer than
6 six hours. A child who is detained in an adult jail or lockup
7 shall be placed in a setting that is physically segregated by
8 sight and sound from adult offenders. After six hours, the
9 child may be placed or detained pursuant to the provisions of
10 Section 32A-2-12 NMSA 1978.

11 B. An adult jail or lockup used as a temporary
12 holding facility for alleged delinquent offenders or for
13 juveniles who have violated conditions of release shall file an
14 annual report regarding its compliance with federal
15 requirements. The juvenile justice advisory committee and the
16 department shall determine the format of the annual reports."

17 SECTION 12. Section 32A-2-5 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 34, as amended) is amended to read:

19 "32A-2-5. JUVENILE PROBATION [~~AND PAROLE~~] SERVICES--
20 ESTABLISHMENT--JUVENILE PROBATION [~~AND PAROLE~~] OFFICERS--POWERS
21 AND DUTIES.--

22 A. Juvenile probation [~~and parole~~] services shall
23 be provided by the department.

24 B. To carry out the objectives and provisions of
25 the Delinquency Act, but subject to its limitations, the

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1 department has the power and duty to:

2 (1) receive and examine complaints and
3 allegations that a child is a delinquent child for the purpose
4 of considering beginning a proceeding pursuant to the
5 provisions of the Delinquency Act;

6 (2) make case referrals for services as appear
7 appropriate or desirable;

8 (3) make predisposition studies and
9 assessments and submit reports and recommendations to the
10 court;

11 (4) supervise and assist a child placed on
12 probation or supervised release or under supervision by court
13 order or by the department;

14 (5) give notice to any individual who has been
15 the subject of a petition filed pursuant to the provisions of
16 the Delinquency Act of the sealing of that individual's records
17 in accordance with that act;

18 (6) informally dispose of up to three
19 misdemeanor charges brought against a child within two years;

20 (7) give notice to the children's court
21 attorney of the receipt of any felony complaint and of any
22 recommended adjustment of such felony complaint;

23 (8) identify an Indian child for the purpose
24 of contacting the Indian child's tribe in delinquency cases;
25 and

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1 (9) contact an Indian child's tribe to consult
2 and exchange information for the purpose of preparing a
3 predisposition report when commitment or placement of an Indian
4 child is contemplated or has been ordered and indicate in the
5 report the name of the person contacted in the Indian child's
6 tribe and the results of the contact.

7 C. ~~[A juvenile probation and parole officer does~~
8 ~~not have the powers of a law enforcement officer.]~~ A juvenile
9 probation ~~[and parole]~~ officer may take into physical custody
10 and place in detention, subject to application of a detention
11 risk assessment instrument, a child who is under supervision as
12 a delinquent child or as a youthful offender when there is
13 reasonable cause to believe that the child has violated the
14 conditions of the child's probation or that the child may leave
15 the jurisdiction of the court. Taking a child into custody
16 under this subsection is subject to and shall proceed in
17 accordance with the provisions of the Delinquency Act relating
18 to custody and detention ~~[procedures and]~~ criteria and
19 procedures."

20 SECTION 13. Section 32A-2-6 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 35) is amended to read:

22 "32A-2-6. TRANSFER OF JURISDICTION OVER CHILD FROM OTHER
23 TRIBUNALS TO COURT.--

24 A. If it appears to a tribunal in a criminal matter
25 that the ~~[defendant]~~ offender was under the age of eighteen

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1 years at the time the offense charged was alleged to have been
2 committed and the offense charged is a delinquent act pursuant
3 to the provisions of the Delinquency Act, the tribunal shall
4 promptly transfer jurisdiction of the matter and the
5 [~~defendant~~] child to the court, together with a copy of the
6 accusatory pleading and other papers, documents and transcripts
7 of testimony relating to the case. The tribunal shall not
8 transfer a serious youthful offender.

9 B. Upon transfer, the court shall have exclusive
10 jurisdiction over the proceedings and the [~~defendant~~] child.
11 The transferring tribunal shall order that the [~~defendant~~]
12 child promptly be taken to the court or taken to a place of
13 detention designated by the court or released to the custody of
14 a parent, guardian, custodian or other person legally
15 responsible for the [~~defendant to~~] child and that the child be
16 brought before the court at a time designated by the court.
17 Upon transfer to the court, a petition shall be prepared and
18 filed in the court in accordance with the provisions of the
19 Delinquency Act. If the [~~defendant~~] offender is not a child at
20 the time of transfer, the court retains jurisdiction over the
21 matter only until disposition is made by the court unless
22 disposition is made pursuant to Subsection G of Section
23 32A-2-20 NMSA 1978."

24 SECTION 14. Section 32A-2-7 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 36, as amended) is amended to read:

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1 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
2 NOTICE--TIME WAIVER.--

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

7 B. During the preliminary inquiry on a delinquency
8 complaint, the matter may be referred to another appropriate
9 agency and conferences may be conducted for the purpose of
10 effecting adjustments or agreements that will obviate the
11 necessity for filing a petition. At the commencement of the
12 preliminary inquiry, the parties, including a parent or legal
13 guardian if made a party to a petition pursuant to Section
14 32A-2-28 NMSA 1978, shall be advised of their basic rights
15 pursuant to Section 32A-2-14 NMSA 1978, and no party may be
16 compelled to appear at any conference, to produce any papers or
17 to visit any place. The child shall be informed of the child's
18 right to remain silent. The preliminary inquiry shall be
19 completed within the time limits set forth in the Children's
20 Court Rules.

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

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

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

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

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1 disposition for the case.

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

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

20 **SECTION 15.** Section 32A-2-8 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 37) is amended to read:

22 "32A-2-8. PETITION--AUTHORIZATION TO FILE--FAILURE TO
23 FILE WITHIN TIME LIMITS.--

24 A. A petition alleging delinquency shall not be
25 filed in delinquency proceedings unless the children's court

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1 attorney, after consulting with probation services, has
2 determined and endorsed upon the petition that the filing of
3 the petition is in the best interest of the public and the
4 child. The children's court attorney shall furnish legal
5 services in connection with the authorization and preparation
6 of the petition.

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

19 SECTION 16. Section 32A-2-9 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 38) is amended to read:

21 "32A-2-9. TAKING INTO CUSTODY.--A child may be taken into
22 custody:

23 A. pursuant to [~~the~~] an order of the court issued
24 because a parent, guardian or custodian fails when requested to
25 bring the child before the court after having promised to do so

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1 when the child was delivered upon release from custody;

2 B. pursuant to the laws of arrest for commission of
3 a delinquent act; or

4 C. by a juvenile probation [~~and parole~~] officer
5 proceeding pursuant to the provisions of Subsection C of
6 Section [~~32-2-5~~] 32A-2-5 NMSA 1978."

