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SENATE BILL 281

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO JUVENILE JUSTICE; CREATING THE JUVENILE JUSTICE DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR CERTAIN TRANSFERS OF FUNCTIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES FROM THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO THE JUVENILE JUSTICE DEPARTMENT; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 16 of this act may be cited as the "Juvenile Justice Department Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the Juvenile Justice Department Act is to establish a department of state government that will administer laws and exercise functions related to juvenile justice, including those

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1 juvenile justice functions previously exercised by the
2 juvenile justice division and other units of the children,
3 youth and families department.

4 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
5 Juvenile Justice Department Act:

6 A. "department" means the juvenile justice
7 department; and

8 B. "secretary" means the secretary of juvenile
9 justice.

10 Section 4. [NEW MATERIAL] DEPARTMENT CREATED--
11 DIVISIONS. --

12 A. The "juvenile justice department" is created.
13 The department is a cabinet department and consists of the
14 following divisions:

15 (1) administrative services division;

16 (2) juvenile institutions division; and

17 (3) juvenile probation and parole division.

18 B. The secretary may organize the department and
19 the divisions specified in Subsection A of this section and
20 may transfer or merge functions between divisions in the
21 interest of efficiency and economy.

22 C. The governor may merge, abolish or create
23 divisions of the department by executive order in the interest
24 of efficiency and economy.

25 Section 5. [NEW MATERIAL] JUVENILE PAROLE BOARD

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1 ADMINISTRATIVELY ATTACHED. -- The juvenile parole board is
2 administratively attached to the department.

3 Section 6. [NEW MATERIAL] SECRETARY OF JUVENILE
4 JUSTICE-- APPOINTMENT. --

5 A. The chief executive and administrative officer
6 of the department is the "secretary of juvenile justice". The
7 secretary shall be appointed by the governor with the consent
8 of the senate. The secretary shall hold office at the
9 pleasure of the governor and shall serve in the executive
10 cabinet.

11 B. An appointed secretary shall serve and have all
12 the duties, responsibilities and authority of that office
13 during the time prior to final action by the senate confirming
14 or rejecting his appointment.

15 Section 7. [NEW MATERIAL] SECRETARY-- DUTIES AND GENERAL
16 POWERS. --

17 A. The secretary is responsible to the governor
18 for the operation of the department. It is the secretary's
19 duty to manage all operations of the department and to
20 administer and enforce the laws with which he or the
21 department is charged.

22 B. To perform his duties, the secretary has every
23 power expressly enumerated in the law, whether granted to the
24 secretary, the department or any division of the department,
25 except when any division is explicitly exempted from the

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1 secretary's power by statute. In accordance with these
2 provisions, the secretary shall:

3 (1) except as otherwise provided in the
4 Juvenile Justice Department Act, exercise general supervisory
5 and appointing power over all department employees, subject to
6 applicable personnel laws and rules;

7 (2) delegate power to subordinates as he
8 deems necessary and appropriate, clearly delineating such
9 delegated power and the limitations to that power;

10 (3) organize the department into
11 organizational units as necessary to enable it to function
12 most efficiently, subject to any provisions of law requiring
13 or establishing specific organizational units;

14 (4) within the limitations of available
15 appropriations and applicable laws, employ and fix the
16 compensation of those persons necessary to discharge his
17 duties;

18 (5) take administrative action by issuing
19 orders and instructions, not inconsistent with law, to assure
20 implementation of and compliance with the provisions of law
21 for which administration or execution he is responsible and to
22 enforce those orders and instructions by appropriate
23 administrative action in the courts;

24 (6) conduct research and studies that will
25 improve the operation of the department and the provision of

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1 services to the citizens of the state;

2 (7) provide courses of instruction and
3 practical training for employees of the department and other
4 persons involved in the administration of programs with the
5 objectives of improving the operations and efficiency of
6 administration;

7 (8) prepare an annual budget for the
8 department;

9 (9) provide cooperation, at the request of
10 administratively attached agencies and adjunct agencies, in
11 order to:

12 (a) minimize or eliminate duplication
13 of services and jurisdictional conflicts;

14 (b) coordinate activities and resolve
15 problems of mutual concern; and

16 (c) resolve by agreement the manner and
17 extent to which the department shall provide budgeting, record
18 keeping and related clerical assistance to administratively
19 attached agencies; and

20 (10) provide for surety bond coverage for all
21 employees of the department as provided in the Surety Bond
22 Act. The department shall pay the costs of such bonds.

