

1 SENATE BILL 510

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 William E. Sharer and Pat Woods and Crystal Brantley
5 and Anthony L. Thornton and Nicholas A. Paul
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10 AN ACT

11 RELATING TO PUBLIC SAFETY; REMOVING THE TIME LIMITATION FOR
12 COMMENCING PROSECUTION OF HUMAN TRAFFICKING; INCREASING THE AGE
13 FOR SEXUAL EXPLOITATION OF CHILDREN BY PROSTITUTION TO
14 EIGHTEEN; AMENDING SECTIONS OF THE CONTROLLED SUBSTANCES ACT;
15 PROVIDING A PENALTY FOR WHEN THE TRAFFICKING OF CERTAIN
16 CONTROLLED SUBSTANCES, CONTROLLED SUBSTANCE ANALOGS OR
17 COUNTERFEIT SUBSTANCES RESULTS IN THE DEATH OF A HUMAN BEING;
18 ADDING HUMAN TRAFFICKING AND OPERATING A STASH HOUSE TO THE
19 DEFINITION OF "RACKETEERING"; AMENDING THE ELEMENTS OF HUMAN
20 TRAFFICKING; PROVIDING A DEFINITION OF "HARM"; PROHIBITING
21 CERTAIN DEFENSES IN A PROSECUTION FOR HUMAN TRAFFICKING;
22 CREATING THE CRIME OF OPERATING A STASH HOUSE; PROVIDING
23 FACTORS TO BE CONSIDERED IN DETERMINING PRETRIAL RELEASE;
24 PROVIDING THAT A REPORT OF A COMPETENCY EVALUATION SHALL
25 INCLUDE A QUALIFIED PROFESSIONAL'S OPINION AS TO WHETHER A

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1 DEFENDANT IS COMPETENT TO STAND TRIAL AND, IF THE PROFESSIONAL
2 BELIEVES THE DEFENDANT IS NOT COMPETENT, TO INCLUDE AN OPINION
3 AS TO WHETHER THE DEFENDANT SATISFIES THE CRITERIA FOR
4 INVOLUNTARY COMMITMENT OR ASSISTED OUTPATIENT TREATMENT;
5 PROVIDING FOR COMMUNITY-BASED COMPETENCY RESTORATION FOR
6 NON-DANGEROUS DEFENDANTS; EXPANDING THE LIST OF CRIMES FOR
7 WHICH A DEFENDANT MAY BE CRIMINALLY COMMITTED; PROVIDING FOR
8 THE COURT TO ADVISE A DISTRICT ATTORNEY TO CONSIDER INITIATING
9 PROCEEDINGS FOR INVOLUNTARY COMMITMENT OR ASSISTED OUTPATIENT
10 TREATMENT UPON DISMISSAL OF A CRIMINAL CASE; ALLOWING A COURT
11 TO AUTHORIZE A DISTRICT ATTORNEY OR THE DEPARTMENT OF HEALTH TO
12 USE THE REPORT OF A COMPETENCY EVALUATION IN INVOLUNTARY
13 COMMITMENT AND ASSISTED OUTPATIENT TREATMENT PROCEEDINGS;
14 AMENDING THE DELINQUENCY ACT; EXPANDING THE DEFINITIONS FOR
15 "SERIOUS YOUTHFUL OFFENDER" AND "YOUTHFUL OFFENDER"; PROVIDING
16 FOR TRANSPORT OF A SERIOUS YOUTHFUL OFFENDER TO A DISTRICT
17 COURT WHEN ORDERED AND FOR THAT OFFENDER TO BE SEGREGATED FROM
18 ADULTS; REMOVING THE REQUIREMENT THAT A CHILDREN'S COURT
19 ATTORNEY CONSULT PROBATION SERVICES BEFORE FILING A DELINQUENCY
20 PETITION; REMOVING THE REQUIREMENT THAT A DETENTION RISK
21 ASSESSMENT BE COMPLETED BEFORE A CHILD IS PLACED IN DETENTION;
22 PROVIDING THAT A DETAINED CHILD BE TRANSFERRED TO AN ADULT
23 FACILITY IF THE CHILD REACHES EIGHTEEN YEARS OF AGE; EXPANDING
24 THE COURT'S DISCRETION TO HOLD A DETENTION HEARING BY MEANS OF
25 ELECTRONIC COMMUNICATION; PROVIDING THAT A SERIOUS YOUTHFUL

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1 OFFENDER FOURTEEN YEARS OF AGE OR OLDER MAY WAIVE THE SERIOUS
2 YOUTHFUL OFFENDER'S RIGHT TO AN AMENABILITY HEARING; PROVIDING
3 THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND THE CORRECTIONS
4 DEPARTMENT WITH DISCRETION TO PREPARE CERTAIN PREDISPOSITION
5 REPORTS; REMOVING LIMITATIONS ON THE TYPES OF COMMITMENT A
6 COURT MAY ORDER; PROVIDING THAT A COURT MAY NOT WEIGH ONE
7 AMENABILITY FACTOR MORE HEAVILY THAN ANOTHER FOR SENTENCING
8 PURPOSES; PROVIDING A COURT WITH DISCRETION TO EXTEND A
9 JUDGMENT UP TO THE DATE A CHILD REACHES TWENTY-FIVE YEARS OF
10 AGE; ELIMINATING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT'S
11 EXCLUSIVE JURISDICTION AND AUTHORITY TO RELEASE AN ADJUDICATED
12 DELINQUENT CHILD; PROVIDING THAT THE STANDARD OF PROOF IN A
13 PROBATION REVOCATION PROCEEDING IS PREPONDERANCE OF THE
14 EVIDENCE; AUTHORIZING A PARTY TO REFERENCE SEALED JUVENILE
15 RECORDS FOR THE PURPOSES OF A HEARING REGARDING PRETRIAL
16 DETENTION, CONDITIONS OF RELEASE OR SENTENCING; ADDING VICTIMS
17 OF HUMAN TRAFFICKING AND SEXUAL EXPLOITATION OF CHILDREN TO THE
18 VICTIMS OF CRIME ACT; PROHIBITING EARNED MERITORIOUS DEDUCTIONS
19 FOR A HUMAN TRAFFICKING SENTENCE; AMENDING THE ASSISTED
20 OUTPATIENT TREATMENT ACT TO AUTHORIZE A DISTRICT ATTORNEY OR
21 THE ATTORNEY GENERAL TO FILE A PETITION FOR ASSISTED OUTPATIENT
22 TREATMENT AND TO ALLOW A PETITION TO BE FILED UP TO THIRTY DAYS
23 AFTER A QUALIFIED PROFESSIONAL HAS EXAMINED A DEFENDANT OR
24 RESPONDENT; MAKING CONFORMING AMENDMENTS; REVISING AND
25 PROVIDING PENALTIES; PRESCRIBING FINES; REPEALING SECTION

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1 32A-2-32.1 NMSA 1978 (BEING LAWS 2007, CHAPTER 96, SECTION 1);
2 MAKING AN APPROPRIATION.

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

5 SECTION 1. Section 30-1-8 NMSA 1978 (being Laws 1963,
6 Chapter 303, Section 1-8, as amended) is amended to read:

7 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A
8 person shall not be prosecuted, tried or punished in any court
9 of this state unless the indictment is found or information or
10 complaint is filed within the time as provided:

11 A. for a second degree felony, within six years
12 from the time the crime was committed;

13 B. for a third or fourth degree felony, within five
14 years from the time the crime was committed;

15 C. for a misdemeanor, within two years from the
16 time the crime was committed;

17 D. for a petty misdemeanor, within one year from
18 the time the crime was committed;

19 E. for any crime against or violation of Section
20 51-1-38 NMSA 1978, within three years from the time the crime
21 was committed;

22 F. for a felony pursuant to Section 7-1-71.3,
23 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
24 crime was committed; provided that for a series of crimes
25 involving multiple filing periods within one calendar year, the

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1 limitation shall begin to run on December 31 of the year in
2 which the crimes occurred;

3 G. for an identity theft crime pursuant to Section
4 30-16-24.1 NMSA 1978, within five years from the time the crime
5 was discovered;

6 H. for any crime not contained in the Criminal Code
7 or where a limitation is not otherwise provided for, within
8 three years from the time the crime was committed; and

9 I. for a capital felony, a first degree violent
10 felony, [~~or~~] second degree murder pursuant to Subsection B of
11 Section 30-2-1 NMSA 1978 or any crime against or in violation
12 of Section 30-52-1 NMSA 1978, no limitation period shall exist,
13 and prosecution for these crimes may commence at any time after
14 the occurrence of the crime."

15 SECTION 2. Section 30-6A-4 NMSA 1978 (being Laws 1984,
16 Chapter 92, Section 4, as amended) is amended to read:

17 "30-6A-4. SEXUAL EXPLOITATION OF CHILDREN BY
18 PROSTITUTION.--

19 A. Any person knowingly receiving any pecuniary
20 profit as a result of a child under the age of [~~sixteen~~]
21 eighteen engaging in a prohibited sexual act with another is
22 guilty of a second degree felony, unless the child is under the
23 age of thirteen, in which event the person is guilty of a first
24 degree felony.

25 B. Any person knowingly hiring or offering to hire

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1 a child under the age of [~~sixteen~~] eighteen to engage in any
2 prohibited sexual act is guilty of a second degree felony.

3 C. Any parent, legal guardian or person having
4 custody or control of a child under [~~sixteen~~] eighteen years of
5 age who knowingly permits that child to engage in or to assist
6 any other person to engage in any prohibited sexual act or
7 simulation of such an act for the purpose of producing any
8 visual or print medium depicting such an act is guilty of a
9 third degree felony.

10 D. In a prosecution for sexual exploitation of
11 children by prostitution, it shall not constitute a defense to
12 prosecution that the defendant's intended victim was a peace
13 officer posing as a child under eighteen years of age."

14 SECTION 3. Section 30-31-20 NMSA 1978 (being Laws 1972,
15 Chapter 84, Section 20, as amended) is amended to read:

16 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
17 VIOLATION.--

18 A. As used in the Controlled Substances Act,
19 "traffic" means the:

20 (1) manufacture of a controlled substance
21 enumerated in Schedules I through V or a controlled substance
22 analog [~~as defined in Subsection W of Section 30-31-2 NMSA~~
23 ~~1978~~];

24 (2) distribution, sale, barter or giving away
25 of:

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1 (a) a controlled substance enumerated in
2 Schedule I or II that is a narcotic drug;

3 (b) a controlled substance analog of a
4 controlled substance enumerated in Schedule I or II that is a
5 narcotic drug; ~~[or]~~

6 (c) a counterfeit substance of a
7 controlled substance enumerated in Schedule I or II that is a
8 narcotic drug;

9 (d) a counterfeit substance of a
10 controlled substance analog of a controlled substance
11 enumerated in Schedule I or II that is a narcotic drug; or

12 ~~[(e)]~~ (e) methamphetamine, its salts,
13 isomers and salts of isomers; or

14 (3) possession with intent to distribute:

15 (a) a controlled substance enumerated in
16 Schedule I or II that is a narcotic drug;

17 (b) a controlled substance analog of a
18 controlled substance enumerated in Schedule I or II that is a
19 narcotic drug; ~~[or]~~

20 (c) a counterfeit substance of a
21 controlled substance enumerated in Schedule I or II that is a
22 narcotic drug;

23 (d) a counterfeit substance of a
24 controlled substance analog of a controlled substance
25 enumerated in Schedule I or II that is a narcotic drug; or

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1 [~~e~~] (e) methamphetamine, its salts,
2 isomers and salts of isomers.

3 B. Except as authorized by the Controlled
4 Substances Act, it is unlawful for a person to intentionally
5 traffic. A person who violates this subsection is:

6 (1) for the first offense, except as provided
7 in Paragraph (2) of this subsection, guilty of a second degree
8 felony for trafficking a controlled substance and shall be
9 sentenced pursuant to the provisions of Section 31-18-15 NMSA
10 1978; [~~and~~] provided that the person shall serve a minimum term
11 of imprisonment of nine years;

12 (2) for the first offense resulting in the
13 death of a human being, guilty of a second degree felony for
14 trafficking a controlled substance resulting in the death of a
15 human being and shall be sentenced pursuant to the provisions
16 of Section 31-18-15 NMSA 1978; provided that the person shall
17 serve a minimum term of imprisonment of twelve years;

18 [~~2~~] (3) for the second and subsequent
19 offenses, except as provided in Paragraph (4) of this
20 subsection, guilty of a first degree felony and shall be
21 sentenced pursuant to the provisions of Section 31-18-15 NMSA
22 1978; and

23 (4) for the second and subsequent offenses, if
24 the offense results in the death of a human being, guilty of a
25 first degree felony for trafficking a controlled substance

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1 resulting in the death of a human being and shall be sentenced
2 pursuant to the provisions of Section 31-18-15 NMSA 1978.

3 C. A person who knowingly violates Subsection B of
4 this section within a drug-free school zone excluding private
5 property residentially zoned or used primarily as a residence
6 is guilty of a first degree felony and shall be sentenced
7 pursuant to the provisions of Section 31-18-15 NMSA 1978."

8 SECTION 4. Section 30-31-21 NMSA 1978 (being Laws 1972,
9 Chapter 84, Section 21, as amended) is amended to read:

10 "30-31-21. DISTRIBUTION TO A MINOR.--

11 A. Except as authorized by the Controlled
12 Substances Act, no person who is eighteen years of age or older
13 shall intentionally distribute a controlled substance to a
14 person under the age of eighteen years.

15 B. Except as provided in Subsection C of this
16 section, any person who violates this section with respect to a
17 controlled substance enumerated in Schedule I, II, III or IV or
18 a controlled substance analog of any controlled substance
19 enumerated in Schedule I, II, III or IV is:

20 (1) for the first offense, guilty of a second
21 degree felony and shall be sentenced pursuant to the provisions
22 of Section 31-18-15 NMSA 1978; and

23 (2) for the second and subsequent offenses,
24 guilty of a first degree felony and shall be sentenced pursuant
25 to the provisions of Section 31-18-15 NMSA 1978.

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1 C. A person who violates this section with respect
2 to a controlled substance enumerated in Schedule I or II that
3 is a narcotic drug or a controlled substance analog of a
4 controlled substance enumerated in Schedule I or II that is a
5 narcotic drug, methamphetamine, its salts, isomers or salts of
6 isomers as enumerated in Schedule II or a controlled substance
7 analog of methamphetamine, its salts, isomers or salts of
8 isomers is guilty of a first degree felony and shall be
9 sentenced pursuant to the provisions of Section 31-18-15 NMSA
10 1978."

11 SECTION 5. Section 30-31-22 NMSA 1978 (being Laws 1972,
12 Chapter 84, Section 22, as amended) is amended to read:

13 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
14 DISTRIBUTION PROHIBITED.--

15 A. Except as authorized by the Controlled
16 Substances Act, it is unlawful for a person to intentionally
17 distribute or possess with intent to distribute a controlled
18 substance or a controlled substance analog except a substance
19 enumerated in Schedule I or II that is a narcotic drug, a
20 controlled substance analog of a controlled substance
21 enumerated in Schedule I or II that is a narcotic drug or
22 methamphetamine, its salts, isomers and salts of isomers. A
23 person who violates this subsection with respect to:

24 (1) synthetic cannabinoids is:

25 (a) for the first offense, guilty of a

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1 fourth degree felony and shall be sentenced pursuant to the
2 provisions of Section 31-18-15 NMSA 1978;

3 (b) for the second and subsequent
4 offenses, guilty of a third degree felony and shall be
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA
6 1978;

7 (c) for the first offense, if more than
8 one hundred pounds is possessed with intent to distribute or
9 distributed or both, guilty of a third degree felony and shall
10 be sentenced pursuant to the provisions of Section 31-18-15
11 NMSA 1978; and

12 (d) for the second and subsequent
13 offenses, if more than one hundred pounds is possessed with
14 intent to distribute or distributed or both, guilty of a second
15 degree felony and shall be sentenced pursuant to the provisions
16 of Section 31-18-15 NMSA 1978;

17 (2) any other controlled substance enumerated
18 in Schedule I, II, III or IV or a controlled substance analog
19 of a controlled substance enumerated in Schedule I, II, III or
20 IV except a substance enumerated in Schedule I or II that is a
21 narcotic drug, a controlled substance analog of a controlled
22 substance enumerated in Schedule I or II that is a narcotic
23 drug or methamphetamine, its salts, isomers and salts of
24 isomers, is:

25 (a) for the first offense, guilty of a

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1 third degree felony and shall be sentenced pursuant to the
2 provisions of Section 31-18-15 NMSA 1978; and

3 (b) for the second and subsequent
4 offenses, guilty of a second degree felony and shall be
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA
6 1978; and

7 (3) a controlled substance enumerated in
8 Schedule V or a controlled substance analog of a controlled
9 substance enumerated in Schedule V is guilty of a misdemeanor
10 and shall be punished by a fine of not less than one hundred
11 dollars (\$100) or more than five hundred dollars (\$500) or by
12 imprisonment for a definite term not less than one hundred
13 eighty days but less than one year, or both.