7 SECTION 17. Section 32A-2-10 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 39, as amended) is amended to read:

9 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

10 A. A person taking a child into custody shall, with
11 all reasonable speed:

12 (1) release the child to the child's parent,
13 guardian or custodian or an adult authorized by the child's
14 parent, guardian or custodian and issue verbal counsel or
15 warning as may be appropriate;

16 (2) release the child to the child's parent,
17 guardian or custodian or an adult authorized to sign on behalf
18 of the child's parent, guardian or custodian upon written
19 promise to bring the child before the court when requested by
20 the court. If the parent, guardian or custodian or an adult
21 authorized to sign on behalf of the child's parent, guardian or
22 custodian fails, when requested, to bring the child before the
23 court as promised, the court may order the child taken into
24 custody and brought before the court;

25 (3) deliver the child to a place of detention

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1 as provided in Section 32A-2-12 NMSA 1978;

2 (4) deliver the child to a medical facility
3 [~~if available~~] if the child is believed to be suffering from a
4 serious illness that requires prompt treatment or prompt
5 diagnosis;

6 (5) deliver the child to an evaluation
7 facility [~~if available~~] if the person taking the child into
8 custody has reasonable grounds to believe the child presents a
9 likelihood of serious harm to the child's self or others or is
10 suffering from some other serious mental condition or illness
11 that requires prompt treatment or prompt diagnosis; or

12 (6) deliver the child to a center or
13 organization that the court or the department [~~recognizes as~~]
14 has determined is an appropriate alternative to secure
15 detention.

16 B. When an alleged delinquent child is delivered to
17 a place of detention or a center or organization [~~recognized~~
18 ~~as~~] determined by the department to be an appropriate
19 alternative to secure detention as provided in Section 32A-2-12
20 NMSA 1978, only a department employee or a trained county
21 detention professional designated by the department may place
22 the child in detention or with a center or organization
23 [~~recognized as~~] determined to be an alternative to secure
24 detention in accordance with the criteria for detention set
25 forth in Section 32A-2-11 NMSA 1978. If the criteria for

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1 detention of an alleged delinquent child are not met, the child
2 shall be released from custody.

3 C. A child under the age of eleven shall not be
4 held in detention. If a child under the age of eleven poses a
5 substantial risk of harm to the child's self or others, a peace
6 officer may detain and transport that child for emergency
7 mental health evaluation and care in accordance with Section
8 32A-6A-19 NMSA 1978.

9 D. If a child is taken into custody and is not
10 released to the child's parent, guardian or custodian or an
11 adult authorized by the child's parent, guardian or custodian,
12 the person taking the child into custody shall give written
13 notice thereof as soon as possible, and in no case later than
14 twenty-four hours, to the child's parent, guardian or custodian
15 or an adult authorized by the child's parent, guardian or
16 custodian and to the court, together with a statement of the
17 reason for taking the child into custody.

18 E. In all cases when a child is taken into custody,
19 the child shall be released to the child's parent, guardian or
20 custodian or an adult authorized by the child's parent,
21 guardian or custodian in accordance with the conditions and
22 time limits set forth in the Children's Court Rules."

23 **SECTION 18.** Section 32A-2-11 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 40, as amended) is amended to read:

25 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

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1 A. Unless ordered by the court pursuant to the
2 provisions of the Delinquency Act, a child taken into custody
3 for an alleged delinquent act shall not be placed in detention
4 unless a detention risk assessment instrument is completed and
5 a determination is made that the child:

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

8 (2) poses a substantial risk of harm to
9 others; or

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

12 B. The criteria for detention in this section shall
13 govern the decisions of all persons responsible for determining
14 whether detention is appropriate prior to a detention hearing,
15 based upon review of the detention risk assessment instrument.

16 C. The department shall develop and implement a
17 detention risk assessment instrument. The department shall
18 collect and analyze data regarding the application of the
19 detention risk assessment instrument. ~~[On January 1, 2004, the
20 department shall provide the legislature with a written report
21 with respect to its collection and analysis of data regarding
22 the application of the detention risk assessment instrument.]"~~

23 SECTION 19. Section 32A-2-12 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 41, as amended) is amended to read:

25 "32A-2-12. PLACEMENT OR DETENTION.--

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1 A. A child alleged to be a delinquent child may be
2 placed or detained, pending a court hearing, in any of the
3 following places:

4 (1) a licensed foster home or a home otherwise
5 authorized under the law to provide foster or group care;

6 (2) a facility operated by a licensed child
7 welfare services agency;

8 (3) a shelter-care facility provided for in
9 the Children's Shelter Care Act that is in compliance with all
10 standards, conditions and regulatory requirements and that
11 shall be considered a temporary placement subject to judicial
12 review within thirty days of placement;

13 (4) a detention facility certified by the
14 department for children alleged to be delinquent children;

15 (5) any other suitable place, other than a
16 facility for the long-term care and rehabilitation of
17 delinquent children to which children adjudicated as delinquent
18 may be confined pursuant to Section 32A-2-19 NMSA 1978,
19 designated by the court ~~[and]~~ that meets the standards for
20 detention facilities pursuant to the Children's Code and
21 federal law; or

22 (6) the child's home or place of residence,
23 under conditions and restrictions approved by the court.

24 B. A child alleged to be a youthful offender may be
25 detained, pending a court hearing, in any of the following

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1 places:

2 (1) a detention facility, licensed by the
3 department, for children alleged to be delinquent children; or

4 (2) any other suitable place, other than a
5 facility for the long-term care and rehabilitation of
6 delinquent children to which children adjudicated as delinquent
7 children may be confined pursuant to Section 32A-2-19 NMSA
8 1978, designated by the court [~~and~~] that meets the standards
9 for detention facilities pursuant to the Children's Code and
10 federal law.

11 ~~[G. A child adjudicated as a youthful offender who~~
12 ~~is violent toward staff or other residents in a detention~~
13 ~~facility may be transferred and detained, pending a court~~
14 ~~hearing, in a county jail. In the event that a child is~~
15 ~~detained in a jail, the director of the jail shall presume that~~
16 ~~the child is vulnerable to victimization by inmates within the~~
17 ~~adult population because of the child's age and shall take~~
18 ~~measures to provide protection to the child. However,~~
19 ~~provision of protective measures shall not result in~~
20 ~~diminishing a child's civil rights to less than those existing~~
21 ~~for an incarcerated adult.]~~

22 C. A child alleged to be a delinquent child or a
23 youthful offender, who at the time of the allegation is in the
24 legal custody of the department pursuant to a previous
25 disposition, may be detained, pending a court hearing or final

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1 disposition, in any of the following places:

2 (1) a detention facility, licensed by the
3 department, for children alleged to be delinquent children; or

4 (2) any other suitable place designated by the
5 court that meets the standards for detention facilities
6 pursuant to the Children's Code and federal law, other than a
7 facility for the long-term care and rehabilitation of
8 delinquent children, to which children adjudicated as
9 delinquent children may be confined pursuant to Section
10 32A-2-19 NMSA 1978.

11 D. A child who has previously been incarcerated as
12 an adult or a person who is eighteen years of age or older
13 shall not be detained in a juvenile detention facility or a
14 facility for the long-term care and rehabilitation of
15 delinquent children but may be detained in a county jail. A
16 child shall not be transferred to a county jail solely on the
17 basis of attaining the age of eighteen while detained in a
18 juvenile detention facility. In the event that a child is
19 detained in a jail, the director of the jail shall presume that
20 the child is vulnerable to victimization by inmates within the
21 adult population because of the child's age, and shall take
22 measures to [~~provide protection to~~] protect the child.
23 However, provision of protective measures shall not result in
24 diminishing a child's civil rights to less than those existing
25 for an incarcerated adult.