23 C. The secretary may apply for and receive, with
24 the governor's approval, in the name of the department, any
25 public or private funds, including United States government

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1 funds, available to the department to carry out its programs,
2 duties or services.

3 D. The secretary may make and adopt such
4 reasonable and procedural rules as may be necessary to carry
5 out the duties of the department and its divisions. No rule
6 promulgated by the director of any division in carrying out
7 the functions and duties of the division shall be effective
8 until approved by the secretary. Unless otherwise provided by
9 statute, no rule affecting any person or agency outside the
10 department shall be adopted, amended or repealed without a
11 public hearing on the proposed action before the secretary or
12 a hearing officer designated by the secretary. The public
13 hearing shall be held in Santa Fe unless otherwise permitted
14 by statute. Notice of the subject matter of the rule, the
15 action proposed to be taken, the time and place of the
16 hearing, the manner in which interested persons may present
17 their views and the method by which copies of the proposed
18 rule or proposed amendment or repeal of an existing rule may
19 be obtained shall be published once at least thirty days prior
20 to the hearing date in a newspaper of general circulation and
21 mailed at least thirty days prior to the hearing date to all
22 persons who have made a written request for advance notice of
23 hearing. Rules shall be filed in accordance with the State
24 Rules Act.

25 Section 8. [NEW MATERIAL] ORGANIZATIONAL UNITS OF

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1 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW - ACCESS TO
2 INFORMATION. --

3 A. Those organizational units of the department
4 and the officers of those units specified by law shall have
5 all the powers and duties enumerated in the specific laws
6 involved. However, the carrying out of those powers and
7 duties shall be subject to the direction and supervision of
8 the secretary, who shall retain the final decision-making
9 authority and responsibility for the administration of such
10 laws unless otherwise specifically provided by law.

11 B. The department shall have access to all records
12 and data of other state departments that are not specifically
13 held confidential by law.

14 Section 9. [NEW MATERIAL] DIVISION DIRECTORS. -- The
15 secretary may appoint, with the approval of the governor,
16 "directors" of such divisions as are established within the
17 department. Directors are exempt from the Personnel Act.

18 Section 10. [NEW MATERIAL] BUREAUS-- CHIEFS. -- The
19 secretary may establish within each division such "bureaus" as
20 he deems necessary to carry out the provisions of the Juvenile
21 Justice Department Act. He shall appoint a "chief" to be the
22 administrative head of any such bureau. The chief and all
23 subsidiary employees of the department shall be covered by the
24 provisions of the Personnel Act.

25 Section 11. [NEW MATERIAL] JUVENILE INSTITUTIONS

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1 DIVISION. --

2 A. The purpose of the juvenile institutions
3 division is to diagnose, supervise, care for, educate and
4 treat children adjudicated to be delinquents or youthful
5 offenders and detained by or placed in the custody of the
6 department pursuant to the Children's Code or other provisions
7 of law.

8 B. The juvenile institutions division shall
9 operate the New Mexico boys' school, the girls' welfare home,
10 the New Mexico youth diagnostic and development center, Camino
11 Nuevo, the reintegration centers and other facilities operated
12 by the department and shall administer funds for juvenile
13 community corrections programs.

14 Section 12. [NEW MATERIAL] JUVENILE PROBATION AND PAROLE
15 DIVISION. -- The juvenile probation and parole division shall
16 supervise children on probation or parole and provide informal
17 supervision pursuant to the Children's Code.