14 B. It is unlawful for a person to distribute gamma
15 hydroxybutyric acid or flunitrazepam to another person without
16 that person's knowledge and with intent to commit a crime
17 against that person, including criminal sexual penetration.
18 For the purposes of this subsection, "without that person's
19 knowledge" means the person is unaware that a substance with
20 the ability to alter that person's ability to appraise conduct
21 or to decline participation in or communicate unwillingness to
22 participate in conduct is being distributed to that person.
23 Any person who violates this subsection is:

24 (1) for the first offense, guilty of a third
25 degree felony and shall be sentenced pursuant to the provisions
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1 of Section 31-18-15 NMSA 1978; and

2 (2) for the second and subsequent offenses,
3 guilty of a second degree felony and shall be sentenced
4 pursuant to the provisions of Section 31-18-15 NMSA 1978.

5 C. Except as authorized by the Controlled
6 Substances Act, it is unlawful for a person to intentionally
7 create or deliver, or possess with intent to deliver, a
8 counterfeit substance. A person who violates this subsection
9 with respect to:

10 (1) a counterfeit substance enumerated in
11 Schedule I, II, III or IV, except a counterfeit substance of a
12 controlled substance enumerated in Schedule I or II that is a
13 narcotic drug or a counterfeit substance of a controlled
14 substance analog of a controlled substance enumerated in
15 Schedule I or II that is a narcotic drug, is guilty of a fourth
16 degree felony and shall be sentenced pursuant to the provisions
17 of Section 31-18-15 NMSA 1978; and

18 (2) a counterfeit substance enumerated in
19 Schedule V is guilty of a petty misdemeanor and shall be
20 punished by a fine of not more than one hundred dollars (\$100)
21 or by imprisonment for a definite term not to exceed six
22 months, or both.

23 D. A person who knowingly violates Subsection A or
24 C of this section while within a drug-free school zone with
25 respect to:

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(1) synthetic cannabinoids is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of

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1 isomers, is:

2 (a) for the first offense, guilty of a
3 second degree felony and shall be sentenced pursuant to the
4 provisions of Section 31-18-15 NMSA 1978; and

5 (b) for the second and subsequent
6 offenses, guilty of a first degree felony and shall be
7 sentenced pursuant to the provisions of Section 31-18-15 NMSA
8 1978;

9 (3) a controlled substance enumerated in
10 Schedule V or a controlled substance analog of a controlled
11 substance enumerated in Schedule V is guilty of a fourth degree
12 felony and shall be sentenced pursuant to the provisions of
13 Section 31-18-15 NMSA 1978; and

14 (4) the intentional creation, delivery or
15 possession with the intent to deliver:

16 (a) a counterfeit substance enumerated
17 in Schedule I, II, III or IV, except a counterfeit substance of
18 a controlled substance enumerated in Schedule I or II that is a
19 narcotic drug or a counterfeit substance of a controlled
20 substance analog of a controlled substance enumerated in
21 Schedule I or II that is a narcotic drug, is guilty of a third
22 degree felony and shall be sentenced pursuant to the provisions
23 of Section 31-18-15 NMSA 1978; and

24 (b) a counterfeit substance enumerated
25 in Schedule V is guilty of a misdemeanor and shall be punished

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1 by a fine of not less than one hundred dollars (\$100) nor more
2 than five hundred dollars (\$500) or by imprisonment for a
3 definite term not less than one hundred eighty days but less
4 than one year, or both.

5 E. Notwithstanding the provisions of Subsection A
6 of this section, distribution of a small amount of synthetic
7 cannabinoids for no remuneration shall be treated as provided
8 in Paragraph (1) of Subsection B of Section 30-31-23 NMSA
9 1978."

10 SECTION 6. Section 30-42-3 NMSA 1978 (being Laws 1980,
11 Chapter 40, Section 3, as amended) is amended to read:

12 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

13 A. "racketeering" means any act that is chargeable
14 or indictable under the laws of New Mexico and punishable by
15 imprisonment for more than one year, involving any of the
16 following cited offenses:

17 (1) murder, as provided in Section 30-2-1 NMSA
18 1978;

19 (2) robbery, as provided in Section 30-16-2
20 NMSA 1978;

21 (3) kidnapping, as provided in Section 30-4-1
22 NMSA 1978;

23 (4) forgery, as provided in Section 30-16-10
24 NMSA 1978;

25 (5) larceny, as provided in Section 30-16-1

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1 NMSA 1978;

2 (6) fraud, as provided in Section 30-16-6 NMSA
3 1978;

4 (7) embezzlement, as provided in Section
5 30-16-8 NMSA 1978;

6 (8) receiving stolen property, as provided in
7 Section 30-16-11 NMSA 1978;

8 (9) bribery, as provided in Sections 30-24-1
9 through 30-24-3.1 NMSA 1978;

10 (10) gambling, as provided in Sections
11 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;

12 (11) illegal kickbacks, as provided in
13 Sections 30-41-1 and 30-41-2 NMSA 1978;

14 (12) extortion, as provided in Section 30-16-9
15 NMSA 1978;

16 (13) trafficking in controlled substances, as
17 provided in Section 30-31-20 NMSA 1978;

18 (14) arson and aggravated arson, as provided
19 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA
20 1978;

21 (15) promoting prostitution, as provided in
22 Section 30-9-4 NMSA 1978;

23 (16) criminal solicitation, as provided in
24 Section 30-28-3 NMSA 1978;

25 (17) fraudulent securities practices, as

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1 provided in the New Mexico Uniform Securities Act;

2 (18) loan sharking, as provided in Sections
3 30-43-1 through 30-43-5 NMSA 1978;

4 (19) distribution of controlled substances or
5 controlled substance analogues, as provided in Sections
6 30-31-21 and 30-31-22 NMSA 1978;

7 (20) a violation of the provisions of Section
8 30-51-4 NMSA 1978;

9 (21) unlawful taking of a vehicle or motor
10 vehicle, as provided in Section 30-16D-1 NMSA 1978;

11 (22) embezzlement of a vehicle or motor
12 vehicle, as provided in Section 30-16D-2 NMSA 1978;

13 (23) fraudulently obtaining a vehicle or motor
14 vehicle, as provided in Section 30-16D-3 NMSA 1978;

15 (24) receiving or transferring stolen vehicles
16 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

17 (25) altering or changing the serial number,
18 engine number, decal or other numbers or marks of a vehicle or
19 motor vehicle, as provided in Section 30-16D-6 NMSA 1978; [~~and~~]

20 (26) trafficking cannabis products, as
21 provided in Section 26-2C-28 NMSA 1978;

22 (27) human trafficking, as provided in Section
23 30-52-1 NMSA 1978; and

24 (28) operating a stash house, as provided in
25 Section 8 of this 2025 act;

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1 B. "person" means an individual or entity capable
2 of holding a legal or beneficial interest in property;

3 C. "enterprise" means a sole proprietorship,
4 partnership, corporation, business, labor union, association or
5 other legal entity or a group of individuals associated in fact
6 although not a legal entity and includes illicit as well as
7 licit entities; and

8 D. "pattern of racketeering activity" means
9 engaging in at least two incidents of racketeering with the
10 intent of accomplishing any of the prohibited activities set
11 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
12 provided that at least one of the incidents occurred after
13 February 28, 1980 and the last incident occurred within five
14 years after the commission of a prior incident of
15 racketeering."

16 SECTION 7. Section 30-52-1 NMSA 1978 (being Laws 2008,
17 Chapter 17, Section 1) is amended to read:

18 "30-52-1. HUMAN TRAFFICKING.--

19 A. Human trafficking consists of a person
20 knowingly:

21 (1) recruiting, soliciting, enticing,
22 transporting, harboring, maintaining, patronizing, providing or
23 obtaining by any means another person with the intent or
24 knowledge that force, fraud or coercion will be used to subject
25 the person to labor, services or commercial sexual activity;

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1 (2) recruiting, soliciting, enticing,
2 transporting, harboring, maintaining, patronizing, providing or
3 obtaining by any means a person under the age of eighteen years
4 with the intent or knowledge that the person will be caused to
5 engage in commercial sexual activity; ~~[or]~~

6 (3) benefiting, financially or by receiving
7 anything of value, from the labor, services or commercial
8 sexual activity of another person ~~[with the knowledge]~~ where
9 the person benefiting knew or should have known that force,
10 fraud or coercion was used to obtain the labor, services or
11 commercial sexual activity; or

12 (4) utilizing a person's services to compel
13 the repayment of a financial debt or other obligation when the
14 person who holds or enforces the debt or obligation does not
15 pay the laborer in accordance with state and local law and has
16 actual or perceived control over the laborer, and the laborer
17 has no reasonable means to terminate the labor arrangement.

18 B. The attorney general and the district attorney
19 in the county of jurisdiction have concurrent jurisdiction to
20 enforce the provisions of this section.

21 C. Whoever commits human trafficking is guilty of a
22 ~~[third]~~ second degree felony; except if the victim is under the
23 age of

24 ~~[(1) sixteen, the person is guilty of a second~~
25 ~~degree felony; or~~

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1 ~~(2) thirteen~~ eighteen, the person is guilty
2 of a first degree felony.

3 D. Prosecution pursuant to this section shall not
4 prevent prosecution pursuant to any other provision of the law
5 when the conduct also constitutes a violation of that other
6 provision. Each violation of this section constitutes a
7 separate offense and shall not merge with any other offense.

8 E. In a prosecution pursuant to this section, a
9 human trafficking victim shall not be charged with accessory to
10 the crime of human trafficking or for prostitution as provided
11 in Section 30-9-2 NMSA 1978.

12 F. A person convicted of human trafficking shall,
13 in addition to any other punishment, be ordered to make
14 restitution to the victim for the gross income or value of the
15 victim's labor or services and any other actual damages in
16 accordance with Section 31-17-1 NMSA 1978.

17 G. As used in this section:

18 (1) "coercion" means:

19 (a) causing or threatening to cause harm
20 to or using physical restraint on any person;

21 (b) using or threatening to use physical
22 force or restraint against any person;

23 (c) abusing or threatening to abuse the
24 law or legal process;

25 (d) threatening to report the

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1 immigration status of any person to governmental authorities;
2 or

3 (e) knowingly destroying, concealing,
4 removing, confiscating or retaining any actual or purported
5 government document of any person; ~~and~~

6 (2) "commercial sexual activity" means any
7 sexual act or sexually explicit exhibition for which anything
8 of value is given, promised to or received by any person; and

9 (3) "harm" means any harm, whether physical or
10 nonphysical, including psychological, financial or reputational
11 harm, that is sufficiently serious under all of the surrounding
12 circumstances to compel a reasonable person of the same
13 background and in the same circumstances to perform or to
14 continue performing compelled labor, services or commercial
15 sexual activity to avoid or attempt to avoid receiving harm.

16 H. In a prosecution for human trafficking pursuant
17 to this section, evidence of the following facts or conditions
18 shall not constitute a defense to prosecution:

19 (1) the victim's sexual history or history of
20 commercial sexual activity, specific instances of the victim's
21 sexual conduct, opinion evidence of the victim's sexual conduct
22 and reputational evidence of the victim's sexual conduct;

23 (2) the consent of a minor;

24 (3) a mistake as to the victim's age; and

25 (4) that the defendant's intended victim was a

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1 peace officer posing as a child under eighteen years of age.

2 I. A person convicted of human trafficking pursuant
3 to this section shall be subject to the Forfeiture Act."

4 SECTION 8. A new section of Chapter 30 NMSA 1978 is
5 enacted to read:

6 "[NEW MATERIAL] OPERATING A STASH HOUSE--PENALTY.--

7 A. The crime of operating a stash house consists of
8 a person knowingly using or allowing a property or place that
9 is under the person's control to be used:

10 (1) to unlawfully hide or store a controlled
11 substance, firearm, destructive device or money in the
12 furtherance of a crime; or

13 (2) for the purpose of human trafficking
14 pursuant to Section 30-52-1 NMSA 1978.

15 B. A person who commits operating a stash house is
16 guilty of a third degree felony."

17 SECTION 9. A new section of Chapter 31, Article 3 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] FACTORS TO BE CONSIDERED IN DETERMINING
20 PRETRIAL RELEASE.--In determining if a defendant shall be
21 released pending trial, whether released on bond, with global
22 positioning system monitoring or on the defendant's own
23 recognizance, the court shall consider any available results of
24 a pretrial risk assessment instrument approved by the supreme
25 court for use in the jurisdiction and the financial resources

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1 of the defendant and shall take into account, individually and
2 in the collective, the available information about:

3 A. the nature and circumstances of the offense
4 charged, including whether the offense is a crime of violence
5 or involves alcohol or drugs;

6 B. the weight of the evidence against the
7 defendant;

8 C. the nature and seriousness of the danger to any
9 person or the community that would be posed by the defendant's
10 release;

11 D. any facts tending to indicate the defendant may
12 or may not be likely to appear as required;

13 E. any facts tending to indicate the defendant may
14 or may not commit new crimes if released; and

15 F. the history and characteristics of the
16 defendant, including:

17 (1) the defendant's character, physical and
18 mental condition, family ties, employment, past and present
19 residences, length of residence in the community, community
20 ties, past conduct, history relating to drug or alcohol abuse,
21 criminal history and record about appearance at court
22 proceedings; and

23 (2) whether, at the time of the current
24 offense or arrest, the defendant was on probation, parole or
25 other release pending trial, sentencing or appeal for any

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1 offense under federal, state or local law."

2 SECTION 10. Section 31-9-1 NMSA 1978 (being Laws 1988,
3 Chapter 107, Section 1 and Laws 1988, Chapter 108, Section 1,
4 as amended by Laws 1993, Chapter 240, Section 1 and also by
5 Laws 1993, Chapter 249, Section 1) is amended to read:

6 "31-9-1. DETERMINATION OF COMPETENCY--RAISING THE
7 ISSUE.--~~[Whenever it appears that there is a question as to the~~
8 ~~defendant's competency to proceed in a criminal case, any~~
9 ~~further proceeding in the cause]~~

10 A. When a party or the court raises a question as
11 to a defendant's competency to stand trial in a criminal case,
12 the proceeding shall be suspended until the issue is
13 determined.

14 B. Unless the case is dismissed upon motion of a
15 party ~~[when]~~ or through diversion:

16 (1) if the question of a defendant's
17 competency is raised in a court other than ~~[the]~~ a district
18 court or a metropolitan court, the ~~[proceeding]~~ case shall be
19 ~~[suspended and the cause]~~ transferred to the district court; or

20 (2) if the question of a defendant's
21 competency is raised in ~~[the]~~ a metropolitan court and the
22 court determines that the defendant is ~~[incompetent to proceed~~
23 ~~in a criminal case, the cause, if not dismissed upon motion of~~
24 a party] not competent to stand trial, the case shall be
25 transferred to the district court."

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1 SECTION 11. Section 31-9-1.1 NMSA 1978 (being Laws 1988,
2 Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2,
3 as amended by Laws 1993, Chapter 240, Section 2 and also by
4 Laws 1993, Chapter 249, Section 2) is amended to read:

5 "31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND
6 DETERMINATION.--[The]

7 A. A defendant's competency shall be
8 [professionally] evaluated by a psychologist or psychiatrist or
9 other qualified professional recognized by the district court
10 as an expert. [and a report shall be submitted] The qualified
11 professional who evaluates a defendant's competency shall
12 prepare an evaluation report and submit the report as ordered
13 by the court.

14 B. An evaluation report shall include a qualified
15 professional's opinion as to whether a defendant is competent
16 to stand trial and has:

17 (1) a sufficient, present ability to consult
18 with the defendant's lawyer with a reasonable degree of
19 rational understanding;

20 (2) a rational and factual understanding of
21 the proceedings against the defendant; and

22 (3) the capacity to assist in the defendant's
23 own defense and to comprehend the reasons for punishment.