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1 E. A child alleged to be a serious youthful
2 offender may be detained pending a court hearing in any of the
3 following places, prior to arraignment in metropolitan,
4 magistrate or district court:

5 (1) a detention facility, licensed by the
6 department, for children alleged to be delinquent children;

7 (2) any other suitable place [~~other than a~~
8 ~~facility for the long-term care and rehabilitation of~~
9 ~~delinquent children to which children adjudicated as delinquent~~
10 ~~children may be confined pursuant to Section 32A-2-19 NMSA~~
11 ~~1978]~~ designated by the court that meets the standards for
12 detention facilities pursuant to the Children's Code and
13 federal law, other than a facility for the long-term care and
14 rehabilitation of delinquent children to which children
15 adjudicated as delinquent children may be confined pursuant to
16 Section 32A-2-19 NMSA 1978; or

17 (3) a county jail, if a facility in Paragraph
18 (1) or (2) of this subsection is not appropriate. In the event
19 that a child is detained in a jail, the director of the jail
20 shall presume that the child is vulnerable to victimization by
21 inmates within the adult population because of the child's age
22 and shall take measures to [~~provide protection to~~] protect the
23 child. However, provision of protective measures shall not
24 result in diminishing a child's civil rights to less than those
25 existing for an incarcerated adult.

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1 F. When a person who is eighteen years of age or
2 older is taken into custody and transported to an adult
3 facility on a juvenile warrant or an adult warrant or other
4 adult charges and an outstanding juvenile warrant exists,
5 notice shall be given to the children's court attorney and the
6 juvenile probation [~~and parole~~] office in the jurisdiction
7 where the juvenile warrant was issued within one day of the
8 person being taken into custody. The juvenile probation [~~and~~
9 ~~parole~~] office shall give notice that the person has been taken
10 into custody to the children's court judge and the attorney who
11 represented the person in the juvenile proceeding.

12 G. In addition to the judicial review required by
13 Paragraph (3) of Subsection A of this section, a child detained
14 in an out-of-home placement pursuant to this section may
15 request judicial review of the appropriateness of the
16 placement."

17 **SECTION 20.** Section 32A-2-13 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 42, as amended) is amended to read:

19 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED
20 CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--
21 DISPOSITION.--

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

24 (1) a judicial determination of probable cause
25 shall be made by a judge or special master or magistrate within

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1 forty-eight hours, including Saturdays, Sundays and legal
2 holidays, except for children taken into custody under an
3 arrest warrant pursuant to the Children's Court Rules. A
4 statement by a law enforcement officer, which shall include the
5 charges, may be the basis of a probable cause determination.
6 The probable cause determination shall be nonadversarial, may
7 be held in the absence of the child and counsel and may be
8 conducted by telephone. If the court finds no probable cause
9 to believe the child committed an offense, the child shall be
10 released;

11 (2) a petition shall be filed within
12 twenty-four hours from the time the child is taken into
13 custody, excluding Saturdays, Sundays and legal holidays, and
14 if not filed within the stated time, the child shall be
15 released; and

16 (3) a detention hearing shall be held within
17 twenty-four hours, excluding Saturdays, Sundays and legal
18 holidays, from the time of filing the petition to determine
19 whether continued detention is required pursuant to the
20 criteria established by the Children's Code. At the request of
21 any party, the court may permit a detention hearing to be
22 conducted by appropriate means of electronic communication;
23 ~~[provided that]~~ no plea, however, shall be allowed to be taken
24 via electronic communication. All hearings conducted by
25 electronic means shall be recorded and preserved as part of the

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1 record and the child shall have legal representation present
2 with the child. [~~no plea shall be allowed to be taken via~~
3 ~~electronic communication and~~] In order for a hearing to be
4 conducted by means of electronic communication, the court
5 [~~finds~~] must find:

6 (a) that undue hardship will result from
7 conducting the hearing with all parties, including the child,
8 present in the courtroom; and

9 (b) that the hardship substantially
10 outweighs any prejudice or harm to the child that is likely to
11 result from the hearing being conducted by electronic means.

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

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

13 I. If the child is not released at the detention
14 hearing and a parent, guardian or custodian was not notified of
15 the hearing and did not appear or waive appearance at the
16 detention hearing, the judge or special master shall rehear the
17 detention matter without unnecessary delay upon the filing of
18 an affidavit stating the facts and a motion for rehearing.

19 J. If a child is not released at the detention
20 hearing, the child's detention may be subsequently reviewed by
21 the court or the court may review the child's detention in
22 conjunction with a pretrial conference.

23 ~~[K. If a child is not placed within ten days after~~
24 ~~a disposition hearing, the child may be released and placed~~
25 ~~under appropriate supervision, so long as the child does not~~

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1 ~~pose a flight risk or substantial risk of harm to the child's~~
2 ~~self or others.]"~~

3 SECTION 21. Section 32A-2-14 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 43, as amended) is amended to read:

5 "32A-2-14. BASIC RIGHTS.--

6 A. A child subject to the provisions of the
7 Delinquency Act is entitled to the same basic rights as an
8 adult, ~~[except as otherwise provided in the Children's Code]~~
9 including rights provided by the Delinquency Act, except as
10 otherwise provided in the Children's Code.

11 B. If after due notice to the parent, guardian or
12 custodian and ~~[after]~~ a hearing determining indigency, the
13 parent, guardian or custodian is declared indigent by the
14 court, the public defender shall represent the child. If the
15 court finds that the parent, guardian or custodian is
16 financially able to pay for an attorney but is unwilling to do
17 so, the court shall order the parent, guardian or custodian to
18 reimburse the state for public defender representation.

19 C. No person subject to the provisions of the
20 Delinquency Act who is alleged or suspected of being a
21 delinquent child shall be interrogated or questioned without
22 first advising the child of the child's constitutional rights
23 and securing a knowing, intelligent and voluntary waiver.

24 D. Before any statement or confession may be
25 introduced at a trial or hearing when a child is alleged to be

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1 a delinquent child, the state shall prove that the statement or
2 confession offered in evidence was elicited only after a
3 knowing, intelligent and voluntary waiver of the child's
4 constitutional rights was obtained.

5 E. In determining whether the child knowingly,
6 intelligently and voluntarily waived the child's rights, the
7 court shall consider the following factors:

8 (1) the age and education of the [~~respondent~~]
9 child;

10 (2) whether the [~~respondent~~] child is in
11 custody;

12 (3) the manner in which the [~~respondent~~] child
13 was advised of the [~~respondent's~~] child's rights;

14 (4) the length of questioning and
15 circumstances under which the [~~respondent~~] child was
16 questioned;

17 (5) the condition of the quarters where the
18 [~~respondent~~] child was being kept at the time of being
19 questioned;

20 (6) the time of day and the treatment of the
21 [~~respondent~~] child at the time of being questioned;

22 (7) the mental and physical condition of the
23 [~~respondent~~] child at the time of being questioned; and

24 (8) whether the [~~respondent~~] child had the
25 counsel of an attorney, friends or relatives at the time of

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1 being questioned.

2 F. Notwithstanding any other provision to the
3 contrary, no confessions, statements or admissions may be
4 introduced against a child under the age of thirteen years on
5 the allegations of the petition. There is a rebuttable
6 presumption that any confessions, statements or admissions made
7 by a child thirteen or fourteen years old to a person in a
8 position of authority are inadmissible.

9 G. An [~~extrajudicial~~] admission or confession made
10 by the child out of court is insufficient to support a finding
11 that the child committed the delinquent acts alleged in the
12 petition unless it is corroborated by other evidence.