18 Section 13. [NEW MATERIAL] DEPARTMENT ADVISORY
19 COMMITTEE. --

20 A. The "juvenile justice department advisory
21 committee" is created to advise the secretary on services and
22 programs of the department.

23 B. The committee shall consist of seven members
24 appointed by the governor. Three members of the committee
25 shall be appointed by the governor from a list of children's

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1 court judges recommended by the chief justice of the supreme
2 court. Members shall be appointed so as to provide adequate
3 representation of all ethnic groups and geographic areas of
4 the state.

5 C. The advisory committee shall meet at least
6 quarterly in a location convenient to the membership. Public
7 members may receive per diem and mileage as provided in the
8 Per Diem and Mileage Act and shall receive no other
9 compensation, perquisite or allowance.

10 Section 14. [NEW MATERIAL] JUVENILE JUSTICE PROGRAMS--
11 FEDERAL GRANTS--ADVISORY COMMITTEE--SUPERVISORY FUNCTION--
12 LEGISLATIVE FINDINGS--FUNCTIONS.--

13 A. A juvenile justice advisory committee appointed
14 pursuant to the federal Juvenile Justice and Delinquency
15 Prevention Act of 1974 shall be advisory to the department,
16 except the committee shall serve as the "supervisory board"
17 pursuant to that act and any applicable rules.

18 B. The legislature finds that pursuant to the
19 federal Juvenile Justice and Delinquency Prevention Act of
20 1974, federal regulations and state law, the juvenile justice
21 advisory committee is required to be given explicit power to
22 continue to fulfill its duties in administering the federal
23 funds available to the state if that funding is to continue.

24 C. The juvenile justice advisory committee has
25 policymaking, planning and review powers over only the

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1 following functions pursuant to the federal Juvenile Justice
2 and Delinquency Prevention Act of 1974:

3 (1) in conjunction with the department,
4 approval of a comprehensive state plan and modifications
5 reflecting statewide goals, objectives and priorities for the
6 expenditure of federal funds received pursuant to that act;

7 (2) approval or disapproval of applications
8 or amendments submitted by eligible entities pursuant to that
9 act;

10 (3) in conjunction with the department,
11 assurance that fund accounting, auditing and evaluation of
12 programs and projects funded pursuant to that act comply with
13 federal requirements and state law;

14 (4) assistance to the governor, the
15 legislature and entities created or funded pursuant to that
16 act in developing new or improved approaches, policies or
17 legislation designed to improve juvenile justice in New
18 Mexico; and

19 (5) provision of technical assistance by the
20 department to eligible entities pursuant to that act.

21 D. All budgetary, evaluation, monitoring and
22 grants administration functions required pursuant to the
23 federal Juvenile Justice and Delinquency Prevention Act of
24 1974 shall be carried out by the department.

25 Section 15. [NEW MATERIAL] JUVENILE CORRECTIONAL

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1 OFFICERS ACTING AS PEACE OFFICERS. --

2 A. Juvenile correctional officers employed by the
3 department who have completed an appropriate American
4 correction association training course and who have at the
5 particular time the principal duty to hold in custody or
6 supervise any person accused or convicted of a delinquent act
7 or criminal offense shall have the power of a peace officer
8 with respect to arrests and enforcement of laws when:

9 (1) on the premises of a department facility
10 or while transporting a person committed to or under the
11 supervision of the department;

12 (2) supervising a person committed to or
13 under the supervision of the department anywhere within the
14 state; or

15 (3) engaged in any effort to pursue or
16 apprehend any such person.

17 B. A juvenile correctional officer employed by the
18 department shall not be convicted or held liable for any act
19 performed pursuant to this section if a peace officer could
20 lawfully have performed the same act in the same
21 circumstances.

22 C. Crimes against a juvenile correctional officer
23 employed by the department while in the lawful discharge of
24 duties that confer peace officer status pursuant to this
25 section shall be deemed the same crimes and shall bear the

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1 same penalties as crimes against a peace officer.