24 C. If a qualified professional believes a defendant
25 is not competent to stand trial, an evaluation report shall

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1 include the qualified professional's opinion as to whether the
2 defendant:

3 (1) satisfies the criteria for involuntary
4 commitment in accordance with the Mental Health and
5 Developmental Disabilities Code and whether:

6 (a) as a result of a mental disorder,
7 the defendant presents a likelihood of serious harm to the
8 defendant's self or others;

9 (b) the defendant needs and is likely to
10 benefit from involuntary commitment and treatment; and

11 (c) the proposed commitment is
12 consistent with the treatment needs of the defendant and with
13 the least drastic means principle; or

14 (2) satisfies the criteria for involuntary
15 treatment in accordance with the Assisted Outpatient Treatment
16 Act and whether the defendant:

17 (a) has a primary diagnosis of a mental
18 disorder;

19 (b) has demonstrated a history of lack
20 of compliance with treatment for a mental disorder;

21 (c) is unwilling or unlikely, as a
22 result of a mental disorder, to voluntarily participate in
23 outpatient treatment that would enable the person to live
24 safely in the community without court supervision;

25 (d) is in need of assisted outpatient

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1 treatment as the least restrictive appropriate alternative to
2 prevent a relapse or deterioration likely to result in serious
3 harm to the defendant's self or others; and

4 (e) will likely benefit from assisted
5 outpatient treatment and have the defendant's best interests
6 served.

7 D. A competency hearing [~~on the issue of the~~
8 ~~competency of~~] shall be held:

9 (1) within thirty days from the date an
10 evaluation report is submitted to the court for an incarcerated
11 defendant charged with a felony; [~~shall be held by the district~~
12 court within a reasonable time, but in no event later than
13 thirty days after notification to the court of completion of
14 the diagnostic evaluation. In the case of]

15 (2) within ten days from the date an
16 evaluation report is submitted to the court for an incarcerated
17 defendant not charged with a felony; [~~the court shall hold a~~
18 hearing and determine his competency within ten days of
19 notification to the court of completion of the diagnostic
20 evaluation] and

21 (3) within a reasonable time after an
22 evaluation report is submitted to the court for a defendant who
23 is not incarcerated."

24 SECTION 12. Section 31-9-1.2 NMSA 1978 (being Laws 1988,
25 Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3,

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1 as amended) is amended to read:

2 "31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--
3 REPORT.--

4 A. ~~When~~ If, after a competency hearing, a court
5 determines that a defendant is not competent to ~~[proceed in a~~
6 ~~criminal case and the court does not find that]~~ stand trial,
7 the court shall determine if the defendant is dangerous. A
8 defendant who is not competent is dangerous if the court finds
9 by clear and convincing evidence that the defendant presents a
10 serious threat of:

11 (1) inflicting great bodily harm, as defined
12 in Section 30-1-12 NMSA 1978, on another person;

13 (2) committing criminal sexual penetration, as
14 provided in Section 30-9-11 NMSA 1978;

15 (3) committing criminal sexual contact of a
16 minor, as provided in Section 30-9-13 NMSA 1978;

17 (4) committing abuse of a child, as provided
18 in Subsection D of Section 30-6-1 NMSA 1978;

19 (5) violating a provision of the Sexual
20 Exploitation of Children Act;

21 (6) committing human trafficking, as provided
22 in Section 30-52-1 NMSA 1978;

23 (7) committing a felony involving the use of a
24 firearm; or

25 (8) committing aggravated arson, as provided

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1 in Section 30-17-6 NMSA 1978.

2 B. If the court determines that a defendant is not
3 dangerous, the court may order the defendant to participate in
4 a community-based competency restoration program or dismiss the
5 criminal case without prejudice in the interests of justice;
6 ~~[Upon dismissal the court may advise, the district attorney to~~
7 ~~consider initiation of proceedings under the Mental Health and~~
8 ~~Developmental Disabilities Code and order the defendant~~
9 ~~confined for a maximum of seven days to facilitate preparation~~
10 ~~and initiation of a petition pursuant to that code]~~ provided
11 that if the court dismisses the case, the court may:

12 (1) advise the district attorney to consider
13 the initiation of involuntary civil commitment proceedings in
14 accordance with the Mental Health and Developmental
15 Disabilities Code and may detain the defendant for a maximum of
16 seven days to facilitate initiation of those proceedings; or

17 (2) advise the district attorney to consider
18 initiation of proceedings in accordance with the Assisted
19 Outpatient Treatment Act but may not detain the defendant for
20 that purpose.

21 C. A community-based competency restoration program
22 shall be approved by the court and provided in an outpatient
23 setting in the community where a defendant resides. A court
24 may order a defendant to participate in a community-based
25 competency restoration program for no longer than ninety days,

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1 and:

2 (1) within thirty days of the date that the
3 defendant was ordered to competency restoration, the person
4 supervising the defendant's competency restoration program
5 shall submit a progress report to the court and both parties
6 that includes:

7 (a) an initial assessment of the
8 defendant and a description of the competency restoration
9 programming that will be provided to the defendant;

10 (b) a report on the defendant's
11 amenability to competency restoration;

12 (c) an assessment of the program's
13 capacity to provide appropriate programming for the defendant;

14 (d) an opinion as to the probability of
15 the defendant being restored to competency within ninety days
16 from the date that the court ordered the defendant's
17 participation in the community-based competency restoration
18 program; and

19 (e) an opinion as to whether the
20 defendant satisfies the criteria for involuntary treatment in
21 accordance with the Assisted Outpatient Treatment Act and
22 whether the defendant: 1) has a primary diagnosis of a mental
23 disorder; 2) has demonstrated a history or lack of compliance
24 with treatment for a mental disorder; 3) is unwilling or
25 unlikely, as a result of a mental disorder, to voluntarily

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1 participate in outpatient treatment that would enable the
2 defendant to live safely in the community without court
3 supervision; 4) is in need of assisted outpatient treatment as
4 the least restrictive appropriate alternative to prevent a
5 relapse or deterioration likely to result in serious harm to
6 the defendant's self or others; and 5) will likely benefit from
7 assisted outpatient treatment and have the defendant's best
8 interests served;

9 (2) no later than ninety days from the date
10 that the court ordered the defendant to participate in a
11 community-based competency restoration program, the court shall
12 hold a review hearing and determine if the defendant has been
13 restored to competency and at least seven days prior to the
14 review hearing, the person providing outpatient treatment and
15 services to the defendant shall submit a written report that
16 includes:

17 (a) an opinion as to whether the
18 defendant has been restored to competency;

19 (b) if the defendant is receiving
20 medication, information from the prescribing physician about
21 the type, dosage and effect of the medication on the
22 defendant's appearance, actions and demeanor;

23 (c) if the defendant remains not
24 competent, an opinion as to whether the defendant satisfies the
25 criteria for involuntary commitment in accordance with the

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1 Mental Health and Developmental Disabilities Code and whether:

2 1) as a result of mental disorder, the defendant presents a
3 likelihood of serious harm to the defendant's self or others;

4 2) the defendant needs and is likely to benefit from
5 involuntary commitment and treatment; and 3) the proposed
6 commitment is consistent with the treatment needs of the
7 defendant and with the least drastic means principle; and

8 (d) if the defendant remains not
9 competent, an opinion as to whether the defendant satisfies the
10 criteria for involuntary treatment in accordance with the
11 Assisted Outpatient Treatment Act and whether the defendant:

12 1) has a primary diagnosis of a mental disorder; 2) has
13 demonstrated a history of lack of compliance with treatment for
14 a mental disorder; 3) is unwilling or unlikely, as a result of
15 a mental disorder, to voluntarily participate in outpatient
16 treatment that would enable the defendant to live safely in the
17 community without court supervision; 4) is in need of assisted
18 outpatient treatment as the least restrictive appropriate
19 alternative to prevent a relapse or deterioration likely to
20 result in serious harm to the defendant's self or others; and
21 5) will likely benefit from assisted outpatient treatment and
22 have the defendant's best interests served; and

23 (3) if, after a review hearing, the court
24 finds that the defendant is competent, the case shall proceed
25 to trial, but if the court finds that the defendant remains not

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1 competent, the case shall be dismissed without prejudice and
2 the court may advise the district attorney to consider
3 initiating proceedings in accordance with the Mental Health and
4 Developmental Disabilities Code or the Assisted Outpatient
5 Treatment Act.

6 ~~[B. When a district]~~ D. If the court determines
7 that a ~~[defendant charged with a felony is incompetent to~~
8 ~~proceed in the criminal case, but does not dismiss the criminal~~
9 ~~case, and the district court at that time makes a specific~~
10 ~~finding that the]~~ defendant who is not competent is dangerous,
11 the district court may commit the defendant as provided in this
12 section for ~~[treatment to attain competency to proceed in a~~
13 ~~criminal case. The court shall enter an appropriate transport~~
14 ~~order that also provides for return of the defendant to the~~
15 ~~local facilities of the court upon completion of the~~
16 ~~treatment. The defendant so committed]~~ competency restoration.
17 If the court orders commitment, the court shall enter a
18 transport order that provides for the defendant's return to the
19 local jail within seventy-two hours upon the defendant being
20 restored to competency, completion of the competency
21 restoration program or as otherwise required by the court. A
22 defendant committed for competency restoration shall be
23 provided with treatment available to ~~[involuntarily committed]~~
24 persons subject to civil commitment, and:

25 (1) ~~[the defendant]~~ shall be detained ~~[by the~~

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1 ~~department of health~~] in a secure, locked, [~~facility~~] licensed
2 inpatient psychiatric hospital; and

3 (2) [~~the defendant, during the period of~~
4 ~~commitment~~] shall not be released from that [~~secure~~] facility
5 except pursuant to an order of the [~~district~~] court that
6 committed [~~him~~] the defendant.

7 [~~G.~~] E. The inpatient psychiatric hospital shall
8 admit a defendant for competency restoration within thirty days
9 of receipt of the court's order of commitment of an incompetent
10 defendant and of the necessary and available documents
11 reasonably required for admission pursuant to written policies
12 adopted by the secretary of health or [~~his~~] the secretary's
13 designee. [~~the defendant shall be admitted to a facility~~
14 ~~designated for the treatment of defendants who are incompetent~~
15 ~~to stand trial and dangerous. If after conducting an~~
16 ~~investigation~~] If the secretary of health or the secretary's
17 designee determines that the department of health does not have
18 the ability to meet the [~~medical~~] needs of [~~a~~] the defendant
19 [~~ordered committed to a facility~~], the secretary or [~~his~~] the
20 secretary's designee may refuse admission [~~to the defendant~~
21 ~~upon~~] by providing written certification to the committing
22 court and the parties of the [~~lack of ability~~] department's
23 inability to meet the [~~medical~~] needs of the defendant. The
24 certification [~~must~~] shall be made within fourteen days of the
25 receipt of the court's order of commitment and necessary and

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1 available documents reasonably required for admission pursuant
2 to written policies adopted by the secretary or [~~his~~
3 secretary's designee. Within ten days of filing of the
4 certification, the court shall conduct a hearing for further
5 disposition of the criminal case.

6 ~~[D. As used in Sections 31-9-1 through 31-9-1.5~~
7 ~~NMSA 1978, "dangerous" means that, if released, the defendant~~
8 ~~presents a serious threat of inflicting great bodily harm on~~
9 ~~another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.~~

10 ~~E.]~~ F. Within thirty days of [~~an incompetent~~] a
11 defendant's admission to [~~a~~] an inpatient psychiatric facility
12 [~~to undergo treatment to attain competency to proceed in a~~
13 ~~criminal case, the person supervising the defendant's~~
14 ~~treatment]~~ for competency restoration, the department shall
15 file with the [~~district~~] court, the state and the defense:

16 (1) an initial assessment of the defendant and
17 treatment plan; [~~and~~]

18 (2) a report on the defendant's amenability to
19 [~~treatment to render him competent to proceed in a criminal~~
20 ~~case]~~ competency restoration;

21 (3) an assessment of the [~~facility's or~~
22 ~~program's]~~ department's capacity to provide appropriate
23 treatment for the defendant; and

24 (4) an opinion as to the probability of the
25 [~~defendant's attaining]~~ defendant being restored to competency

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1 within ~~[a period of]~~ nine months from the date ~~[of the original~~
2 ~~finding of incompetency to proceed in a criminal case]~~ the
3 court determined the defendant is not competent to stand
4 trial."

5 SECTION 13. Section 31-9-1.3 NMSA 1978 (being Laws 1988,
6 Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4,
7 as amended) is amended to read:

8 "31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY
9 REVIEW--REPORTS--CONTINUING TREATMENT.--

10 A. Within ninety days ~~[of the entry of the order~~
11 ~~committing an incompetent defendant to undergo treatment, the~~
12 ~~district court]~~ after a court issues an order committing a
13 defendant for competency restoration, the court, sitting
14 without a jury, shall conduct a review hearing, unless waived
15 by the defense, and shall determine:

16 (1) whether the defendant ~~[is competent to~~
17 ~~proceed in the criminal case; and, if not]~~ has been restored to
18 competency or remains not competent to stand trial;

19 (2) if the defendant remains not competent,
20 whether the defendant is making progress ~~[under treatment]~~
21 toward ~~[attainment of]~~ being restored to competency within nine
22 months from the date ~~[of the original finding of incompetency]~~
23 the court determined the defendant is not competent to stand
24 trial; and

25 (3) whether the defendant remains dangerous as

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1 ~~[that term is defined in]~~ determined by the court in accordance
2 with Section 31-9-1.2 NMSA 1978.

3 B. At least seven days prior to the review hearing,
4 the treatment supervisor shall submit a written progress report
5 to the court, the state and the defense ~~[indicating]~~ that
6 includes:

7 (1) the clinical findings ~~[of the treatment~~
8 ~~supervisor]~~ regarding the defendant's progress toward
9 competency restoration and the facts upon which the findings
10 are based;

11 (2) ~~[the]~~ an opinion ~~[of the treatment~~
12 ~~supervisor]~~ as to whether the defendant has ~~[attained]~~ been
13 restored to competency or as to whether the defendant is making
14 progress ~~[under treatment]~~ toward ~~[attaining]~~ being restored to
15 competency within nine months from the date ~~[of the original~~
16 ~~finding of incompetency]~~ the court determined the defendant is
17 not competent to stand trial and whether there is a substantial
18 probability that the defendant will ~~[attain]~~ be restored to
19 competency within nine months from the date ~~[of the original~~
20 ~~finding of incompetency]~~ the court determined the defendant is
21 not competent to stand trial;

22 (3) an opinion as to whether the defendant
23 ~~[is]~~ remains dangerous as ~~[that term is defined in]~~ determined
24 by the court in accordance with Section 31-9-1.2 NMSA 1978 ~~[or~~
25 ~~whether the defendant satisfies the criteria for involuntary~~

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1 ~~commitment contained in the Mental Health and Developmental~~
2 ~~Disabilities Code and];~~

3 (4) if the defendant is receiving medication,
4 information from the prescribing physician indicating the type,
5 the dosage and the effect of the medication on the defendant's
6 appearance, actions and demeanor;

7 (5) if the department of health believes the
8 defendant remains not competent, an opinion as to whether the
9 defendant satisfies the criteria for involuntary commitment in
10 accordance with the Mental Health and Developmental
11 Disabilities Code and whether:

12 (a) as a result of a mental disorder,
13 the defendant presents a likelihood of serious harm to the
14 defendant's self or others;

15 (b) the defendant needs and is likely to
16 benefit from involuntary commitment and treatment; and

17 (c) the proposed commitment is
18 consistent with the treatment needs of the defendant and with
19 the least drastic means principle; and

20 (6) if the department of health believes the
21 defendant remains not competent, an opinion as to whether the
22 defendant satisfies the criteria for involuntary treatment in
23 accordance with the Assisted Outpatient Treatment Act and
24 whether the defendant:

25 (a) has a primary diagnosis of a mental

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1 disorder;

2 (b) has demonstrated a history of lack
3 of compliance with treatment for a mental disorder;

4 (c) is unwilling or unlikely, as a
5 result of a mental disorder, to voluntarily participate in
6 outpatient treatment that would enable the person to live
7 safely in the community without court supervision;

8 (d) is in need of assisted outpatient
9 treatment as the least restrictive appropriate alternative to
10 prevent a relapse or deterioration likely to result in serious
11 harm to the defendant's self or others; and

12 (e) will likely benefit from assisted
13 outpatient treatment and have the defendant's best interests
14 served.