13 H. The child and the parent, guardian or custodian
14 of the child shall be advised by the court or its
15 representative that the child shall be represented by counsel
16 at all stages of the proceedings on a delinquency petition,
17 including all post-dispositional court proceedings. [~~If~~
18 ~~counsel is not retained for the child or if it does not appear~~
19 ~~that counsel will be retained, counsel shall be appointed for~~
20 ~~the child.~~]

21 I. A child under the age of thirteen alleged or
22 adjudicated to be a delinquent child shall not be fingerprinted
23 or photographed for identification purposes without obtaining a
24 court order.

25 J. The court, at any stage of the proceeding on a

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1 petition under the Children's Code, may appoint a guardian ad
2 litem for a child who is a party if the child has no parent,
3 guardian or custodian appearing on behalf of the child or if
4 the parent's, guardian's or custodian's interests conflict with
5 those of the child. A party to the proceeding or an employee
6 or representative of a party shall not be appointed as guardian
7 ad litem.

8 K. The court shall appoint a guardian for a child
9 if the court determines that the child does not have a parent
10 or a legally appointed guardian in a position to exercise
11 effective guardianship. No officer or employee of an agency
12 that is vested with the legal custody of the child shall be
13 appointed guardian of the child except when parental rights
14 have been terminated and the agency is authorized to place the
15 child for adoption.

16 L. A person afforded rights under the Delinquency
17 Act shall be advised of those rights at that person's first
18 appearance before the court on a petition under that act.

19 M. A serious youthful offender who is detained
20 prior to trial in an adult facility has a right to bail as
21 provided under [~~SCRA-1986~~] Rule 5-401 NMRA. A child held in a
22 juvenile facility designated as a place of detention prior to
23 adjudication does not have a right to bail but may be released
24 pursuant to the provisions of the Delinquency Act.

25 N. The provisions of the Delinquency Act shall not

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1 be interpreted to limit the right of a child to petition a
2 court for a writ of habeas corpus."

3 SECTION 22. Section 32A-2-16 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 45, as amended) is amended to read:

5 "32A-2-16. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
6 DISPOSITIONAL MATTERS--PENALTY.--

7 A. Hearings on petitions shall be conducted by the
8 court separate from other proceedings. A jury trial on the
9 issues of alleged delinquent acts may be demanded by the child,
10 parent, guardian, custodian or counsel in proceedings on
11 petitions alleging delinquency when the offense alleged would
12 be triable by jury if committed by an adult. If a jury is
13 demanded and the child is entitled to a jury trial, the jury's
14 function is limited to that of trier of the factual issue of
15 whether the child committed the alleged delinquent acts. If no
16 jury is demanded, the ~~[hearing shall be by the court without a~~
17 ~~jury]~~ court shall be the trier of fact. Jury trials shall be
18 conducted in accordance with rules promulgated under the
19 provisions of Subsection B of Section 32A-1-5 NMSA 1978. A
20 delinquent child facing a juvenile disposition shall be
21 entitled to a six-member jury. If the children's court
22 attorney has filed a motion ~~[to invoke]~~ seeking an adult
23 sentence, the child is entitled to a twelve-member jury. A
24 unanimous verdict is required for all jury trials. The
25 proceedings shall be recorded by stenographic notes or by

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1 electronic, mechanical or other appropriate means.

2 B. All hearings to declare a person in contempt of
3 court and all hearings on petitions pursuant to the provisions
4 of the Delinquency Act shall be open to the general public,
5 except where the court in its discretion, after a finding of
6 exceptional circumstances, deems it appropriate to conduct a
7 closed delinquency hearing. Only the parties, their counsel,
8 witnesses and other persons approved by the court may be
9 present at a closed hearing. Those other persons the court
10 finds to have a proper interest in the case or in the work of
11 the court may be admitted by the court to closed hearings on
12 the condition that they refrain from divulging any information
13 concerning the exceptional circumstances that resulted in the
14 need for a closed hearing. Accredited representatives of the
15 news media shall be allowed to be present at closed hearings
16 subject to the conditions that they refrain from divulging
17 information concerning the exceptional circumstances that
18 resulted in the need for a closed hearing and subject to such
19 enabling regulations as the court finds necessary for the
20 maintenance of order and decorum and for the furtherance of the
21 purposes of the Delinquency Act.

22 C. Those persons or parties granted admission to a
23 closed hearing who intentionally divulge information in
24 violation of Subsection B of this section are guilty of a petty
25 misdemeanor.

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1 D. The court shall determine if the allegations of
2 the petition are admitted or denied. If the allegations are
3 denied, the court shall proceed to hear evidence on the
4 petition. The court after hearing all of the evidence bearing
5 on the allegations of delinquency shall make and record its
6 findings on whether the delinquent acts [~~subscribed~~] ascribed
7 to the child were committed by the child. If the court finds
8 that the allegations of delinquency have not been established,
9 it shall dismiss the petition and order the child released from
10 any detention or legal custody imposed in connection with the
11 proceedings.

12 E. The court shall make a finding of delinquency
13 based on a valid admission of the allegations of the petition
14 or on the basis of proof beyond a reasonable doubt.

15 F. If the court finds on the basis of a valid
16 admission of the allegations of the petition or on the basis of
17 proof beyond a reasonable doubt that the child is a delinquent,
18 the court may proceed immediately or at a [~~postponed hearing~~]
19 later date to make disposition of the case.

20 G. In [~~that part of the hearings~~] a dispositional
21 hearing held under the Delinquency Act [~~on dispositional~~
22 ~~issues~~], all relevant and material evidence helpful in
23 determining the questions presented, including oral and written
24 reports, may be received by the court and may be relied upon to
25 the extent of its probative value even though not competent had

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1 it been offered during the part of the hearings on adjudicatory
2 issues.

3 H. On the court's motion or that of a party, the
4 court may continue the hearing on the petition for a reasonable
5 time to receive reports and other evidence in connection with
6 disposition. ~~[The court may continue the hearing pending the~~
7 ~~receipt of the predisposition study and report if that document~~
8 ~~has not been prepared and received.]~~ During any continuances
9 under this subsection, the court shall make an appropriate
10 order for detention or legal custody."

11 SECTION 23. Section 32A-2-17 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 46, as amended) is amended to read:

13 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
14 EXAMINATIONS.--

15 A. After a petition has been filed and either a
16 finding with respect to the allegations of the petition has
17 been made or a notice of intent to admit the allegations of the
18 petition has been filed, the court may direct that a
19 predisposition study and report to the court be made in writing
20 by the department or an appropriate agency designated by the
21 court concerning the child, the family of the child, the
22 environment of the child and any other matters relevant to the
23 need for treatment or to appropriate disposition of the case.
24 The following predisposition reports shall be provided to the
25 parties and the court five days before actual disposition or

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1 sentencing:

2 (1) the adult probation and parole division of
3 the corrections department shall prepare a predisposition
4 report for a serious youthful offender;

5 (2) the department shall prepare a
6 predisposition report for a serious youthful offender who is
7 convicted of an offense other than first degree murder;

8 (3) the department shall prepare a
9 predisposition report for a youthful offender concerning the
10 youthful offender's amenability to treatment and if:

11 (a) the court determines that a juvenile
12 disposition is appropriate, the department shall prepare a
13 subsequent predisposition report; or

14 (b) the court makes the findings
15 necessary to impose an adult sentence pursuant to Section
16 32A-2-20 NMSA 1978, the adult probation and parole division of
17 the corrections department shall prepare a subsequent
18 predisposition report; this subparagraph shall not apply,
19 however, to any adult sentence sought pursuant to Section
20 32A-2-20.1 NMSA 1978; and

21 (4) the department shall prepare a
22 predisposition report for a delinquent offender, upon the
23 court's request.