2 Section 16. [NEW MATERIAL] JUVENILE CORRECTIONAL
3 OFFICERS--QUALIFICATIONS.--To qualify for employment with the
4 department as a juvenile correctional officer, a person shall:

- 5 A. be a citizen of the United States;
- 6 B. be eighteen years of age or older;
- 7 C. possess a high school education or its
8 equivalent;
- 9 D. be of good moral character and not have been
10 convicted of a felony offense by a court of this state, any
11 other state or the United States; and
- 12 E. successfully pass a physical examination and an
13 aptitude examination administered by the department.

14 Section 17. Section 9-2A-1 NMSA 1978 (being Laws 1992,
15 Chapter 57, Section 1) is amended to read:

16 "9-2A-1. SHORT TITLE.--[Sections 1 through 16 of this
17 act] Chapter 9, Article 2A NMSA 1978 may be cited as the
18 "Children, Youth and Families Department Act". "

19 Section 18. Section 9-2A-2 NMSA 1978 (being Laws 1992,
20 Chapter 57, Section 2) is amended to read:

21 "9-2A-2. PURPOSE.--The purpose of the Children, Youth
22 and Families Department Act is to establish a department of
23 state government that shall:

- 24 A. administer [aH] laws and exercise [aH]
25 functions [~~formerly administered and exercised by the youth~~

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1 ~~authority as well as administering certain functions]~~ related
2 to ~~[children, youth and families that were formerly~~
3 ~~administered by other departments or agencies of the state]~~
4 child and adult abuse and neglect, children's mental health
5 and families in need of services;

6 B. assist in the development of state policies and
7 plans for services to children, youth and families, including
8 policies and plans that endeavor to strengthen client self-
9 sufficiency and that emphasize prevention without jeopardizing
10 the necessary provision of essential treatment and early
11 intervention services; and

12 C. advocate for services for children, youth and
13 families as an enduring priority in New Mexico. "

14 Section 19. Section 9-2A-4 NMSA 1978 (being Laws 1992,
15 Chapter 57, Section 4) is amended to read:

16 "9-2A-4. DEPARTMENT CREATED-- DIVISIONS. --

17 A. The "children, youth and families department"
18 is created. The department is a cabinet department and
19 consists of, but is not limited to, six divisions as follows:

- 20 (1) the administrative services division;
21 (2) the preventive services division;
22 (3) the risk reduction services division;
23 (4) the moderate intervention services
24 division;
25 (5) the community residential services

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1 division;

2 [~~(6) the juvenile justice services division,~~
3 ~~until July 1, 1993;~~] and

4 [~~(7)~~] (6) the institutional care division,
5 beginning July 1, 1993.

6 B. The secretary [~~is empowered to~~] may organize
7 the department and the divisions specified in Subsection A of
8 this section and may transfer or merge functions between
9 divisions in the interest of efficiency and economy.

10 C. The governor [~~is empowered to~~] may merge
11 divisions and [~~to~~] abolish or create divisions of the
12 department by executive order in the interest of efficiency
13 and economy. "

14 Section 20. Section 9-2A-8 NMSA 1978 (being Laws 1992,
15 Chapter 57, Section 8, as amended) is amended to read:

16 "9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to
17 other duties provided by law or assigned to the department by
18 the governor, the department shall:

19 A. develop priorities for state services and
20 resources arising out of state policy and local planning
21 processes;

22 B. strengthen collaboration and coordination in
23 state and local services for children, youth and families;

24 C. develop and maintain a statewide database,
25 including client tracking of services for children, youth and

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1 families;

2 D. develop and disseminate a readily accessible
3 resource database;

4 E. develop and use community or regional councils
5 to establish community priorities and service strategies in
6 order to enhance community-level decision-making and creative
7 solutions;

8 F. develop standards of service that focus on
9 coordination, monitoring and accountability, including the
10 development of a plan for both process and outcome assessment
11 and evaluation;