15 C. If the district court finds that the defendant
16 [~~to be competent~~] is restored to competency, the district court
17 shall set the matter for trial; provided that if the defendant
18 is in need of continued care or treatment and the [~~supervisor~~
19 ~~of the defendant's treatment~~] department of health agrees to
20 continue to provide it, the district court may [~~enter any~~]
21 order [~~it deems appropriate for the~~] continued care or
22 treatment of the defendant [~~by the facility or program pending~~]
23 until the conclusion of the criminal proceedings.

24 D. If the district court finds that the defendant
25 [~~is still~~] remains not competent [~~to proceed in a criminal~~

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1 ease] but that [he] the defendant is making progress toward
2 [attaining] being restored to competency, the district court
3 may continue or modify its original [~~treatment~~] commitment
4 order entered pursuant to Section 31-9-1.2 NMSA 1978; provided
5 that:

6 (1) the question of the defendant's competency
7 shall be reviewed again not later than nine months from the
8 [~~original determination of incompetency to proceed in a~~
9 ~~criminal case~~] date the court determined the defendant is not
10 competent to stand trial; and

11 (2) the treatment supervisor shall submit a
12 written progress report as specified in Subsection B of this
13 section at least seven days prior to such hearing.

14 E. If the district court finds that the defendant
15 [~~is still~~] remains not competent, that [he] the defendant is
16 not making progress toward [attaining] being restored to
17 competency and that there is not a substantial probability that
18 [he] the defendant will [attain] be restored to competency
19 within nine months from the date [~~of the original finding of~~
20 ~~incompetency the district court~~] the court determined the
21 defendant is not competent to stand trial, the court shall
22 proceed pursuant to Section 31-9-1.4 NMSA 1978. However, if
23 the defendant is in need of continued care and treatment and
24 the [~~supervisor of the defendant's treatment~~] department of
25 health agrees to continue to provide it, the district court may

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1 ~~[enter any]~~ order ~~[it deems appropriate for the]~~ continued care
2 or treatment of the defendant by the ~~[facility or program~~
3 ~~pending]~~ department until the conclusion of the criminal
4 proceedings."

5 SECTION 14. Section 31-9-1.4 NMSA 1978 (being Laws 1988,
6 Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5,
7 as amended) is amended to read:

8 "31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT
9 DEFENDANTS.--If at any time the district court determines that
10 there is not a substantial probability that the defendant will
11 ~~[become competent to proceed in a criminal case within a~~
12 ~~reasonable period of time not to exceed nine months from the~~
13 ~~date of the original finding of incompetency]~~ be restored to
14 competency within nine months from the date the court
15 determined the defendant is not competent to stand trial, the
16 district court may:

17 A. ~~[hear the matter pursuant to]~~ hold a criminal
18 commitment hearing in accordance with Section 31-9-1.5 NMSA
19 1978 within three months if the defendant is charged with ~~[a~~
20 ~~felony that involves the infliction of great bodily harm on~~
21 ~~another person; a felony that involves the use of a firearm;~~
22 ~~aggravated arson, as provided in Section 30-17-6 NMSA 1978;~~
23 ~~criminal sexual penetration, as provided in Section 30-9-11~~
24 ~~NMSA 1978; or criminal sexual contact of a minor, as provided~~
25 ~~in Section 30-9-13 NMSA 1978]:~~

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1 (1) a felony involving infliction of great
2 bodily harm, as defined in Section 30-1-12 NMSA 1978, on
3 another person;

4 (2) criminal sexual penetration, as provided
5 in Section 30-9-11 NMSA 1978;

6 (3) criminal sexual contact of a minor, as
7 provided in Section 30-9-13 NMSA 1978;

8 (4) abuse of a child, as provided in
9 Subsection D of Section 30-6-1 NMSA 1978;

10 (5) a crime provided for in the Sexual
11 Exploitation of Children Act;

12 (6) human trafficking, as provided in Section
13 30-52-1 NMSA 1978;

14 (7) a felony involving the use of a firearm;
15 or

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

18 B. release the defendant from custody and dismiss
19 the criminal case with prejudice [~~the charges against him~~]; or

20 C. dismiss the criminal case without prejudice in
21 the interest of justice; provided that if the treatment
22 supervisor [~~has issued a report finding~~] reports to the court
23 that the defendant satisfies the criteria for involuntary
24 commitment [~~contained~~] in accordance with the Mental Health and
25 Developmental Disabilities Code, the department of health shall

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1 [commence] initiate those proceedings [~~pursuant to Chapter 43,~~
2 ~~Article 1 NMSA 1978~~], and the court may order the defendant
3 confined for a maximum of seven days to facilitate [~~preparation~~
4 ~~and~~] the initiation of [~~a petition pursuant to the Mental~~
5 ~~Health and Developmental Disabilities code. The district court~~
6 ~~may refer the defendant to the district attorney for possible~~
7 ~~initiation of proceedings under the Mental Health and~~
8 ~~Developmental Disabilities Code~~] those proceedings; and
9 provided further that the district attorney may initiate
10 involuntary commitment proceedings in the department's stead."

11 SECTION 15. Section 31-9-1.5 NMSA 1978 (being Laws 1988,
12 Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6,
13 as amended) is amended to read:

14 "31-9-1.5. DETERMINATION OF COMPETENCY--CRIMINAL
15 COMMITMENT--EVIDENTIARY HEARING.--

16 A. [~~As provided for in Subsection A of Section~~
17 ~~31-9-1.4 NMSA 1978, A~~] If the court determines that there is
18 not a substantial probability that a defendant not competent to
19 stand trial will be restored to competency, a commitment
20 hearing to determine the sufficiency of the evidence of the
21 defendant's guilt shall be held if [~~the case is not dismissed~~
22 ~~and if~~] the defendant is charged with [~~a felony that involves~~
23 ~~the infliction of great bodily harm on another person; a felony~~
24 ~~that involves the use of a firearm; aggravated arson, as~~
25 ~~provided in Section 30-17-6 NMSA 1978; criminal sexual~~

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1 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~
2 ~~criminal sexual contact of a minor, as provided in Section~~
3 ~~30-9-13 NMSA 1978. Such]:~~

4 (1) a felony involving infliction of great
5 bodily harm, as defined in Section 30-1-12 NMSA 1978, on
6 another person;

7 (2) criminal sexual penetration, as provided
8 in Section 30-9-11 NMSA 1978;

9 (3) criminal sexual contact of a minor, as
10 provided in Section 30-9-13 NMSA 1978;

11 (4) abuse of a child, as provided in
12 Subsection D of Section 30-6-1 NMSA 1978;

13 (5) a crime provided for in the Sexual
14 Exploitation of Children Act;

15 (6) human trafficking, as provided in Section
16 30-52-1 NMSA 1978;

17 (7) a felony involving the use of a firearm;
18 or

19 (8) aggravated arson, as provided in Section
20 30-17-6 NMSA 1978.

21 B. A criminal commitment hearing shall be conducted
22 by the district court without a jury. The state and the
23 defendant may introduce evidence relevant to the question of
24 the defendant's guilt of the crime charged. The district court
25 may admit hearsay or affidavit evidence on secondary matters

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1 such as testimony to establish the chain of possession of
2 physical evidence, laboratory reports, authentication of
3 transcripts taken by official reporters, district court and
4 business records and public documents.

5 ~~[B.]~~ C. If the evidence does not establish by clear
6 and convincing evidence that the defendant committed ~~[a felony~~
7 ~~that involves the infliction of great bodily harm on another~~
8 ~~person; a felony that involves the use of a firearm; aggravated~~
9 ~~arson, as provided in Section 30-17-6 NMSA 1978; criminal~~
10 ~~sexual penetration, as provided in Section 30-9-11 NMSA 1978;~~
11 ~~or criminal sexual contact of a minor, as provided in Section~~
12 ~~30-9-13 NMSA 1978]~~ the crime charged, the district court shall
13 dismiss the criminal case with prejudice. ~~[however, nothing in~~
14 ~~this section shall prevent the state from initiating~~
15 ~~proceedings under the provisions of the Mental Health and~~
16 ~~Developmental Disabilities Code, and the court may order the~~
17 ~~defendant confined for a maximum of seven days to facilitate~~
18 ~~preparation and initiation of a petition pursuant to that code.~~

19 ~~G.]~~ D. If the district court finds by clear and
20 convincing evidence that the defendant committed ~~[a]~~ the crime
21 charged and has not made a finding of dangerousness ~~[pursuant~~
22 ~~to]~~ in accordance with Section 31-9-1.2 NMSA 1978, the district
23 court shall dismiss the ~~[charges]~~ criminal case without
24 prejudice. ~~[The state may initiate proceedings pursuant to the~~
25 ~~provisions of the Mental Health and Developmental Disabilities~~

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1 ~~Code and the court may order the defendant confined for a~~
2 ~~maximum of seven days to facilitate preparation and initiation~~
3 ~~of a petition pursuant to that code.~~

4 D.] E. If the district court finds by clear and
5 convincing evidence that the defendant committed [~~a felony that~~
6 ~~involves the infliction of great bodily harm on another person;~~
7 ~~a felony that involves the use of a firearm; aggravated arson,~~
8 ~~as provided in Section 30-17-6 NMSA 1978; criminal sexual~~
9 ~~penetration, as provided in Section 30-9-11 NMSA 1978; or~~
10 ~~criminal sexual contact of a minor, as provided in Section~~
11 ~~30-9-13 NMSA 1978]~~ the crime charged and enters a finding that
12 the defendant remains [~~incompetent to proceed~~] not competent to
13 stand trial and remains dangerous [~~pursuant to~~] as determined
14 by the court in accordance with Section 31-9-1.2 NMSA 1978:

15 (1) the defendant shall be detained [~~by the~~
16 ~~department of health~~] in a secure, locked, [~~facility~~] licensed
17 inpatient psychiatric hospital;

18 (2) the defendant shall not be released from
19 that secure facility except pursuant to an order of the
20 [~~district~~] court [~~which~~] that committed [~~him~~] the defendant or
21 upon expiration of the period of time equal to the maximum
22 sentence to which the defendant would have been subject had the
23 defendant been convicted in a criminal proceeding;

24 (3) significant changes in the defendant's
25 condition, including [~~but not limited to~~] trial competency and

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1 dangerousness, shall be reported in writing to the district
2 court, state and defense; and

3 (4) at least every two years, the district
4 court shall conduct a hearing upon notice to the parties and
5 the department of health charged with detaining the defendant.
6 At the hearing, the court shall enter findings on the issues of
7 trial competency and dangerousness:

8 (a) upon a finding that the defendant is
9 competent to proceed in a criminal case, the court shall
10 continue with the criminal proceeding;

11 (b) if the defendant continues to [~~be~~
12 ~~incompetent to proceed in a criminal case~~] remain not competent
13 to stand trial and dangerous [~~pursuant to~~] in accordance with
14 Section 31-9-1.2 NMSA 1978, the court shall review the
15 defendant's competency and dangerousness every two years until
16 expiration of the period of commitment equal to the maximum
17 sentence to which the defendant would have been subject had [~~he~~
18 ~~or she~~] the defendant been convicted in a criminal proceeding;
19 [~~provided that if the treatment supervisor recommends that the~~
20 ~~defendant be committed pursuant to the Mental Health and~~
21 ~~Developmental Disabilities Code, the court may at any time~~
22 ~~proceed pursuant to Subsection C of Section 31-9-1.4 NMSA 1978]~~
23 and

24 (c) [~~if the defendant is not committed~~
25 ~~pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978 or~~] if

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1 the court finds upon its two-year review hearing that the
2 defendant is no longer dangerous, [~~as defined in Section~~
3 ~~31-9-1.2 NMSA 1978~~] the defendant shall be released.

4 F. At any time, including after a court dismisses a
5 case against a defendant, the department of health or the
6 district attorney may initiate involuntary commitment
7 proceedings in accordance with the Mental Health and
8 Developmental Disabilities Code or proceedings in accordance
9 with the Assisted Outpatient Treatment Act. If the district
10 attorney indicates an intent to initiate involuntary commitment
11 proceedings in accordance with the Mental Health and
12 Developmental Disabilities Code, the court may detain the
13 defendant for a maximum of seven days only to facilitate the
14 initiation of those proceedings."

15 SECTION 16. Section 31-9-1.6 NMSA 1978 (being Laws 1997,
16 Chapter 153, Section 1, as amended) is amended to read:

17 "31-9-1.6. HEARING TO DETERMINE DEVELOPMENTAL OR
18 INTELLECTUAL DISABILITY.--

19 A. Upon motion of the defense, [~~requesting a~~
20 ~~ruling~~] the court shall hold a hearing to determine whether the
21 defendant [~~has~~] is not competent due to a developmental or
22 intellectual disability as defined in Subsection E of this
23 section, and the evaluator shall be provided with the necessary
24 and available documents reasonably required for admission
25 pursuant to written policies adopted by the secretary of health

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1 or the secretary's designee.

2 B. If the court finds by a preponderance of the
3 evidence that the defendant [~~has~~] is not competent to stand
4 trial due to a developmental or intellectual disability and
5 that there is not a substantial probability that the defendant
6 will [~~become competent to proceed in a criminal case~~] be
7 restored to competency within [~~a reasonable period of time not~~
8 ~~to exceed~~] nine months from the date [~~of the original finding~~
9 ~~of incompetency, then, no later than sixty days from~~
10 ~~notification to the secretary of health or the secretary's~~
11 ~~designee of the court's findings, the department of health~~
12 ~~shall perform an evaluation to~~] the court determined the
13 defendant is not competent to stand trial, the court shall
14 notify the department of health of the court's finding. Within
15 sixty days of receipt of the court's notification, the
16 department of health shall determine whether the defendant
17 presents a likelihood of serious harm to the defendant's self
18 or others.

19 C. If the department of health [~~evaluation results~~
20 ~~in a finding~~] determines that the defendant presents a
21 likelihood of serious harm to self or others, [~~within sixty~~
22 ~~days of the department's evaluation~~] the department shall
23 [~~commence proceedings pursuant to Chapter 43, Article 1 NMSA~~
24 ~~1978~~] initiate involuntary commitment proceedings in accordance
25 with the Mental Health and Developmental Disabilities Code if

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1 the defendant [~~was~~] is charged with [~~murder in the first~~
2 ~~degree, first degree criminal sexual penetration, criminal~~
3 ~~sexual contact of a minor or arson in the initial proceedings,~~
4 ~~and the court presiding over the initial proceedings shall~~
5 ~~enter a finding that the respondent presents a likelihood of~~
6 ~~harm to others~~]:

7 (1) a felony involving infliction of great
8 bodily harm, as defined in Section 30-1-12 NMSA 1978, on
9 another person;

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

12 (3) criminal sexual contact of a minor, as
13 provided in Section 30-9-13 NMSA 1978;

14 (4) abuse of a child, as provided in
15 Subsection D of Section 30-6-1 NMSA 1978;

16 (5) a crime provided for in the Sexual
17 Exploitation of Children Act;

18 (6) human trafficking, as provided in Section
19 30-52-1 NMSA 1978;

20 (7) a felony involving the use of a firearm;
21 or

22 (8) aggravated arson, as provided in Section
23 30-17-6 NMSA 1978.

24 D. [~~The criminal charges shall be dismissed without~~
25 ~~prejudice] After the [~~hearing pursuant to Chapter 43, Article 1~~~~

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1 ~~NMSA 1978]~~ involuntary commitment hearing or upon expiration of
2 fourteen months from the court's initial determination that the
3 defendant is [~~incompetent to proceed in a criminal case~~] not
4 competent to stand trial, the criminal case shall be dismissed
5 without prejudice.

6 E. As used in this section, "developmental or
7 intellectual disability" means significantly subaverage general
8 intellectual functioning existing concurrently with deficits in
9 adaptive behavior. An intelligence quotient of seventy or
10 below on a reliably administered intelligence quotient test
11 shall be presumptive evidence of developmental or intellectual
12 disability."

13 SECTION 17. Section 31-9-2 NMSA 1978 (being Laws 1967,
14 Chapter 231, Section 3) is amended to read:

15 "31-9-2. COMPETENCY EVALUATION--MENTAL OR FUNCTIONAL
16 EXAMINATION.--

17 A. Upon motion of any defendant, the court shall
18 order a mental examination of the defendant before making any
19 determination of the defendant's competency. [~~under Sections~~
20 ~~41-13-3 or 41-13-3.1 New Mexico Statutes Annotated, 1953~~
21 ~~Compilation. Where~~] If the defendant is determined to be
22 indigent, the court shall pay for the costs of the examination
23 from funds available to the court.