24 B. Where there are indications that the child may
25 have a mental disorder or developmental disability, the court,

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1 on motion by the children's court attorney or that of counsel
2 for the child, may order the child to be examined at a suitable
3 place by a physician or psychiatrist, a licensed psychologist,
4 a licensed professional clinical counselor or a licensed
5 independent social worker prior to a hearing on the merits of
6 the petition. An examination made prior to the hearing or as a
7 part of the predisposition study and report shall be conducted
8 on an outpatient basis, unless the court finds that placement
9 in a hospital or other appropriate facility is necessary.

10 C. The court, after a hearing, may order
11 examination by a physician or psychiatrist, a licensed
12 psychologist or a licensed professional clinical counselor or a
13 licensed independent social worker of a parent, legal guardian
14 or custodian who is a party to the case and whose ability to
15 care for or supervise a child is an issue before the court.

16 D. The court may order that a child adjudicated as
17 a delinquent child be administered a predispositional
18 evaluation by a professional designated by the department for
19 purposes of diagnosis, with direction that the court be given a
20 report indicating what disposition appears most suitable when
21 the interests of the child and the public are considered. The
22 evaluation shall be completed within fifteen days of the
23 court's order and ~~[the preference shall be for performing the~~
24 ~~evaluation in the child's community]~~ shall be performed in the
25 child's community, unless the court first makes a finding that

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1 the child meets the detention requirements in Section 32A-2-11
2 NMSA 1978.

3 E. If a child meets the detention standards in
4 Section 32A-2-11 NMSA 1978 and is detained for purposes of
5 performing a predispositional evaluation, it shall be completed
6 within [~~fifteen~~] thirty days and in no event shall a child be
7 detained for more than [~~fifteen~~] thirty days within a three-
8 hundred-sixty-five-day period for a predispositional
9 evaluation, unless for good cause shown."

10 SECTION 24. Section 32A-2-18 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 47, as amended) is amended to read:

12 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--
13 NONADMISSIBILITY--TIME REDUCTION--NO CONSECUTIVE COMMITMENTS.--

14 A. The court shall enter a judgment setting forth
15 the court's findings and disposition in the proceeding. A
16 judgment in proceedings on a petition under the Delinquency Act
17 resulting in a juvenile disposition shall not be deemed a
18 conviction of crime nor shall it impose any civil disabilities
19 ordinarily resulting from conviction of a crime nor shall it
20 operate to disqualify the child in any civil service
21 application or appointment. The juvenile disposition of a
22 child and any evidence given in a hearing in court shall not be
23 admissible as evidence against the child in any case or
24 proceeding in any other tribunal whether before or after
25 reaching the age of majority, except in sentencing proceedings

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1 after conviction of a felony and then only for the purpose of a
2 presentence study and report.

3 B. If a judgment resulting from a youthful offender
4 or serious youthful offender proceeding under the Delinquency
5 Act results in an adult sentence, a record of the judgment
6 shall be admissible in any other case or proceeding in any
7 other court involving the youthful offender or serious youthful
8 offender, unless the sentence was imposed pursuant to Paragraph
9 (2) of Subsection F of Section 32A-2-2 NMSA 1978 and Subsection
10 G of Section 32A-2-20.1 NMSA 1978 and the offender successfully
11 completed adult probation.

12 C. If a judgment on a proceeding under the
13 Delinquency Act results in an adult sentence, the determination
14 of guilt at trial becomes a conviction for purposes of the
15 Criminal Code, except as provided in Subsection G of Section
16 32A-2-20.1 NMSA 1978.

17 D. Children adjudicated as delinquent and
18 transferred to the legal custody of the department for a
19 commitment are not eligible to receive a time reduction from
20 the term of the commitment imposed for time spent in detention
21 while awaiting adjudication.

22 E. A court shall not impose consecutive commitments
23 upon a child adjudicated as delinquent and committed to the
24 care and custody of the department. Any sentence imposed shall
25 be concurrent and served at the same time as any commitment

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1 currently being served, with the later termination date
2 controlling."

3 SECTION 25. Section 32A-2-19 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 48, as amended) is amended to read:

5 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
6 OFFENDER.--

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

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

13 (2) the child's adjustment to the child's
14 home, school and community;

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

19 (4) the wishes of the child as to the child's
20 custodian;

21 (5) the wishes of the child's parents as to
22 the child's custody;

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

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1 (7) the availability of services recommended
2 in the predisposition report; and

3 (8) the ability of the parents to care for the
4 child in the home.

5 B. [~~If~~] When a child is found to be delinquent, the
6 court may impose a fine not to exceed the fine that could be
7 imposed if the child were an adult and may enter its judgment
8 making any of the following dispositions for the supervision,
9 care and rehabilitation of the child:

10 (1) transfer legal custody to the department,
11 an agency responsible for the care and rehabilitation of
12 delinquent children, which shall receive the child at a
13 facility designated by the secretary of the department as a
14 juvenile reception facility. The department shall thereafter
15 determine the appropriate placement, supervision and
16 rehabilitation program for the child. The judge may include
17 recommendations for placement of the child. Commitments are
18 subject to limitations and modifications set forth in Section
19 32A-2-23 NMSA 1978. The types of commitments include:

20 (a) a short-term commitment of one year
21 in a facility for the care and rehabilitation of adjudicated
22 delinquent children. No more than nine months shall be served
23 at the facility and no less than ninety days shall be served on
24 supervised release, unless: 1) a petition to extend the
25 commitment has been filed prior to the commencement of

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1 supervised release; 2) the commitment has been extended
2 pursuant to Section 32A-2-23 NMSA 1978; [~~or~~] 3) supervised
3 release is revoked pursuant to Section 32A-2-25 NMSA 1978; or
4 4) the facility release panel holds a hearing and determines
5 that the child is not ready for supervised release for reasons
6 that are outside of the department's control and a proper
7 transition plan is prepared and provided to the panel, which
8 plan shall include a summary of the reasons that are outside of
9 the department's control;

10 (b) a long-term commitment for no more
11 than two years in a facility for the care and rehabilitation of
12 adjudicated delinquent children. No more than twenty-one
13 months shall be served at the facility and no less than ninety
14 days shall be served on supervised release, unless: 1) a
15 petition to extend the commitment has been filed prior to the
16 commencement of supervised release; 2) supervised release is
17 revoked pursuant to Section 32A-2-25 NMSA 1978; [~~or 2)~~] 3) the
18 commitment is extended pursuant to Section 32A-2-23 NMSA 1978;
19 or 4) the facility release panel holds a hearing and determines
20 that the child is not ready for supervised release for reasons
21 that are outside of the department's control and a proper
22 transition plan is prepared and provided to the panel, which
23 plan shall include a summary of the reasons that are outside of
24 the department's control; or

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 [F] J of Section 32A-2-3 NMSA 1978, a commitment
3 to 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 imposing a fine not to
16 exceed the fine that could be imposed if the child were an
17 adult or any combination of these dispositions; or

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

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1 court first determines that the department is able to provide
2 or contract for adequate and appropriate treatment for the
3 child and that the treatment is likely to be beneficial.