12 G. review and comment on policies of other
13 departments that affect children, youth and families,
14 including assisting in the development of common contracting
15 procedures and common service definitions;

16 H. develop a uniform system of access to services
17 for children, youth and families;

18 I. ~~[enact regulations]~~ adopt and promulgate rules
19 to control ~~[disposition and]~~ placement of children ~~[under]~~ who
20 are not delinquent offenders, youthful offenders or serious
21 youthful offenders pursuant to the Children's Code, including
22 ~~[regulations]~~ rules to limit or prohibit the out-of-state
23 placement of children, including those who are developmentally
24 disabled or mentally disordered, when in-state alternatives
25 are available; and

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1 J. develop reimbursement criteria for licensed
2 child care centers and licensed home providers, including
3 establishing that accreditation by a department-approved
4 national accrediting body is sufficient qualification for the
5 child care center or home provider to receive the highest
6 reimbursement rate paid by the department. "

7 Section 21. Section 9-2A-13 NMSA 1978 (being Laws 1992,
8 Chapter 57, Section 13) is amended to read:

9 "9-2A-13. INTERAGENCY COORDINATING GROUP. -- There is
10 created an "interagency coordinating group" consisting of the
11 secretary of juvenile justice, the secretary of finance and
12 administration, the secretary of health, the secretary of
13 human services, the secretary of labor, the superintendent of
14 public instruction, the chairman of the joint interim
15 legislative health and human services committee and a member
16 of the governor's office. The group shall assist the
17 secretary of children, youth and families and the children,
18 youth and families advisory committee in planning coordination
19 of services. "

20 Section 22. Section 31-18-15.3 NMSA 1978 (being Laws
21 1993, Chapter 77, Section 3) is amended to read:

22 "31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION. --

23 A. An alleged serious youthful offender may be
24 detained in any of the following places, prior to arraignment
25 in metropolitan, magistrate or district court:

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1 (1) a detention facility for delinquent
2 children, licensed by the [~~children, youth and families~~]
3 juvenile justice department;

4 (2) any other suitable place, other than a
5 facility for the care and rehabilitation of delinquent
6 children, that meets standards for detention facilities, as
7 set forth in the Children's Code and federal law; or

8 (3) a county jail, if a facility described in
9 Paragraph (1) or (2) of this subsection is not appropriate.

10 B. When an alleged serious youthful offender is
11 detained in a juvenile detention facility prior to trial, the
12 time spent in the juvenile detention facility shall count
13 towards completion of any sentence imposed.

14 C. At arraignment, when a metropolitan or district
15 court judge or a magistrate determines that an alleged serious
16 youthful offender should remain in custody, the alleged
17 serious youthful offender may be detained in an adult or
18 juvenile detention facility, subject to the facility's
19 accreditation and the provisions of applicable federal law.

20 D. When an alleged serious youthful offender is
21 found guilty of first degree murder, the court shall sentence
22 the offender pursuant to the provisions of the Criminal
23 Sentencing Act. The court may sentence the offender to less
24 than, but not exceeding, the mandatory term for an adult. The
25 determination of guilt becomes a conviction for purposes of

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1 the Criminal Sentencing Act.

2 E. Prior to the sentencing of an alleged serious
3 youthful offender who is convicted of first degree murder,
4 adult probation services shall prepare a presentence report
5 and submit the report to the court and the parties five days
6 prior to the sentencing hearing.