24 B. A court may authorize a district attorney or the
25 department of health to use a report of any examination ordered

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1 before a determination of a defendant's competency to stand
2 trial for the purposes of initiating proceedings in accordance
3 with the Mental Health and Developmental Disabilities Code or
4 the Assisted Outpatient Treatment Act."

5 SECTION 18. Section 31-18-15 NMSA 1978 (being Laws 1977,
6 Chapter 216, Section 4, as amended) is amended to read:

7 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
8 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
9 DEDUCTIONS.--

10 A. As used in a statute that establishes a
11 noncapital felony, the following defined felony classifications
12 and associated basic sentences of imprisonment are as follows:

| 13 FELONY CLASSIFICATION | BASIC SENTENCE |
|--------------------------------------|-----------------------------|
| 14 first degree felony | |
| 15 resulting in the death | |
| 16 of a child | life imprisonment |
| 17 first degree felony for | |
| 18 aggravated criminal sexual | |
| 19 penetration | life imprisonment |
| 20 <u>first degree felony for</u> | |
| 21 <u>trafficking a controlled</u> | |
| 22 <u>substance resulting in</u> | |
| 23 <u>the death of a human being</u> | <u>life imprisonment</u> |
| 24 first degree felony | eighteen years imprisonment |
| 25 second degree felony | |

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1 B. The appropriate basic sentence of imprisonment
2 shall be imposed upon a person convicted and sentenced pursuant
3 to Subsection A of this section, unless the court alters the
4 sentence pursuant to the provisions of the Criminal Sentencing
5 Act.

6 C. A period of parole shall be imposed only for
7 felony convictions wherein a person is sentenced to
8 imprisonment of more than one year, unless the parties to a
9 proceeding agree that a period of parole should be imposed. If
10 a period of parole is imposed, the court shall include in the
11 judgment and sentence of each person convicted and sentenced to
12 imprisonment in a corrections facility designated by the
13 corrections department authority for a period of parole to be
14 served in accordance with the provisions of Section 31-21-10
15 NMSA 1978 after the completion of any actual time of
16 imprisonment and authority to require, as a condition of
17 parole, the payment of the costs of parole services and
18 reimbursement to a law enforcement agency or local crime
19 stopper program in accordance with the provisions of that
20 section. If imposed, the period of parole shall be deemed to
21 be part of the sentence of the convicted person in addition to
22 the basic sentence imposed pursuant to Subsection A of this
23 section together with alterations, if any, pursuant to the
24 provisions of the Criminal Sentencing Act.

25 D. When a court imposes a sentence of imprisonment

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1 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
2 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
3 imprisonment provided pursuant to the provisions of Subsection
4 A of this section, the period of parole shall be served in
5 accordance with the provisions of Section 31-21-10 NMSA 1978
6 for the degree of felony for the basic sentence for which the
7 inmate was convicted. For the purpose of designating a period
8 of parole, a court shall not consider that the basic sentence
9 of imprisonment was suspended or deferred and that the inmate
10 served a period of imprisonment pursuant to the provisions of
11 the Criminal Sentencing Act.

12 E. The court may, in addition to the imposition of
13 a basic sentence of imprisonment, impose a fine not to exceed:

14 (1) for a first degree felony resulting in the
15 death of a child, seventeen thousand five hundred dollars
16 (\$17,500);

17 (2) for a first degree felony for aggravated
18 criminal sexual penetration, seventeen thousand five hundred
19 dollars (\$17,500);

20 (3) for a first degree felony for trafficking
21 a controlled substance resulting in the death of a human being,
22 seventeen thousand five hundred dollars (\$17,500);

23 [~~(3)~~] (4) for a first degree felony, fifteen
24 thousand dollars (\$15,000);

25 [~~(4)~~] (5) for a second degree felony resulting

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1 in the death of a human being, twelve thousand five hundred
2 dollars (\$12,500);

3 ~~[(5)]~~ (6) for a second degree felony for a
4 sexual offense against a child, twelve thousand five hundred
5 dollars (\$12,500);

6 (7) for a second degree felony for trafficking
7 a controlled substance resulting in the death of a human being,
8 twelve thousand five hundred dollars (\$12,500);

9 ~~[(6)]~~ (8) for a second degree felony for
10 sexual exploitation of children, five thousand dollars
11 (\$5,000);

12 ~~[(7)]~~ (9) for a second degree felony, ten
13 thousand dollars (\$10,000);

14 ~~[(8)]~~ (10) for a third degree felony resulting
15 in the death of a human being, five thousand dollars (\$5,000);

16 ~~[(9)]~~ (11) for a third degree felony for a
17 sexual offense against a child, five thousand dollars (\$5,000);

18 ~~[(10)]~~ (12) for a third degree felony for
19 sexual exploitation of children, five thousand dollars
20 (\$5,000);

21 ~~[(11)]~~ (13) for a third or fourth degree
22 felony, five thousand dollars (\$5,000); or

23 ~~[(12)]~~ (14) for a fourth degree felony for
24 sexual exploitation of children, five thousand dollars
25 (\$5,000).

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1 F. When the court imposes a sentence of
2 imprisonment for a felony offense, the court shall indicate
3 whether or not the offense is a serious violent offense as
4 defined in Section 33-2-34 NMSA 1978. The court shall inform
5 an offender that the offender's sentence of imprisonment is
6 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
7 and 33-2-38 NMSA 1978. If the court fails to inform an
8 offender that the offender's sentence is subject to those
9 provisions or if the court provides the offender with erroneous
10 information regarding those provisions, the failure to inform
11 or the error shall not provide a basis for a writ of habeas
12 corpus.

13 G. No later than October 31 of each year, the
14 New Mexico sentencing commission shall provide a written report
15 to the secretary of corrections, all New Mexico criminal court
16 judges, the administrative office of the district attorneys and
17 the chief public defender. The report shall specify the
18 average reduction in the sentence of imprisonment for serious
19 violent offenses and nonviolent offenses, as defined in Section
20 33-2-34 NMSA 1978, due to meritorious deductions earned by
21 prisoners during the previous fiscal year pursuant to the
22 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
23 NMSA 1978. The corrections department shall allow the
24 commission access to documents used by the department to
25 determine earned meritorious deductions for prisoners."

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1 SECTION 19. Section 31-26-3 NMSA 1978 (being Laws 1994,
2 Chapter 144, Section 3, as amended) is amended to read:

3 "31-26-3. DEFINITIONS.--As used in the Victims of Crime
4 Act:

5 A. "court" means magistrate court, metropolitan
6 court, children's court, district court, the court of appeals
7 or the supreme court;

8 B. "criminal offense" means:

9 (1) negligent arson resulting in death or
10 bodily injury, as provided in Paragraph (1) of Subsection [B] G
11 of Section 30-17-5 NMSA 1978;

12 (2) aggravated arson, as provided in Section
13 30-17-6 NMSA 1978;

14 (3) aggravated assault, as provided in Section
15 30-3-2 NMSA 1978;

16 (4) aggravated battery, as provided in Section
17 30-3-5 NMSA 1978;

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

20 (6) negligent use of a deadly weapon, as
21 provided in Section 30-7-4 NMSA 1978;

22 (7) murder, as provided in Section 30-2-1 NMSA
23 1978;

24 (8) voluntary manslaughter, as provided in
25 Section 30-2-3 NMSA 1978;

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1 (9) involuntary manslaughter, as provided in
2 Section 30-2-3 NMSA 1978;

3 (10) kidnapping, as provided in Section 30-4-1
4 NMSA 1978;

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

7 (12) criminal sexual contact of a minor, as
8 provided in Section 30-9-13 NMSA 1978;

9 (13) armed robbery, as provided in Section
10 30-16-2 NMSA 1978;

11 (14) homicide by vehicle, as provided in
12 Section 66-8-101 NMSA 1978;

13 (15) great bodily injury by vehicle, as
14 provided in Section 66-8-101 NMSA 1978;

15 (16) abandonment or abuse of a child, as
16 provided in Section 30-6-1 NMSA 1978;

17 (17) stalking or aggravated stalking, as
18 provided in the Harassment and Stalking Act;

19 (18) aggravated assault against a household
20 member, as provided in Section 30-3-13 NMSA 1978;

21 (19) assault against a household member with
22 intent to commit a violent felony, as provided in Section
23 30-3-14 NMSA 1978;

24 (20) battery against a household member, as
25 provided in Section 30-3-15 NMSA 1978; [or]

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1 (21) aggravated battery against a household
2 member, as provided in Section 30-3-16 NMSA 1978;

3 (22) human trafficking, as provided in Section
4 30-52-1 NMSA 1978; or

5 (23) sexual exploitation of children, as
6 provided in Section 30-6A-3 NMSA 1978;

7 C. "court proceeding" means a hearing, argument or
8 other action scheduled by and held before a court;

9 D. "family member" means a spouse, child, sibling,
10 parent or grandparent;

11 E. "formally charged" means the filing of an
12 indictment, the filing of a criminal information pursuant to a
13 bind-over order, the filing of a petition or the setting of a
14 preliminary hearing;

15 F. "victim" means an individual against whom a
16 criminal offense is committed. "Victim" also means a family
17 member or a victim's representative when the individual against
18 whom a criminal offense was committed is a minor, is
19 incompetent or is a homicide victim; and

20 G. "victim's representative" means an individual
21 designated by a victim or appointed by the court to act in the
22 best interests of the victim."

23 **SECTION 20.** Section 32A-2-2 NMSA 1978 (being Laws 1993,
24 Chapter 77, Section 31, as amended) is amended to read:

25 "32A-2-2. PURPOSE OF ACT.--The purpose of the

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1 Delinquency Act is:

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

12 B. to provide effective deterrents to acts of
13 juvenile delinquency, if deterrents are appropriate,
14 including an emphasis on community-based alternatives;

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

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

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

22 F. to develop objective risk assessment
23 instruments to be used for admission to juvenile detention
24 centers;

25 G. to encourage efficient processing of cases;

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1 H. to develop community-based alternatives to
2 detention, if alternatives are appropriate;

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

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

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

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

12 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

13 A. "delinquent act" means an act committed by a
14 child that would be designated as a crime under the law if
15 committed by an adult, not including a violation of Section
16 30-9-2 NMSA 1978, including the following offenses:

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

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

21 (b) failure to stop in the event of an
22 accident causing [death] personal injury or damage to
23 property;

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

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- 1 (d) receiving or transferring of a
2 stolen vehicle or motor vehicle;
3 [~~(e)~~] ~~homicide by vehicle;~~
4 [~~(f)~~] (e) injuring or tampering with a
5 vehicle;
6 [~~(g)~~] (f) altering or changing of an
7 engine number or other vehicle identification numbers;
8 [~~(h)~~] (g) altering or forging of a
9 driver's license or permit or any making of a fictitious
10 license or permit;
11 [~~(i)~~] (h) reckless driving;
12 [~~(j)~~] (i) driving with a suspended or
13 revoked license; or
14 [~~(k)~~] (j) an offense punishable as a
15 felony;

16 (2) buying, attempting to buy, receiving,
17 possessing or being served any alcoholic liquor or being
18 present in a licensed liquor establishment, other than a
19 restaurant or a licensed retail liquor establishment, except
20 in the presence of the child's parent, guardian, custodian or
21 adult spouse. As used in this paragraph, "restaurant" means
22 an establishment where meals are prepared and served
23 primarily for on-premises consumption and that has a dining
24 room, a kitchen and the employees necessary for preparing,
25 cooking and serving meals. "Restaurant" does not include an

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1 establishment, as defined in regulations promulgated by the
2 director of the special investigations unit of the New Mexico
3 state police division of the department of public safety,
4 that serves only hamburgers, sandwiches, salads and other
5 fast foods;

6 (3) a violation of Section 30-29-2 NMSA
7 1978, regarding the illegal use of a glue, aerosol spray
8 product or other chemical substance;

9 (4) a violation of the Controlled Substances
10 Act;

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

15 (6) a violation of Section 30-15-1.1 NMSA
16 1978 regarding unauthorized graffiti on personal or real
17 property;

18 (7) a violation of an order of protection
19 issued pursuant to the provisions of the Family Violence
20 Protection Act; or

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

23 B. "delinquent child" means a child who has
24 committed a delinquent act;

25 C. "delinquent offender" means a delinquent child

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1 who is subject to juvenile sanctions only and who is not a
2 youthful offender or a serious youthful offender;

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

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

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

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

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1 1978;

2 H. "serious youthful offender" is not a
3 delinquent child and means [~~an individual fifteen~~] a child
4 fourteen to eighteen years of age who is charged with [~~and~~
5 ~~indicted or bound over for trial for first degree murder. A~~
6 ~~"serious youthful offender" is not a delinquent child as~~
7 ~~defined pursuant to the provisions of this section] at least
8 one of the following crimes:~~

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

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

13 (3) robbery while armed with a deadly
14 weapon, as provided in Section 30-16-2 NMSA 1978; or

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

20 I. "supervised release" means the release of a
21 juvenile, whose term of commitment has not expired, from a
22 facility for the care and rehabilitation of adjudicated
23 delinquent children, with specified conditions to protect
24 public safety and promote successful transition and
25 reintegration into the community. A juvenile on supervised

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1 release is subject to monitoring by the department until the
2 term of commitment has expired and may be returned to custody
3 for violating conditions of release; and

4 J. "youthful offender" means a delinquent child
5 subject to adult or juvenile sanctions who is ~~[(1)]~~ fourteen
6 to eighteen years of age ~~[at the time of the offense and who~~
7 ~~is adjudicated for at least one of the following offenses:~~

8 ~~(a) second degree murder, as provided~~
9 ~~in Section 30-2-1 NMSA 1978] and is:~~

10 (1) charged with at least one of the
11 following offenses:

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

15 ~~[(c)]~~ (b) kidnapping, as provided in
16 Section 30-4-1 NMSA 1978;

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

19 ~~[(e)]~~ (d) aggravated battery against a
20 household member, as provided in Subsection C of Section
21 30-3-16 NMSA 1978;

22 ~~[(f)]~~ (e) aggravated battery upon a
23 peace officer, as provided in Subsection C of Section
24 30-22-25 NMSA 1978;

25 ~~[(g)]~~ (f) shooting at a dwelling or

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1 occupied building that does not result in great bodily harm
2 to another person or shooting at or from a motor vehicle that
3 does not result in great bodily harm to another person, as
4 provided in Section 30-3-8 NMSA 1978;

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

7 ~~(i)~~ (h) criminal sexual penetration,
8 as provided in Section 30-9-11 NMSA 1978;

9 ~~(j)~~ (i) robbery, as provided in
10 Section 30-16-2 NMSA 1978;

11 ~~(k)~~ (j) aggravated burglary, as
12 provided in Section 30-16-4 NMSA 1978;

13 ~~(l)~~ (k) aggravated arson, as
14 provided in Section 30-17-6 NMSA 1978; ~~or~~

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

18 (m) unlawful possession of a handgun
19 by a person, as provided in Section 30-7-2.2 NMSA 1978;

20 (n) homicide by vehicle, as provided
21 in Section 66-8-101 NMSA 1978;

22 (o) involuntary manslaughter, as
23 provided in Section 30-2-3 NMSA 1978; or

24 (p) failing to stop a vehicle when the
25 vehicle is involved in an accident that results in injury or

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1 death, as provided in Section 66-7-201 NMSA 1978; or

2 (2) [~~fourteen to eighteen years of age at~~
3 ~~the time of the offense, who is~~] adjudicated for [any] a
4 felony offense and who has had three prior, separate felony
5 adjudications within a three-year time period immediately
6 preceding the instant offense; provided that:

7 (a) the felony adjudications relied
8 upon as prior adjudications shall not have arisen out of the
9 same transaction or occurrence or series of events related in
10 time and location; and

11 (b) successful completion of a consent
12 [~~decrees is~~] decree shall not be considered a prior
13 adjudication for the purposes of this paragraph [~~or~~

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

17 SECTION 22. Section 32A-2-4.1 NMSA 1978 (being Laws
18 2009, Chapter 239, Section 12) is amended to read:

19 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
20 HOLDING FACILITIES--REPORTS.--

21 A. A child arrested and detained for an alleged
22 delinquent act may be temporarily held in an adult jail or
23 lockup for no longer than six hours. A child who is detained
24 in an adult jail or lockup shall be placed in a setting that
25 is physically segregated by sight and sound from adult

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1 offenders. After six hours, the child may be placed or
2 detained pursuant to the provisions of Section 32A-2-12 NMSA
3 1978.