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

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

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

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

21 G. If a child is not placed within ten days after a
22 disposition hearing, the child may be released and placed under
23 appropriate supervision, so long as the child does not pose a
24 flight risk or substantial risk of harm to the child's self or
25 others.

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1 ~~[G-]~~ H. In addition to any other disposition
2 pursuant to Subsection B of this section, the court may make an
3 abuse or neglect report for investigation and proceedings as
4 provided for in the Abuse and Neglect Act. The report may be
5 made to a local law enforcement agency, the department or a
6 tribal law enforcement or social service agency for an Indian
7 child residing in Indian country.

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

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1 66-5-35 NMSA 1978 or an ignition interlock license pursuant to
2 the Ignition Interlock Licensing Act, and nothing in this
3 section precludes the delinquent's participation in an
4 appropriate educational, counseling or rehabilitation program.

5 ~~[F.]~~ J. In addition to any other disposition
6 pursuant to this section or any other penalty provided by law,
7 when a child is adjudicated delinquent on the basis of
8 Paragraph (6) of Subsection A of Section 32A-2-3 NMSA 1978, the
9 child shall perform the mandatory community service set forth
10 in Section 30-15-1.1 NMSA 1978. When a child fails to
11 completely perform the mandatory community service, the name
12 and address of the child's parent or legal guardian shall be
13 published in a newspaper of general circulation, accompanied by
14 a notice that the parent or legal guardian is the parent or
15 legal guardian of a child adjudicated delinquent for committing
16 graffiti."

17 SECTION 26. Section 32A-2-20 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 49, as amended) is amended to read:

19 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

20 A. The court has the discretion to ~~[invoke]~~ impose
21 either an adult sentence or juvenile sanctions on a youthful
22 offender pursuant to this section or the court may proceed
23 pursuant to Section 32A-20-20.1 NMSA 1978. If seeking an adult
24 sentence, the children's court attorney shall file a notice of
25 intent to ~~[invoke]~~ seek an adult sentence within ten working

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1 days of the filing of the petition; provided that the court may
2 extend the time for filing of the notice of intent to [~~invoke~~]
3 seek an adult sentence, for good cause shown, prior to the
4 adjudicatory hearing. A preliminary hearing by the court or a
5 hearing before a grand jury shall be held, within ten days
6 after the filing of the notice of intent to [~~invoke~~] seek an
7 adult sentence, to determine whether probable cause exists to
8 support the allegations contained in the petition.

9 B. If the children's court attorney has filed a
10 notice of intent to [~~invoke~~] seek an adult sentence and the
11 child is adjudicated as a youthful offender, the court shall
12 make the following findings in order to [~~invoke~~] impose an
13 adult sentence, except when imposing an adult sentence pursuant
14 to Section 32A-2-20.1 NMSA 1978:

15 (1) the child is not amenable to treatment or
16 rehabilitation as a child in available juvenile-only
17 facilities; and

18 (2) the child is not eligible for commitment
19 to an institution for children with developmental disabilities
20 or mental disorders.

21 C. In making the findings set forth in Subsection B
22 of this section, the judge shall consider the following
23 factors:

24 (1) the seriousness of the alleged offense;

25 (2) whether the alleged offense was committed

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1 in an aggressive, violent, premeditated or willful manner;

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

4 (4) whether the alleged offense was against
5 persons or against property, greater weight being given to
6 offenses against persons, especially if personal injury
7 resulted;

8 (5) the maturity of the child as determined by
9 consideration of the child's home, environmental situation,
10 social and emotional health, pattern of living, brain
11 development, trauma history and disability;

12 (6) the record and previous history of the
13 child;

14 (7) the prospects for adequate protection of
15 the public and the likelihood of reasonable rehabilitation of
16 the child by the use of procedures, services and facilities
17 currently available; and

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

20 D. If a child has previously been sentenced as an
21 adult pursuant to the provisions of this section, there shall
22 be a rebuttable presumption that the child is not amenable to
23 treatment or rehabilitation as a child in available juvenile-
24 only facilities.

25 E. If the court [~~invokes an adult sentence, the~~

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1 ~~court may sentence the child to less than, but shall not~~
2 ~~exceed, the mandatory adult sentence]~~ determines that the child
3 is not amenable to treatment and that an adult sentence is
4 appropriate, the court shall sentence the youthful offender as
5 an adult. A child adjudicated as a youthful offender and
6 sentenced as an adult shall be sentenced to a term not to
7 exceed the maximum adult sentence that could be imposed for the
8 charges on which the youthful offender is adjudicated. A
9 youthful offender given an adult sentence shall be treated as
10 an adult [~~offender~~] and shall be transferred to the legal
11 custody of an agency responsible for incarceration of persons
12 sentenced to adult sentences. This transfer terminates the
13 jurisdiction of the court over the child with respect to the
14 delinquent acts alleged in the petition.

15 ~~[F. If a juvenile disposition is appropriate, the~~
16 ~~court shall follow the provisions set forth in Section~~
17 ~~32A-2-19 NMSA 1978. A youthful offender may be subject to~~
18 ~~extended commitment in the care of the department until the age~~
19 ~~of twenty-one, pursuant to the provisions of Section 32A-2-23~~
20 ~~NMSA 1978.]~~

21 F. If the court determines that the child is
22 amenable to treatment and that a juvenile disposition is
23 appropriate, the court shall sentence the youthful offender as
24 a delinquent child for an indeterminate period not to exceed
25 the maximum adult sentence that could be imposed, or to age

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1 twenty-one, whichever occurs first. If it is determined that
2 the offender will be in custody at the age of twenty-one, the
3 offender shall be placed on supervised release ninety days
4 before either the offender's twenty-first birthday or the
5 scheduled date of release, whichever occurs first.

6 G. If a child prosecuted as a youthful offender is
7 convicted of an offense that is not an offense described in
8 Subsection J of Section 32A-2-3 NMSA 1978, the court shall
9 adjudicate the child delinquent and order a disposition under
10 Section 32A-2-19 NMSA 1978.

11 [~~G.~~] H. A child fourteen years of age or older
12 charged with first degree murder but not convicted of first
13 degree murder, [~~and~~] but found to have committed a youthful
14 offender offense as set forth in Subsection [~~F.~~] J of Section
15 32A-2-3 NMSA 1978, is subject to the dispositions set forth in
16 this section.

17 [~~H.~~] I. A child fourteen years of age or older
18 charged with first degree murder, but found to have committed a
19 delinquent act that is neither first degree murder nor a
20 youthful offender offense as set forth in Subsection [~~F.~~] J of
21 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
22 subject to the dispositions set forth in Section 32A-2-19 NMSA
23 1978."

24 **SECTION 27.** A new Section 32A-2-20.1 NMSA 1978 is enacted
25 to read:

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1 "32A-2-20.1. [NEW MATERIAL] DUAL DISPOSITION OF A
2 YOUTHFUL OFFENDER AMENABLE TO TREATMENT.--If a youthful
3 offender prosecution results in adjudication for an offense
4 listed in Subsection J of Section 32A-2-3 NMSA 1978 and the
5 offender is found by the court to be amenable to treatment, the
6 court may impose:

7 A. a fine pursuant to Subsection B of Section
8 32A-2-19 NMSA 1978;

9 B. a juvenile disposition under Subparagraphs (b)
10 or (c) of Paragraph (1) of Subsection B of Section 32A-2-19
11 NMSA 1978; and

12 C. an adult criminal sentence, the execution of
13 which shall be stayed on the condition that the offender not
14 violate the provisions of the disposition order and not commit
15 a new offense. Successful completion of the juvenile
16 disposition ordered shall be a condition of suspension of the
17 adult criminal sentence."

18 **SECTION 28.** A new Section 32A-2-20.2 NMSA 1978 is enacted
19 to read:

20 "32A-2-20.2. [NEW MATERIAL] EXECUTION OF ADULT
21 SENTENCE.--

22 A. When there is probable cause to believe that a
23 youthful offender sentenced pursuant to Section 32A-2-20.1 NMSA
24 1978 has violated any condition of the stayed sentence or is
25 alleged to have committed a new offense, the court may, if

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1 necessary, direct that the offender be taken into immediate
2 custody. The children's court attorney may petition for
3 revocation of the stay of execution of the adult sentence and
4 shall notify the offender in writing of the reasons alleged to
5 exist for revocation of the stay.

6 B. The offender shall be entitled to a hearing on
7 the state's petition to revoke the stay or may waive a hearing.
8 If the offender challenges the petition for revocation of the
9 stay, the court shall hold a hearing at which the offender is
10 entitled to be heard and represented by counsel. The
11 children's court attorney shall present proof of the violation
12 to a reasonable certainty. Proof of a new offense in this
13 hearing shall not establish guilt as to that new offense. If a
14 violation is established, the court shall proceed pursuant to
15 Subsection D of this section.

16 C. If a person described in Subsection A of this
17 section is under the age of eighteen and is taken into custody,
18 the person may be detained only in accordance with Section
19 32A-2-4.1 NMSA 1978.

20 D. If it is established after a hearing that a
21 youthful offender has violated the terms of suspension of the
22 sentence stayed pursuant to Subsection C of Section 32A-2-20.1
23 NMSA 1978, the court shall order execution of the previously
24 imposed sentence unless the court makes written findings of
25 mitigating factors that justify continuing the stay. If the

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1 court finds that no mitigating factors are present, the court
2 shall treat the offender as an adult and order any of the adult
3 sanctions authorized by the original disposition and sentence.

4 E. Upon revocation of the stay and execution of the
5 adult sentence, the offender's youthful offender status is
6 terminated and the court's jurisdiction over the child with
7 respect to the delinquent acts alleged in the petition is
8 terminated. The ongoing jurisdiction for any adult sanction,
9 other than commitment to the corrections department, is with
10 the adult court.

11 F. Before an offender who has received a suspended
12 adult sentence reaches the age of twenty-one, the court shall
13 hold a hearing. The court shall:

14 (1) revoke the suspension, order execution of
15 the adult sentence and direct that the offender be taken into
16 the immediate custody of the corrections department;

17 (2) order execution of the adult sentence and
18 place the offender on probation; or

19 (3) order the release of the offender.

20 G. If an offender is ordered to serve probation
21 pursuant to Paragraph (2) of Subsection F of this section and
22 successfully completes probation, the adjudication shall not
23 become a conviction for purposes of the Criminal Code and the
24 court shall enter a conditional discharge as provided for in
25 Section 31-20-13 NMSA 1978.

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1 H. If execution of the adult sentence is ordered
2 and the offender is placed in the custody of the corrections
3 department, all time served by the offender under the juvenile
4 disposition shall be credited toward the adult criminal
5 sentence imposed."

6 **SECTION 29.** Section 32A-2-23 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 52, as amended) is amended to read:

8 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
9 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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

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

21 C. A child shall be released by an agency and
22 probation or supervision shall be terminated by juvenile
23 probation [~~and parole~~] services or the agency providing
24 supervision when it appears that the purpose of the order has
25 been achieved before the expiration of the period of the

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1 judgment. A release or termination and the reasons therefor
2 shall be reported promptly to the court in writing by the
3 releasing authority.

4 D. Prior to the expiration of a short-term
5 commitment of one year, as provided for in Section 32A-2-19
6 NMSA 1978, the court may extend the judgment for up to one six-
7 month period if the court finds that the extension is necessary
8 to safeguard the welfare of the child or the public safety. If
9 a short-term commitment is extended, the mandatory ninety-day
10 supervised release, as required by Section 32A-2-19 NMSA 1978,
11 shall be included in the extension. Notice and hearing are
12 required for any extension of a juvenile's commitment.

13 E. Prior to the expiration of a long-term
14 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
15 court may extend the judgment for additional periods of one
16 year until the child reaches the age of twenty-one if the court
17 finds that ~~[the]~~ an extension is necessary to safeguard the
18 welfare of the child or the public safety. Notice and hearing
19 are required for any extension of a juvenile's commitment. If
20 a long-term commitment is extended, the mandatory ninety-day
21 supervised release, as required by Section 32A-2-19 NMSA 1978,
22 shall be included in the extension. [~~Notice and hearing are~~
23 ~~required for any extension of a juvenile's commitment.~~]

24 F. Prior to the expiration of a judgment of
25 probation, the court may extend the judgment for an additional

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1 period of one year until the child reaches the age of twenty-
2 one if the court finds that [~~the~~] an extension is necessary to
3 protect the community or to safeguard the welfare of the child.

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

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

21 I. The department may seek a bench warrant from the
22 court [~~when~~] if the child absconds from supervised release."

23 **SECTION 30.** Section 32A-2-25 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 54, as amended) is amended to read:

25 "32A-2-25. [~~PAROLE~~] SUPERVISED RELEASE REVOCATION--

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1 PROCEDURES.--

2 A. A child on [~~parole~~] supervised release from an
3 agency that has legal custody who violates a term of [~~parole~~]
4 supervised release may be proceeded against in a [~~parole~~]
5 supervised release revocation proceeding conducted by the
6 department or the supervising agency or by a hearing officer
7 contracted by the department who is neutral to the child and
8 the agency in accordance with procedures established by the
9 department in cooperation with the juvenile [~~parole~~] public
10 safety advisory board. A juvenile probation [~~and parole~~]
11 officer may detain a child on [~~parole~~] supervised release
12 status who is alleged to have violated a term or condition of
13 [~~parole~~] supervised release until the completion and review of
14 a preliminary [~~parole~~] supervised release revocation hearing.
15 A child may waive the right to a preliminary [~~parole~~]
16 supervised release revocation hearing after consultation with
17 the child's attorney, parent, guardian or custodian.

18 B. If a retake warrant is issued by the department
19 upon the completion of the preliminary [~~parole~~] supervised
20 release revocation hearing, the juvenile institution to which
21 the warrant is issued shall promptly transport the child to
22 that institution at the expense of the department. If a child
23 absconds from [~~parole supervision~~] supervised release and is
24 apprehended in another state after the issuance of a retake
25 warrant by the department, the juvenile justice division of the

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1 department shall cause the return of the child to this state at
2 the expense of the department.

3 C. When a client on supervised release absconds or
4 otherwise makes themselves absent from supervision, the
5 supervised release period is tolled and the department may add
6 any time remaining on supervised release to the end of the
7 child's commitment expiration date once the child has been
8 detained."