4 B. An adult jail or lockup used as a temporary
5 holding facility for alleged delinquent offenders shall file
6 an annual report regarding its compliance with federal
7 requirements. The juvenile justice advisory committee and
8 the department shall determine the format of the annual
9 reports.

10 C. A serious youthful offender shall be
11 transported to a district court when the serious youthful
12 offender's appearance is ordered by the district court;
13 provided, however, that the serious youthful offender shall
14 be physically segregated from adult offenders and segregated
15 by sight and sound from adult offenders to the fullest extent
16 possible."

17 SECTION 23. Section 32A-2-8 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 37) is amended to read:

19 "32A-2-8. PETITION--AUTHORIZATION TO FILE.--A petition
20 alleging delinquency shall not be filed [~~in~~] to initiate
21 delinquency proceedings unless the children's court attorney
22 [~~after consulting with probation services~~] has determined and
23 endorsed upon the petition that the filing of the petition is
24 in the best interest of the public and the child. The
25 children's court attorney shall furnish legal services in

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1 connection with the authorization and preparation of the
2 petition."

3 SECTION 24. Section 32A-2-11 NMSA 1978 (being Laws
4 1993, Chapter 77, Section 40, as amended) is amended to read:

5 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

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

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

14 (2) poses a substantial risk of harm to
15 others; or

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

18 B. The criteria for detention provided for in
19 this section shall [~~govern~~] apply to the decisions of all
20 persons responsible for determining whether detention is
21 appropriate prior to a detention hearing. [~~based upon review~~
22 ~~of the detention risk assessment instrument.~~

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

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1 ~~detention risk assessment instrument. On January 1, 2004,~~
2 ~~the department shall provide the legislature with a written~~
3 ~~report with respect to its collection and analysis of data~~
4 ~~regarding the application of the detention risk assessment~~
5 ~~instrument]"~~

6 SECTION 25. Section 32A-2-12 NMSA 1978 (being Laws
7 1993, Chapter 77, Section 41, as amended) is amended to read:

8 "32A-2-12. PLACEMENT OR DETENTION.--

9 A. A child alleged to be a delinquent child may
10 be placed or detained, pending a court hearing, in any of the
11 following places:

12 (1) a licensed foster home or a home
13 otherwise authorized under the law to provide foster or group
14 care;

15 (2) a facility operated by a licensed child
16 welfare services agency;

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

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

24 (5) any other suitable place, other than a
25 facility for the long-term care and rehabilitation of

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1 delinquent children to which children adjudicated as
2 delinquent may be confined pursuant to Section 32A-2-19 NMSA
3 1978, designated by the court [~~and~~] that meets the standards
4 for detention facilities pursuant to the Children's Code and
5 federal law; or

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

8 B. A child alleged to be a youthful offender may
9 be detained, pending a court hearing, in any of the following
10 places:

11 (1) a detention facility, licensed by the
12 department, for children alleged to be delinquent children;
13 or

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

21 C. A child adjudicated as a youthful offender who
22 is violent toward staff or other residents in a detention
23 facility may be transferred and detained, pending a court
24 hearing, in a county jail. In the event that a child is
25 detained in a jail, the director of the jail shall presume

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1 that the child is vulnerable to victimization by inmates
2 within the adult population because of the child's age and
3 shall take measures to provide protection to the child.
4 However, provision of protective measures shall not result in
5 diminishing a child's civil rights to less than those
6 existing for an incarcerated adult.

7 D. A child who has previously been incarcerated
8 as an adult ~~[or a person eighteen years of age or older]~~
9 shall not be detained in a juvenile detention facility or a
10 facility for the long-term care and rehabilitation of
11 delinquent children but may be detained in a county jail. A
12 child ~~[shall not]~~ who reaches eighteen years of age while in
13 a juvenile detention facility shall be transferred to a
14 county jail ~~[solely on the basis of attaining the age of~~
15 ~~eighteen while detained in a juvenile detention facility]~~.

16 In the event that a child is detained in a jail, the director
17 of the jail shall presume that the child is vulnerable to
18 victimization by inmates within the adult population because
19 of the child's age, and shall take measures to provide
20 protection to the child. However, provision of protective
21 measures shall not result in diminishing a child's civil
22 rights to less than those existing for an incarcerated adult.

23 E. A child alleged to be a serious youthful
24 offender may be detained pending a court hearing in any of
25 the following places, prior to arraignment in metropolitan,

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1 magistrate or district court:

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

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
7 delinquent children may be confined pursuant to Section
8 32A-2-19 NMSA 1978, designated by the court that meets the
9 standards for detention facilities pursuant to the Children's
10 Code and federal law; or

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

20 F. When a person who is eighteen years of age or
21 older is taken into custody and transported to an adult
22 facility on a juvenile warrant or an adult warrant or other
23 adult charges and an outstanding juvenile warrant exists,
24 notice shall be given to the children's court attorney and
25 the juvenile probation and parole office in the jurisdiction

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1 where the juvenile warrant was issued within one day of the
2 person being taken into custody. The juvenile probation and
3 parole office shall give notice that the person has been
4 taken into custody to the children's court judge and the
5 attorney who represented the person in the juvenile
6 proceeding.

7 G. In addition to the judicial review required by
8 Paragraph (3) of Subsection A of this section, a child
9 detained in an out-of-home placement pursuant to this section
10 may request judicial review of the appropriateness of the
11 placement."

12 SECTION 26. Section 32A-2-13 NMSA 1978 (being Laws
13 1993, Chapter 77, Section 42, as amended) is amended to read:

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

17 A. [~~When~~] If a child who has been taken into
18 custody is not released but is detained:

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

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1 cause determination. The probable cause determination shall
2 be nonadversarial, may be held in the absence of the child
3 and counsel and may be conducted by telephone. If the court
4 finds no probable cause to believe the child committed an
5 offense, the child shall be released;

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

11 (3) a detention hearing shall be held within
12 twenty-four hours, excluding Saturdays, Sundays and legal
13 holidays, from the time of filing the petition to determine
14 whether continued detention is required pursuant to the
15 criteria established by the Children's Code. At the court's
16 discretion or at the request of any party, the court may
17 permit a detention hearing to be conducted by appropriate
18 means of electronic communication. ~~[provided that all~~
19 ~~hearings conducted by electronic means shall be recorded and~~
20 ~~preserved as part of the record, the child shall have legal~~
21 ~~representation present with the child, no plea shall be~~
22 ~~allowed to be taken via electronic communication and the~~
23 ~~court finds:~~

24 (a) ~~that undue hardship will result~~
25 ~~from conducting the hearing with all parties, including the~~

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1 ~~child, present in the courtroom; and~~

2 ~~(b) that the hardship substantially~~
3 ~~outweighs any prejudice or harm to the child that is likely~~
4 ~~to result from the hearing being conducted by electronic~~
5 ~~means.~~

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

14 ~~G.]~~ B. Notice of the detention hearing, either
15 oral or written, stating the time, place and purpose of the
16 hearing shall be given by the person designated by the court
17 to the child's parents, guardian or custodian, if they can be
18 found, and to the child. The department shall be provided
19 with reasonable oral or written notification and an
20 opportunity to be heard. At any hearing held pursuant to
21 this subsection, the department may appear as a party.

22 ~~[D.]~~ C. At the commencement of the detention
23 hearing, the judge ~~[or special master]~~ shall advise the
24 parties of their basic rights provided in the Children's Code
25 and shall appoint counsel, guardians and custodians, if

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1 appropriate.

2 [E.] D. If the judge [~~or special master~~] finds
3 that the child's detention is appropriate under the criteria
4 established by the Children's Code, the judge [~~or special~~
5 ~~master~~] shall order detention in an appropriate facility in
6 accordance with the Children's Code.

7 [F.] E. If the judge [~~or special master~~] finds
8 that detention of the child is not appropriate under the
9 criteria established by the Children's Code, the judge [~~or~~
10 ~~special master~~] shall order the release of the child, but, in
11 so doing, may order one or more of the following conditions
12 to meet the individual needs of the child:

13 (1) place the child in the custody of a
14 parent, guardian or custodian or under the supervision of an
15 agency agreeing to supervise the child;

16 (2) place restrictions on the child's
17 travel, association with other persons or place of abode
18 during the period of the child's release; or

19 (3) impose any other condition deemed
20 reasonably necessary and consistent with the criteria for
21 detaining children established by the Children's Code,
22 including a condition requiring that the child return to
23 custody as required.

24 [G.] F. An order releasing a child on any
25 conditions specified in this section may at any time be

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1 amended to impose additional or different conditions of
2 release or to return the child to custody or detention for
3 failure to conform to the conditions originally imposed.

4 ~~[H.]~~ G. At the detention hearing, all relevant
5 and material evidence helpful in determining the need for
6 detention may be admitted by the judge ~~[or special master]~~
7 even though it would not be admissible in a hearing on the
8 petition.

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

16 ~~[J.]~~ I. If a child is not released at the
17 detention hearing, the child's detention may be subsequently
18 reviewed by the court or the court may review the child's
19 detention in conjunction with a pretrial conference.

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

25 SECTION 27. Section 32A-2-14 NMSA 1978 (being Laws
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1 1993, Chapter 77, Section 43, as amended) is amended to read:

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

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

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

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

23 D. Before any statement or confession may be
24 introduced at a trial or hearing when a child is alleged to
25 be a delinquent child, the state shall prove that the

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

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

7 (1) the age and education of the respondent;
8 (2) whether the respondent is in custody;
9 (3) the manner in which the respondent was
10 advised of the respondent's rights;

11 (4) the length of questioning and
12 circumstances under which the respondent was questioned;

13 (5) the condition of the quarters where the
14 respondent was being kept at the time of being questioned;

15 (6) the time of day and the treatment of the
16 respondent at the time of being questioned;

17 (7) the mental and physical condition of the
18 respondent at the time of being questioned; and

19 (8) whether the respondent had the counsel
20 of an attorney, friends or relatives at the time of being
21 questioned.

22 F. Notwithstanding any other provision to the
23 contrary, no confessions, statements or admissions may be
24 introduced against a child under the age of thirteen years on
25 the allegations of the petition. There is a rebuttable

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1 presumption that any confessions, statements or admissions
2 made by a child thirteen or fourteen years old to a person in
3 a position of authority are inadmissible.

4 G. An extrajudicial admission or confession made
5 by the child out of court is insufficient to support a
6 finding that the child committed the delinquent acts alleged
7 in the petition unless it is corroborated by other evidence.

8 H. The child and the parent, guardian or
9 custodian of the child shall be advised by the court or its
10 representative that the child shall be represented by counsel
11 at all stages of the proceedings on a delinquency petition,
12 including all post-dispositional court proceedings. If
13 counsel is not retained for the child or if it does not
14 appear that counsel will be retained, counsel shall be
15 appointed for the child.

16 I. A child under the age of thirteen alleged or
17 adjudicated to be a delinquent child shall not be
18 fingerprinted or photographed for identification purposes
19 without obtaining a court order.

20 J. The court, at any stage of the proceeding on a
21 petition under the Children's Code, may appoint a guardian ad
22 litem for a child who is a party if the child has no parent,
23 guardian or custodian appearing on behalf of the child or if
24 the parent's, guardian's or custodian's interests conflict
25 with those of the child. A party to the proceeding or an

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1 employee or representative of a party shall not be appointed
2 as guardian ad litem.

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

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

14 M. A serious youthful offender who is detained
15 prior to trial in ~~[an adult]~~ a facility has a right to ~~[bail]~~
16 a hearing to consider or address conditions of release as
17 provided ~~[under SCRA 1986, Rule 5-401]~~ by supreme court rule.
18 A child held in a juvenile facility designated as a place of
19 detention prior to adjudication ~~[does not have a right to~~
20 ~~bail but]~~ may be released pursuant to the provisions of the
21 Delinquency Act.

22 N. A child fourteen years of age or older who is
23 adjudicated as a youthful offender may waive the child's
24 right to an amenability hearing and instead be sentenced as
25 an adult.

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1 [N.] O. The provisions of the Delinquency Act
2 shall not be interpreted to limit the right of a child to
3 petition a court for a writ of habeas corpus."

4 **SECTION 28.** Section 32A-2-17 NMSA 1978 (being Laws
5 1993, Chapter 77, Section 46, as amended) is amended to read:

6 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
7 EXAMINATIONS.--

8 A. After a petition has been filed and either a
9 finding with respect to the allegations of the petition has
10 been made or a notice of intent to admit the allegations of
11 the petition has been filed, the court may direct that a
12 predisposition study and report to the court be made in
13 writing by the department or an appropriate agency designated
14 by the court concerning the child, the family of the child,
15 the environment of the child and any other matters relevant
16 to the need for treatment or to appropriate disposition of
17 the case. If directed by the court, the following
18 predisposition reports shall be provided to the parties and
19 the court five days before actual disposition or sentencing:

20 (1) the adult probation and parole division
21 of the corrections department shall prepare a predisposition
22 report for a serious youthful offender;

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

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1 (3) the department shall prepare a
2 predisposition report for a youthful offender concerning the
3 youthful offender's amenability to treatment; and if:

4 (a) the court determines that a
5 juvenile disposition is appropriate, the department shall
6 prepare a subsequent predisposition report; or

7 (b) the court makes the findings
8 necessary to impose an adult sentence pursuant to Section
9 32A-2-20 NMSA 1978, the adult probation and parole division
10 of the corrections department shall prepare a subsequent
11 predisposition report; and

12 (4) the department shall prepare a
13 predisposition report for a delinquent offender upon the
14 court's request.

15 B. ~~[Where]~~ If there are indications that the
16 child may have a mental disorder or developmental disability,
17 the court, on motion by the children's court attorney or that
18 of counsel for the child, may order the child to be examined
19 at a suitable place by a physician or psychiatrist, a
20 licensed psychologist, a licensed professional clinical
21 counselor or a licensed independent social worker prior to a
22 hearing on the merits of the petition. An examination made
23 prior to the hearing or as a part of the predisposition study
24 and report shall be conducted on an outpatient basis, unless
25 the court finds that placement in a hospital or other

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1 appropriate facility is necessary.

2 C. The court, after a hearing, may order
3 examination by a physician or psychiatrist, a licensed
4 psychologist or a licensed professional clinical counselor or
5 a licensed independent social worker of a parent or custodian
6 whose ability to care for or supervise a child is an issue
7 before the court.

8 D. The court may order that a child adjudicated
9 as a delinquent child be administered a predispositional
10 evaluation by a professional designated by the department for
11 purposes of diagnosis, with direction that the court be given
12 a report indicating what disposition appears most suitable
13 when the interests of the child and the public are
14 considered. The evaluation shall be completed within fifteen
15 days of the court's order and the preference shall be for
16 performing the evaluation in the child's community.

17 E. If a child is detained for purposes of
18 performing a predispositional evaluation, it shall be
19 completed within fifteen days and in no event shall a child
20 be detained for more than fifteen days within a three-
21 hundred-sixty-five-day period for a predispositional
22 evaluation, unless for good cause shown."

23 SECTION 29. Section 32A-2-18 NMSA 1978 (being Laws
24 1993, Chapter 77, Section 47, as amended) is amended to read:

25 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--

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1 NONADMISSIBILITY.--

2 A. The court shall enter a judgment setting forth
3 the court's findings and disposition in the proceeding. A
4 judgment in proceedings on a petition under the Delinquency
5 Act resulting in a juvenile disposition shall not be deemed a
6 conviction of crime nor shall it impose any civil
7 disabilities ordinarily resulting from conviction of a crime
8 nor shall it operate to disqualify the child in any civil
9 service application or appointment. The juvenile disposition
10 of a child and any evidence given in a hearing in court shall
11 not be admissible as evidence against the child in any case
12 or proceeding in any other tribunal whether before or after
13 reaching the age of majority, except in sentencing
14 proceedings [~~after conviction of a felony and then only for~~
15 ~~the purpose of a presentence study and report~~] or a hearing
16 held pursuant to Article 2, Section 13 of the constitution of
17 New Mexico or in accordance with supreme court rule to
18 consider or address conditions of release.

19 B. If a judgment resulting from a youthful
20 offender or serious youthful offender proceeding under the
21 Delinquency Act results in an adult sentence, a record of the
22 judgment shall be admissible in any other case or proceeding
23 in any other court involving the youthful offender or serious
24 youthful offender.

25 C. If a judgment on a proceeding under the

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1 Delinquency Act results in an adult sentence, the
2 determination of guilt at trial becomes a conviction for
3 purposes of the Criminal Code."

4 SECTION 30. Section 32A-2-19 NMSA 1978 (being Laws
5 1993, Chapter 77, Section 48, as amended) is amended to read:

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

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

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

15 (2) the child's adjustment to the child's
16 home, school and community;

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

21 (4) the wishes of the child as to the
22 child's custodian;

23 (5) the wishes of the child's parents as to
24 the child's custody;

25 (6) whether there exists a relative of the

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1 child or other individual who, after study by the department,
2 is found to be qualified to receive and care for the child;

3 (7) the availability of services recommended
4 in the predisposition report; and

5 (8) the ability of the parents to care for
6 the child in the home.

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

11 (1) transfer legal custody to the department
12 or an agency responsible for the care and rehabilitation of
13 delinquent children, which shall receive the child at a
14 facility designated by the secretary of the department as a
15 juvenile reception facility. The department shall thereafter
16 determine the appropriate placement, supervision and
17 rehabilitation program for the child. The judge may include
18 recommendations for placement of the child. Commitments are
19 subject to limitations and modifications set forth in Section
20 32A-2-23 NMSA 1978. ~~[The types of commitments include:~~

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

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1 ~~to extend the commitment has been filed prior to the~~
2 ~~commencement of supervised release; 2) the commitment has~~
3 ~~been extended pursuant to Section 32A-2-23 NMSA 1978; or 3)~~
4 ~~supervised release is revoked pursuant to Section 32A-2-25~~
5 ~~NMSA 1978;~~

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

14 (c) ~~if the child is a delinquent~~
15 ~~offender who committed one of the criminal offenses set forth~~
16 ~~in Subsection J of Section 32A-2-3 NMSA 1978, a commitment to~~
17 ~~age twenty-one, unless sooner discharged; or~~

18 (d) ~~if the child is a youthful~~
19 ~~offender, a commitment to age twenty-one, unless sooner~~
20 ~~discharged;~~

21 (2) ~~place the child on probation under those~~
22 ~~conditions and limitations as the court may prescribe] The~~
23 ~~court has discretion to consider the child's unique~~
24 ~~circumstances and history when imposing probation or~~
25 ~~commitment and may impose probation or commitment for any~~

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1 period up to the date the child reaches twenty-five years of
2 age;

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

12 [~~(4)~~] (3) if a child is found to be
13 delinquent solely on the basis of Paragraph (2), (3) or (4)
14 of Subsection A of Section 32A-2-3 NMSA 1978, the court may
15 make any disposition provided by this section and may enter
16 its judgment placing the child on probation and, as a
17 condition of probation, transfer custody of the child to the
18 department for a period not to exceed six months without
19 further order of the court; provided that this transfer shall
20 not be made unless the court first determines that the
21 department is able to provide or contract for adequate and
22 appropriate treatment for the child and that the treatment is
23 likely to be beneficial.

24 C. [~~When~~] If the child is an Indian child, the
25 Indian child's cultural needs shall be considered in the

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

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

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

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

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

24 H. In addition to any other disposition pursuant
25 to this section or any other penalty provided by law, if a

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

22 I. In addition to any other disposition pursuant
23 to this section or any other penalty provided by law, when a
24 child is adjudicated delinquent on the basis of Paragraph (6)
25 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall

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

9 SECTION 31. Section 32A-2-20 NMSA 1978 (being Laws
10 1993, Chapter 77, Section 49, as amended) is amended to read:

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

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

25 B. If the children's court attorney has filed a

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1 notice of intent to invoke an adult sentence and the child is
2 adjudicated as a youthful offender, the court shall make the
3 following findings in order to invoke an adult sentence:

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

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

9 C. In making the findings set forth in Subsection
10 B of this section, the judge shall consider the following
11 factors, but may not weigh one factor more heavily than
12 another:

13 (1) the seriousness of the alleged offense;

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

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

19 (4) whether the alleged offense was against
20 persons or against property [~~greater weight being given to~~
21 ~~offenses against persons, especially if personal injury~~
22 ~~resulted~~];

23 (5) the maturity of the child as determined
24 by consideration of the child's home, environmental
25 situation, social and emotional health, pattern of living,

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1 brain development, trauma history and disability;

2 (6) the record and previous history of the
3 child;

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

8 (8) any other relevant factor; provided that
9 factor is stated on the record.

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

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

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1 F. If a juvenile disposition is appropriate, the
2 court shall follow the provisions set forth in Section
3 32A-2-19 NMSA 1978. A youthful offender may be subject to
4 extended commitment in the care of the department until the
5 age of twenty-one, pursuant to the provisions of Section
6 32A-2-23 NMSA 1978.

7 G. A child fourteen years of age or older who was
8 charged [~~with first degree murder~~] as a serious youthful
9 offender but [~~not convicted of first degree murder and~~] was
10 found to have committed a youthful offender offense as set
11 forth in Subsection J of Section 32A-2-3 NMSA 1978 is subject
12 to the dispositions set forth in this section.

13 H. A child fourteen years of age or older who was
14 charged [~~with first degree murder~~] as a serious youthful
15 offender but was found to have committed a delinquent act
16 that is neither [~~first degree murder~~] a serious youthful
17 offender offense as set forth in Subsection H of Section
18 32A-2-3 NMSA 1978 nor a youthful offender offense as set
19 forth in Subsection J of Section 32A-2-3 NMSA 1978 shall be
20 adjudicated as a delinquent and is subject to the
21 dispositions set forth in Section 32A-2-19 NMSA 1978;
22 provided that the case shall be transferred to the children's
23 court for disposition."

24 SECTION 32. Section 32A-2-22 NMSA 1978 (being Laws
25 1993, Chapter 77, Section 51, as amended) is amended to read:

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1 "32A-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT
2 JUDGMENT--CONSENT DECREE--DISPOSITION.--

3 A. At any time after the filing of a delinquency
4 petition and before the entry of a judgment, the court may,
5 on motion of the children's court attorney or that of counsel
6 for the child, suspend the proceedings and continue the child
7 under supervision in the child's own home under terms and
8 conditions negotiated with probation services and agreed to
9 by ~~[all the parties affected]~~ the state and the child's
10 defense attorney and approved by the court. The court's
11 order continuing the child under supervision under this
12 section shall be known as a "consent decree". An admission
13 of some or all of the allegations stated in the delinquency
14 petition shall not be required for a consent decree order.

15 B. If the child objects to a consent decree, the
16 court shall proceed to findings, adjudication and disposition
17 of the case. If the child does not object but an objection
18 is made by the children's court attorney after consultation
19 with probation services, the court shall, after considering
20 the objections and the reasons given, proceed to determine
21 whether it is appropriate to enter a consent decree and may,
22 in its discretion, enter the consent decree.

23 C. A consent decree shall remain in force for six
24 months unless the child is discharged sooner by probation
25 services. Prior to the expiration of the six-month period

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1 and upon the application of probation services or any other
2 agency supervising the child under a consent decree, the
3 court may extend the decree for an additional six months in
4 the absence of objection to extension by the child. If the
5 child objects to the extension, the court shall hold a
6 hearing and make a determination on the issue of extension;
7 provided that a consent decree shall not be available to a
8 child charged as a youthful offender or serious youthful
9 offender.

10 D. If either prior to discharge by probation
11 services or expiration of the consent decree the child
12 allegedly fails to fulfill the terms of the decree, the
13 children's court attorney may file a petition to revoke the
14 consent decree. Proceedings on the petition shall be
15 conducted in the same manner as proceedings on petitions to
16 revoke probation. If the child is found to have violated the
17 terms of the consent decree, the court may:

18 (1) extend the period of the consent decree;
19 or

20 (2) make any other disposition that would
21 have been appropriate in the original proceeding.

22 E. A child who is discharged by probation
23 services or who completes a period under supervision without
24 reinstatement of the original delinquency petition shall not
25 again be proceeded against in any court for the same offense

1 alleged in the petition or an offense based upon the same
2 conduct and the original petition shall be dismissed with
3 prejudice. Nothing in this subsection precludes a civil suit
4 against the child for damages arising from the child's
5 conduct.

6 F. A judge who pursuant to this section elicits
7 or examines information or material about a child that would
8 be inadmissible in a hearing on the allegations of the
9 petition shall not, over the objection of the child,
10 participate in any subsequent proceedings on the delinquency
11 if:

12 (1) a consent decree is denied and the
13 allegations in the petition remain to be decided in a hearing
14 where the child denies the allegations; or

15 (2) a consent decree is granted but the
16 delinquency petition is subsequently reinstated.

17 G. If a consent decree has been entered pursuant
18 to the filing of a delinquency petition based on Paragraph
19 (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978
20 for a child who is fifteen years of age or older, a condition
21 of the consent decree agreement may be the denial of the
22 child's driving privileges or the revocation of the child's
23 driver's license for a period of ninety days. For the second
24 or subsequent adjudication, the child's driving privileges
25 may be denied or the child's driver's license revoked for a

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1 period of one year. Within twenty-four hours of the entry by
2 the court of a decree consenting to the revocation or denial
3 of the child's driver's license or driving privileges, the
4 court shall send the decree to the motor vehicle division of
5 the taxation and revenue department. Upon receipt of the
6 decree from the court consenting to the denial or revocation
7 of the child's driving privileges or driver's license, the
8 director of the motor vehicle division of the taxation and
9 revenue department shall revoke or deny the delinquent
10 child's driver's license or driving privileges. Nothing in
11 this section shall prohibit the delinquent child from
12 applying for a limited driving privilege pursuant to Section
13 66-5-35 NMSA 1978 or an ignition interlock license pursuant
14 to the Ignition Interlock Licensing Act, and nothing in this
15 section precludes the delinquent child's participation in an
16 appropriate educational, counseling or rehabilitation
17 program."

18 **SECTION 33.** Section 32A-2-23 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 52, as amended) is amended to read:

20 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
21 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

22 A. A judgment transferring legal custody of an
23 adjudicated delinquent child to an agency responsible for the
24 care and rehabilitation of delinquent children divests the
25 court of jurisdiction at the time of transfer of custody,

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

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

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

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

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

11 ~~F.~~ D. Prior to the expiration of a judgment of
12 probation or commitment, the court may exercise discretion
13 and extend the judgment, based on the child's unique
14 circumstances and history, for an additional period [~~of one~~
15 ~~year until~~] up to the date the child reaches [the age of
16 ~~twenty-one]~~ twenty-five years of age if the court finds that
17 the extension is necessary to protect the community or to
18 safeguard the welfare of the child.

19 ~~G.~~ E. The court may dismiss a motion if it
20 finds after preliminary investigation that the motion is
21 without substance. If the court is of the opinion that the
22 matter should be reviewed, it may, upon notice to all
23 necessary parties, proceed to a hearing in the manner
24 provided for hearings on petitions alleging delinquency. The
25 court may terminate a judgment if it finds that the child is

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1 no longer in need of care, supervision or rehabilitation or
2 it may enter a judgment extending or modifying the original
3 judgment if it finds that action necessary to safeguard the
4 child or the public interest.

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

11 ~~[I.]~~ G. The department may seek a bench warrant
12 from the court when the child absconds from supervised
13 release."

14 **SECTION 34.** Section 32A-2-23.1 NMSA 1978 (being Laws
15 2009, Chapter 239, Section 23) is amended to read:

16 "32A-2-23.1. RELEASE ELIGIBILITY.--

17 ~~[A. The department shall have exclusive~~
18 ~~jurisdiction and authority to release an adjudicated~~
19 ~~delinquent child during the term of the child's commitment,~~
20 ~~consistent with the provisions of the Victims of Crime Act.~~
21 ~~In determining whether to release a child, the department~~
22 ~~shall give due consideration to public safety, the extent to~~
23 ~~which the child has been rehabilitated, the adequacy and~~
24 ~~suitability of the proposed release plan and the needs and~~
25 ~~best interests of the child, including the child's need for~~

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1 ~~behavioral health or medical services that are not available~~
2 ~~in facilities for adjudicated delinquent children.~~

3 B.] A. The decision to grant or deny release
4 shall be made by the secretary of children, youth and
5 families or the secretary's designee. The department may
6 impose such conditions of release as it deems appropriate.

7 ~~[C. A child is eligible for release any time~~
8 ~~after the entry of a judgment transferring legal custody to~~
9 ~~the department, and the department may consider a reasonable~~
10 ~~request for release from the child at any time sixty days~~
11 ~~after the child has been committed.~~

12 D.] B. In the event release for a child is denied
13 by the department after release is recommended for the child
14 by the juvenile public safety advisory board, or release is
15 approved by the department after the board has recommended
16 that the child not be released, within ten days the board may
17 request a review of the decision by the court of the judicial
18 district from which legal custody of the child was
19 transferred, and the department shall transmit the child's
20 records to the court. The court shall have jurisdiction to
21 review the matter without conducting a formal hearing and to
22 issue an order that either denies or grants release to the
23 child. If the board requests review under this section, the
24 child shall not be released until such time as the court has
25 issued a decision. If the board does not petition the

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1 district court for review of the department's decision to
2 grant or deny release within ten days of the department's
3 decision, the department's decision shall be final, and the
4 department shall release the child or continue the commitment
5 in accordance with the terms of its decision.

6 ~~[E-]~~ C. The secretary of children, youth and
7 families or the secretary's designee may review the case of
8 any child upon the child's or the juvenile public safety
9 advisory board's reasonable request at any time after release
10 is denied."

11 **SECTION 35.** Section 32A-2-24 NMSA 1978 (being Laws
12 1993, Chapter 77, Section 53, as amended) is amended to read:

13 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

14 A. A child on probation incident to an
15 adjudication as a delinquent child who violates a term of the
16 probation may be proceeded against in a probation revocation
17 proceeding. A proceeding to revoke probation shall be begun
18 by filing in the original proceeding a petition styled as a
19 "petition to revoke probation". Petitions to revoke
20 probation shall be screened, reviewed and prepared in the
21 same manner and shall contain the same information as
22 petitions alleging delinquency. Procedures of the
23 Delinquency Act regarding taking into custody and detention
24 shall apply. The petition shall state the terms of probation
25 alleged to have been violated and the factual basis for these

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1 allegations.

2 B. The standard of proof in probation revocation
3 proceedings shall be [~~evidence beyond a reasonable doubt~~]
4 preponderance of the evidence and the hearings shall be
5 before the court without a jury. In all other respects,
6 proceedings to revoke probation shall be governed by the
7 procedures, rights and duties applicable to proceedings on a
8 delinquency petition. If a child is found to have violated a
9 term of the child's probation, the court may extend the
10 period of probation or make any other judgment or disposition
11 that would have been appropriate in the original disposition
12 of the case."

13 SECTION 36. Section 32A-2-26 NMSA 1978 (being Laws
14 1993, Chapter 77, Section 55, as amended) is amended to read:

15 "32A-2-26. SEALING OF RECORDS.--

16 A. On motion by or on behalf of a person who has
17 been the subject of a delinquency petition or on the court's
18 own motion, the court shall vacate its findings, orders and
19 judgments on the petition and order the legal and social
20 files and records of the court, probation services and any
21 other agency in the case sealed. If requested in the motion,
22 the court shall also order law enforcement files and records
23 sealed. An order sealing records and files shall be entered
24 if the court finds that:

25 (1) two years have elapsed since the final

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1 release of the person from legal custody and supervision or
2 two years have elapsed since the entry of any other judgment
3 not involving legal custody or supervision;

4 (2) the person has not, within the two years
5 immediately prior to filing the motion, been convicted of a
6 felony or of a misdemeanor involving moral turpitude or been
7 found delinquent by a court and no proceeding is pending
8 seeking such a conviction or finding; and

9 (3) the person is eighteen years of age or
10 older or the court finds that good cause exists to seal the
11 records prior to the child's eighteenth birthday.

12 B. Reasonable notice of the motion shall be given
13 to:

14 (1) the children's court attorney;

15 (2) the authority granting the release;

16 (3) the law enforcement officer, department
17 and central depository having custody of the law enforcement
18 files and records; and

19 (4) any other agency having custody of
20 records or files subject to the sealing order.