9 SECTION 31. Section 32A-2-27 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 56, as amended) is amended to read:

11 "32A-2-27. INJURY TO PERSON OR DESTRUCTION OF
12 PROPERTY--LIABILITY--COSTS AND ATTORNEY FEES--RESTITUTION.--

13 A. Any person may recover damages not to exceed
14 four thousand dollars (\$4,000) in a civil action in a court or
15 tribunal of competent jurisdiction from the parent or guardian
16 having custody and control of a child when the child has
17 maliciously or willfully injured a person or damaged, destroyed
18 or deprived use of property, real or personal, belonging to the
19 person bringing the action.

20 B. Recovery of damages under this section is
21 limited to the actual damages proved in the action, not to
22 exceed four thousand dollars (\$4,000), taxable court costs and,
23 in the discretion of the court, reasonable attorney fees to be
24 fixed by the court or tribunal.

25 C. Nothing contained in this section limits the

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1 discretion of the court to issue an order requiring damages or
2 restitution to be paid by the child when the child has been
3 found to be within the provisions of the Delinquency Act.

4 D. Nothing contained in this section shall be
5 construed [~~so as~~] to impute liability to any foster parent."

6 SECTION 32. Section 32A-2-28 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 57) is amended to read:

8 "32A-2-28. PARENTAL RESPONSIBILITY.--

9 A. In any complaint alleging delinquency, a parent,
10 legal guardian or custodian of the child alleged to be
11 delinquent may be made a party in the petition. If a parent,
12 legal guardian or custodian is made a party and if a child is
13 adjudicated a delinquent, the court may order the [~~parent or~~
14 ~~parents~~] party to submit to counseling, participate in any
15 probation or other treatment program ordered by the court and,
16 if the child is committed for institutionalization, participate
17 in any institutional treatment or counseling program, including
18 attendance at the site of the institution. The court shall
19 order [~~the~~] a parent or legal guardian to support the child
20 committed for institutionalization by paying the reasonable
21 costs of support, maintenance and treatment of the child that
22 the parent is financially able to pay. The court may use the
23 child support guidelines set forth in Section 40-4-11.1 NMSA
24 1978 to calculate a reasonable payment.

25 B. If a fine is imposed against a child by a court

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1 of this state, the parent, legal guardian or custodian of the
2 child is not liable to pay the fine.

3 C. The court may enforce any of its orders issued
4 pursuant to this section by use of its contempt power."

5 SECTION 33. Section 32A-2-32 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 61, as amended) is amended to read:

7 "32A-2-32. CONFIDENTIALITY--RECORDS.--

8 A. All records pertaining to the child, including
9 all related social records, behavioral health screenings,
10 diagnostic evaluations, educational records, psychiatric
11 reports, medical reports, social studies reports, records from
12 local detention facilities, client-identifying records from
13 facilities for the care and rehabilitation of delinquent
14 children, [~~pre-parole~~] pre-supervised release or supervised
15 release reports and supervision histories obtained by the
16 juvenile probation office, [~~parole~~] probation officers and the
17 juvenile public safety advisory board or in possession of the
18 department, are confidential and shall not be disclosed
19 directly or indirectly to the public.

20 B. The disclosure of all mental health and
21 developmental disability records shall be made pursuant to the
22 Children's Mental Health and Developmental Disabilities Act.

23 C. The records described in Subsection A of this
24 section, other than mental health and developmental disability
25 records, shall be disclosed only to any of the following,

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1 provided that the agency, person or institution receiving
2 information shall not re-release the information without proper
3 consent or as otherwise provided by law:

- 4 (1) court personnel;
- 5 (2) the child's court-appointed special
6 advocates;
- 7 (3) the child's attorney or guardian ad litem
8 representing the child in any matter;
- 9 (4) department personnel;
- 10 (5) corrections department personnel;
- 11 (6) law enforcement officials [~~when the~~
12 ~~request is related to the investigation of a crime~~];
- 13 (7) district attorneys or children's court
14 attorneys;
- 15 (8) a state government social services agency
16 in any state;
- 17 (9) those persons or entities of a child's
18 Indian tribe specifically authorized to inspect such records
19 pursuant to the federal Indian Child Welfare Act of 1978 or any
20 regulations promulgated under that act;
- 21 (10) tribal juvenile justice system and social
22 service representatives;
- 23 (11) a foster parent, if the records are those
24 of a child currently placed with that foster parent or of a
25 child being considered for placement with that foster parent,

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1 when the disclosure of the information is necessary for the
2 child's treatment or care and shall include only that
3 information necessary to provide for treatment and care of the
4 child;

5 (12) school personnel involved with the child
6 if the records concern the child's educational needs, but shall
7 only include that information necessary to provide for the
8 child's educational planning and needs;

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

13 (14) representatives of the protection and
14 advocacy system;

15 (15) the child's parent, guardian or legal
16 custodian when the disclosure of the information is necessary
17 for the child's treatment or care and shall include only that
18 information necessary to provide for the treatment or care of
19 the child;

20 (16) any other person or entity, by order of
21 the court, having a legitimate interest in the case or the work
22 of the court who agrees not to otherwise release the records;
23 [~~and~~]

24 (17) the child, if fourteen years of age or
25 older; and

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1 (18) a person or entity that is authorized by
2 contract with the department, or by state or federal law, to
3 review, inspect or otherwise have access to records or
4 information in the department's possession.

5 D. If disclosure of otherwise confidential records
6 is made to the child or any other person or entity pursuant to
7 a valid release of information signed by the child, all victim
8 or witness identifying information shall be redacted or
9 otherwise deleted.

10 E. Whoever intentionally and unlawfully releases
11 any information or records closed to the public pursuant to
12 this section or releases or makes other unlawful use of records
13 in violation of this section is guilty of a petty misdemeanor.

14 F. The department shall promulgate rules for
15 implementing disclosure of records pursuant to this section and
16 in compliance with state and federal law and the Children's
17 Court Rules."

18 SECTION 34. Section 32A-2-33 NMSA 1978 (being Laws 1999,
19 Chapter 216, Section 1, as amended) is amended to read:

20 "32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL
21 PREMISES--DETENTION--HEARING.--

22 A. If a public school administrator or employee has
23 reasonable cause to believe that a child is in possession of or
24 has been in possession of a firearm on school premises in
25 violation of Section 30-7-2.1 NMSA 1978, the administrator or

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1 employee shall immediately report the child's actions to a law
2 enforcement agency and the children, youth and families
3 department.

4 B. Upon receipt of a report pursuant to Subsection
5 A of this section, the law enforcement agency may conduct an
6 investigation to determine if there is probable cause to
7 believe that the child possessed a firearm on school premises.

8 C. If the law enforcement agency determines there
9 is probable cause to believe that the child possessed a firearm
10 on school premises, the law enforcement agency may take the
11 child into custody and deliver the child to a detention
12 facility licensed by the department. After the child is
13 delivered to a detention facility, the department shall comply
14 with the notification provisions set forth in Subsection ~~[E]~~ D
15 of Section 32A-2-10 NMSA 1978. The child shall be detained in
16 the detention facility, pending a detention hearing pursuant to
17 the provisions of Section 32A-2-13 NMSA 1978.

18 D. As used in this section, "firearm" means any
19 weapon that will or is designed to or may readily be converted
20 to expel a projectile by the action of an explosion; the frame
21 or receiver of any such weapon; or any firearm muffler or
22 firearm silencer. "Firearm" includes any handgun, rifle or
23 shotgun."

24 **SECTION 35. EFFECTIVE DATE.**--The effective date of the
25 provisions of this act is July 1, 2013.

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