21 C. Upon the entry of the sealing order, the
22 proceedings in the case shall be treated as if they never
23 occurred and all index references shall be deleted. The
24 court, law enforcement officers and departments and agencies
25 shall reply, and the person may reply, to an inquiry that no

1 record exists with respect to the person. Copies of the
2 sealing order shall be sent to each agency or official named
3 in the order.

4 D. Inspection of the files and records or the
5 release of information in the records included in the sealing
6 order may thereafter be permitted by the court only:

7 (1) upon motion by the person who is the
8 subject of the records and only to those persons named in the
9 motion; and

10 (2) in its discretion, in an individual
11 case, to any clinic, hospital or agency that has the person
12 under care or treatment or to other persons engaged in fact
13 finding or research.

14 E. Any finding of delinquency or need of services
15 or conviction of a crime subsequent to the sealing order may
16 at the court's discretion be used by the court as a basis to
17 set aside the sealing order.

18 F. A court may set aside a sealing order for the
19 juvenile disposition of a youthful offender and any evidence
20 given in a hearing in court for a youthful offender for the
21 purpose of considering the setting of bail or other
22 conditions of release of a person charged with a felony
23 whether charged as an adult or a juvenile.

24 G. A child who has been the subject of a petition
25 filed pursuant to the provisions of the Delinquency Act shall

1 be notified in writing by the department when the child
2 reaches the age of eighteen or at the expiration of legal
3 custody and supervision, whichever occurs later, that the
4 department's records have been sealed and that the court, the
5 children's court attorney, the child's attorney and the
6 referring law enforcement agency have been notified that the
7 child's records are subject to sealing.

8 H. The department shall seal the child's files
9 and records when the child reaches the age of eighteen or at
10 the expiration of the disposition, whichever occurs later.
11 The department shall notify the children's court attorney,
12 the child's attorney and the referring law enforcement agency
13 that the child's records are subject to sealing.

14 I. Youthful offender records sealed pursuant to
15 Subsection H of this section may be unsealed by the court
16 along with any evidence given in a hearing in court for a
17 youthful offender for the purpose of considering the setting
18 of bail or other conditions of release of a person charged
19 with a felony, whether charged as an adult or juvenile.

20 J. A child who is determined by the court not to
21 be a delinquent offender shall have the child's files and
22 records in the instant proceeding automatically sealed by the
23 court upon motion by the children's court attorney at the
24 conclusion of the proceedings.

25 K. After sealing, the department may store and

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1 use a person's records for research and reporting purposes,
2 subject to the confidentiality provisions of Section 32A-2-32
3 NMSA 1978 and other applicable federal and state laws.

4 L. Notwithstanding the provisions of Subsections
5 A through K of this section, only with prior notice to the
6 court, a party may reference a juvenile record and the
7 contents of a juvenile record for the purposes of a hearing
8 held in accordance with Article 2, Section 13 of the
9 constitution of New Mexico, a hearing held pursuant to
10 supreme court rule to consider or address conditions of
11 release or a sentencing hearing. A party may reference the
12 existence of a juvenile record in written pleadings but may
13 not disclose the contents of the juvenile record unless
14 otherwise allowed by law."

15 SECTION 37. Section 33-2-34 NMSA 1978 (being Laws 1999,
16 Chapter 238, Section 1, as amended) is amended to read:

17 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
18 DEDUCTIONS.--

19 A. To earn meritorious deductions, a prisoner
20 confined in a correctional facility designated by the
21 corrections department must be an active participant in
22 programs recommended for the prisoner by the classification
23 supervisor and approved by the warden or the warden's
24 designee. Meritorious deductions shall not exceed the
25 following amounts:

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1 (1) for a prisoner confined for committing a
2 serious violent offense, up to a maximum of four days per
3 month of time served;

4 (2) for a prisoner confined for committing a
5 nonviolent offense, up to a maximum of thirty days per month
6 of time served;

7 (3) for a prisoner confined following
8 revocation of parole for the alleged commission of a new
9 felony offense or for absconding from parole, up to a maximum
10 of four days per month of time served during the parole term
11 following revocation; and

12 (4) for a prisoner confined following
13 revocation of parole for a reason other than the alleged
14 commission of a new felony offense or absconding from parole:

15 (a) up to a maximum of eight days per
16 month of time served during the parole term following
17 revocation, if the prisoner was convicted of a serious violent
18 offense or failed to pass a drug test administered as a
19 condition of parole; or

20 (b) up to a maximum of thirty days per
21 month of time served during the parole term following
22 revocation, if the prisoner was convicted of a nonviolent
23 offense.

24 B. A prisoner may earn meritorious deductions upon
25 recommendation by the classification supervisor, based upon

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1 the prisoner's active participation in approved programs and
2 the quality of the prisoner's participation in those approved
3 programs. A prisoner may not earn meritorious deductions
4 unless the recommendation of the classification supervisor is
5 approved by the warden or the warden's designee.

6 C. If a prisoner's active participation in
7 approved programs is interrupted by a lockdown at a
8 correctional facility, the prisoner may continue to be awarded
9 meritorious deductions at the rate the prisoner was earning
10 meritorious deductions prior to the lockdown, unless the
11 warden or the warden's designee determines that the prisoner's
12 conduct contributed to the initiation or continuance of the
13 lockdown.

14 D. A prisoner confined in a correctional facility
15 designated by the corrections department is eligible for lump-
16 sum meritorious deductions as follows:

17 (1) for successfully completing an approved
18 vocational, substance abuse or mental health program, one
19 month; except when the prisoner has a demonstrable physical,
20 mental health or developmental disability that prevents the
21 prisoner from successfully earning a high school equivalency
22 credential, in which case, the prisoner shall be awarded three
23 months;

24 (2) for earning a high school equivalency
25 credential, three months;

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1 (3) for earning an associate's degree, four
2 months;

3 (4) for earning a bachelor's degree, five
4 months;

5 (5) for earning a graduate qualification,
6 five months; and

7 (6) for engaging in a heroic act of saving
8 life or property, engaging in extraordinary conduct for the
9 benefit of the state or the public that is at great expense or
10 risk to or involves great effort on the part of the prisoner
11 or engaging in extraordinary conduct far in excess of normal
12 program assignments that demonstrates the prisoner's
13 commitment to self-rehabilitation. The classification
14 supervisor and the warden or the warden's designee may
15 recommend the number of days to be awarded in each case based
16 upon the particular merits, but any award shall be determined
17 by the director of the adult institutions division of the
18 corrections department or the director's designee.

19 E. Lump-sum meritorious deductions, provided in
20 Paragraphs (1) through (6) of Subsection D of this section,
21 may be awarded in addition to the meritorious deductions
22 provided in Subsections A and B of this section. Lump-sum
23 meritorious deductions shall not exceed one year per award and
24 shall not exceed a total of one year for all lump-sum
25 meritorious deductions awarded in any consecutive twelve-month

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1 period.

2 F. A prisoner is not eligible to earn meritorious
3 deductions if the prisoner:

4 (1) disobeys an order to perform labor,
5 pursuant to Section 33-8-4 NMSA 1978;

6 (2) is in disciplinary segregation;

7 (3) is confined for committing a serious
8 violent offense and is within the first sixty days of receipt
9 by the corrections department; or

10 (4) is not an active participant in programs
11 recommended and approved for the prisoner by the
12 classification supervisor.

13 G. The provisions of this section shall not be
14 interpreted as providing eligibility to earn meritorious
15 deductions from a sentence of life imprisonment or a sentence
16 of life imprisonment without possibility of release or parole.

17 H. The corrections department shall promulgate
18 rules to implement the provisions of this section, and the
19 rules shall be matters of public record. A concise summary of
20 the rules shall be provided to each prisoner, and each
21 prisoner shall receive a quarterly statement of the
22 meritorious deductions earned.

23 I. A New Mexico prisoner confined in a federal or
24 out-of-state correctional facility is eligible to earn
25 meritorious deductions for active participation in programs on

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1 the basis of the prisoner's conduct and program reports
2 furnished by that facility to the corrections department. All
3 decisions regarding the award and forfeiture of meritorious
4 deductions at such facility are subject to final approval by
5 the director of the adult institutions division of the
6 corrections department or the director's designee.

7 J. In order to be eligible for meritorious
8 deductions, a prisoner confined in a federal or out-of-state
9 correctional facility designated by the corrections department
10 must actively participate in programs that are available. If
11 a federal or out-of-state correctional facility does not have
12 programs available for a prisoner, the prisoner may be awarded
13 meritorious deductions at the rate the prisoner could have
14 earned meritorious deductions if the prisoner had actively
15 participated in programs.

16 K. A prisoner confined in a correctional facility
17 in New Mexico that is operated by a private company, pursuant
18 to a contract with the corrections department, is eligible to
19 earn meritorious deductions in the same manner as a prisoner
20 confined in a state-run correctional facility. All decisions
21 regarding the award or forfeiture of meritorious deductions at
22 such facilities are subject to final approval by the director
23 of the adult institutions division of the corrections
24 department or the director's designee.

25 L. As used in this section:

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1 (1) "active participant" means a prisoner
2 who has begun, and is regularly engaged in, approved programs;

3 (2) "program" means work, vocational,
4 educational, substance abuse and mental health programs,
5 approved by the classification supervisor, that contribute to
6 a prisoner's self-betterment through the development of
7 personal and occupational skills. "Program" does not include
8 recreational activities;

9 (3) "nonviolent offense" means any offense
10 other than a serious violent offense; and

11 (4) "serious violent offense" means:

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

14 (b) voluntary manslaughter, as provided
15 in Section 30-2-3 NMSA 1978;

16 (c) third degree aggravated battery, as
17 provided in Section 30-3-5 NMSA 1978;

18 (d) third degree aggravated battery
19 against a household member, as provided in Section 30-3-16
20 NMSA 1978;

21 (e) first degree kidnapping, as
22 provided in Section 30-4-1 NMSA 1978;

23 (f) first and second degree criminal
24 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

25 (g) second and third degree criminal

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1 sexual contact of a minor, as provided in Section 30-9-13 NMSA
2 1978;

3 (h) first and second degree robbery, as
4 provided in Section 30-16-2 NMSA 1978;

5 (i) second degree aggravated arson, as
6 provided in Section 30-17-6 NMSA 1978;

7 (j) shooting at a dwelling or occupied
8 building, as provided in Section 30-3-8 NMSA 1978;

9 (k) shooting at or from a motor
10 vehicle, as provided in Section 30-3-8 NMSA 1978;

11 (l) aggravated battery upon a peace
12 officer, as provided in Section 30-22-25 NMSA 1978;

13 (m) assault with intent to commit a
14 violent felony upon a peace officer, as provided in Section
15 30-22-23 NMSA 1978;

16 (n) aggravated assault upon a peace
17 officer, as provided in Section 30-22-22 NMSA 1978; or

18 (o) any of the following offenses, when
19 the nature of the offense and the resulting harm are such that
20 the court judges the crime to be a serious violent offense for
21 the purpose of this section: 1) involuntary manslaughter, as
22 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
23 aggravated assault, as provided in Section 30-3-2 NMSA 1978;
24 3) third degree assault with intent to commit a violent
25 felony, as provided in Section 30-3-3 NMSA 1978; 4) fourth

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1 degree aggravated assault against a household member, as
2 provided in Section 30-3-13 NMSA 1978; 5) third degree assault
3 against a household member with intent to commit a violent
4 felony, as provided in Section 30-3-14 NMSA 1978; 6) third and
5 fourth degree aggravated stalking, as provided in Section
6 30-3A-3.1 NMSA 1978; 7) second degree kidnapping, as provided
7 in Section 30-4-1 NMSA 1978; 8) second degree abandonment of a
8 child, as provided in Section 30-6-1 NMSA 1978; 9) first,
9 second and third degree abuse of a child, as provided in
10 Section 30-6-1 NMSA 1978; 10) third degree dangerous use of
11 explosives, as provided in Section 30-7-5 NMSA 1978; 11) third
12 and fourth degree criminal sexual penetration, as provided in
13 Section 30-9-11 NMSA 1978; 12) fourth degree criminal sexual
14 contact of a minor, as provided in Section 30-9-13 NMSA 1978;
15 13) third degree robbery, as provided in Section 30-16-2 NMSA
16 1978; 14) third degree homicide by vehicle or great bodily
17 harm by vehicle, as provided in Section 66-8-101 NMSA 1978;
18 [~~or~~] 15) battery upon a peace officer, as provided in Section
19 30-22-24 NMSA 1978; or 16) human trafficking, as provided in
20 Section 30-52-1 NMSA 1978.

21 M. Except for sex offenders, as provided in
22 Section 31-21-10.1 NMSA 1978, an offender sentenced to
23 confinement in a correctional facility designated by the
24 corrections department who has been released from confinement
25 and who is serving a parole term may be awarded earned

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1 meritorious deductions of up to thirty days per month upon
2 recommendation of the parole officer supervising the offender,
3 with the final approval of the adult parole board. The
4 offender must be in compliance with all the conditions of the
5 offender's parole to be eligible for earned meritorious
6 deductions. The adult parole board may remove earned
7 meritorious deductions previously awarded if the offender
8 later fails to comply with the conditions of the offender's
9 parole. The corrections department and the adult parole board
10 shall promulgate rules to implement the provisions of this
11 subsection. This subsection applies to offenders who are
12 serving a parole term on or after July 1, 2004."

13 **SECTION 38.** Section 43-1B-4 NMSA 1978 (being Laws 2016,
14 Chapter 84, Section 4, as amended) is amended to read:

15 "43-1B-4. PETITION TO THE COURT.--

16 A. A petition for an order authorizing assisted
17 outpatient treatment may be filed in the district court for
18 the county in which the respondent is present or reasonably
19 believed to be present; provided that such district court is a
20 party to a memorandum of understanding with a participating
21 municipality or county.

22 B. A petition for an order authorizing assisted
23 outpatient treatment may be filed only by the following
24 persons:

25 (1) a person eighteen years of age or older

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- 1 who resides with the respondent;
- 2 (2) the parent or spouse of the respondent;
- 3 (3) the sibling or child of the respondent;
- 4 provided that the sibling or child is eighteen years of age or
5 older;
- 6 (4) the director of a hospital where the
7 respondent is hospitalized;
- 8 (5) the director of a public or charitable
9 organization or agency or a home where the respondent resides
10 and that provides mental health services to the respondent;
- 11 (6) a qualified professional who either
12 supervises the treatment of or treats the respondent for a
13 mental disorder or has supervised or treated the respondent
14 for a mental disorder within the past forty-eight months; [~~or~~]
- 15 (7) a surrogate decision-maker; or
- 16 (8) a district attorney or the attorney
17 general.

18 C. The petition shall be entitled "In the Matter
19 of _____" and shall include:

- 20 (1) each criterion for assisted outpatient
21 treatment as set forth in Section 43-1B-3 NMSA 1978;
- 22 (2) facts that support the petitioner's
23 belief that the respondent meets each criterion; provided that
24 the hearing on the petition need not be limited to the stated
25 facts; and

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1 (3) whether the respondent is present or is
2 reasonably believed to be present within the county where the
3 petition is filed.

4 D. The petition shall be accompanied by an
5 affidavit of a qualified professional that shall state that:

6 (1) the qualified professional has
7 personally examined the respondent no more than ~~[ten]~~ thirty
8 days prior to the filing of the petition, that the qualified
9 professional recommends assisted outpatient treatment for the
10 respondent and that the qualified professional is willing and
11 able to testify at the hearing on the petition either in
12 person or by contemporaneous transmission from a different
13 location; or

14 (2) no more than ten days prior to the
15 filing of the petition, the qualified professional or the
16 qualified professional's designee has unsuccessfully attempted
17 to persuade the respondent to submit to an examination, that
18 the qualified professional has reason to believe that the
19 respondent meets the criteria for assisted outpatient
20 treatment and that the qualified professional is willing and
21 able to examine the respondent and testify at the hearing on
22 the petition either in person or by contemporaneous
23 transmission from a different location."

24 SECTION 39. APPROPRIATION.--Five hundred thousand
25 dollars (\$500,000) is appropriated from the general fund to

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1 the administrative office of the courts for expenditure in
2 fiscal year 2026 for additional costs due to global
3 positioning systems or other costs associated with pretrial
4 release conditions. Any unexpended or unencumbered balance
5 remaining at the end of fiscal year 2026 shall revert to the
6 general fund.

7 SECTION 40. REPEAL.--Section 32A-2-32.1 NMSA 1978
8 (being Laws 2007, Chapter 96, Section 1) is repealed.

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