7 F. When the alleged serious youthful offender is
8 convicted of a lesser offense than first degree murder, the
9 court shall provide for disposition of the offender pursuant
10 to the provisions of Section [~~32-2-19 or 32-2-20~~] 32A-2-19 or
11 32A-2-20 NMSA 1978. When an offender is adjudicated as a
12 delinquent child, the conviction shall not be used as a
13 conviction for purposes of the Criminal Sentencing Act. "

14 Section 23. Section 32A-1-4 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 13, as amended) is amended to read:

16 "32A-1-4. DEFINITIONS. --As used in the Children's Code:

17 A. "adult" means [~~an individual~~] a person who is
18 eighteen years of age or older;

19 B. "child" means [~~an individual~~] a person who is
20 less than eighteen years old;

21 C. "court", when used without further
22 qualification, means the children's court division of the
23 district court and includes the judge, special master or
24 commissioner appointed pursuant to the provisions of the
25 Children's Code or supreme court rule;

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1 D. "court appointed special advocate" or "CASA"
2 means a person appointed as a [~~CASA~~] court appointed special
3 advocate, pursuant to the provisions of the Children's Court
4 Rules [~~and Forms~~], who assists the court in determining the
5 best interests of the child by investigating the case and
6 submitting a report to the court;

7 E. "custodian" means a person, other than a parent
8 or guardian, who exercises physical control, care or custody
9 of the child, including [~~any~~] an employee of a residential
10 facility or [~~any~~] persons providing out-of-home care;

11 ~~[F. "department" means the children, youth and~~
12 ~~families department, unless otherwise specified;~~

13 ~~G.]~~ F. "foster parent" means a person, including a
14 relative of the child, licensed or certified by the children,
15 youth and families department or a child placement agency to
16 provide care for children in the custody of the department or
17 agency;

18 ~~[H.]~~ G. "guardian" means the person having the
19 duty and authority of guardianship;

20 ~~[I.]~~ H. "guardianship" means the duty and
21 authority to ~~make important decisions in matters having a~~
22 ~~permanent effect on the life and development of a child and to~~
23 ~~be concerned about the child's general welfare and includes:~~

24 (1) the authority to consent to marriage, to
25 enlistment in the armed forces of the United States or to

1 major medical, psychiatric and surgical treatment;

2 (2) the authority to represent the child in
3 legal actions and to make other decisions of substantial legal
4 significance concerning the child;

5 (3) the authority and duty of reasonable
6 visitation of the child;

7 (4) the rights and responsibilities of legal
8 custody when the physical custody of the child is exercised by
9 the child's parents, except when legal custody has been vested
10 in another person; and

11 (5) when the rights of the child's parents
12 have been terminated as provided for in the laws governing
13 termination of parental rights or when both of the child's
14 parents are deceased, the authority to consent to the adoption
15 of the child and to make any other decision concerning the
16 child that the child's parents could have made;

17 [~~J.~~] I. "guardian ad litem" means an attorney
18 appointed by the children's court to represent and protect the
19 best interests of the child in a court proceeding; provided
20 that no party or employee or representative of a party to the
21 proceeding shall be appointed to serve as a guardian ad litem;

22 [~~K.~~] J. "Indian child" means an unmarried person
23 who is:

24 (1) less than eighteen years old;

25 (2) a member of an Indian tribe or is

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1 eligible for membership in an Indian tribe; and

2 (3) the biological child of a member of an
3 Indian tribe;

4 [~~L.~~] K. "Indian child's tribe" means:

5 (1) the Indian tribe in which an Indian child
6 is a member or eligible for membership; or

7 (2) in the case of an Indian child who is a
8 member or eligible for membership in more than one tribe, the
9 Indian tribe with which the Indian child has more significant
10 contacts;

11 [~~M.~~] L. "judge", when used without further
12 qualification, means the judge of the court;

13 [~~N.~~] M. "legal custody" means a legal status
14 created by the order of the court or other court of competent
15 jurisdiction that vests in a person, department or agency the
16 right to determine where and with whom a child shall live; the
17 right and duty to protect, train and discipline the child and
18 to provide the child with food, shelter, education and
19 ordinary and emergency medical care; the right to consent to
20 major medical, psychiatric, psychological and surgical
21 treatment and to the administration of legally prescribed
22 psychotropic medications pursuant to the Children's Mental
23 Health and Developmental Disabilities Act; and the right to
24 consent to the child's enlistment in the armed forces of the
25 United States, all subject to the powers, rights, duties and

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1 responsibilities of the guardian of the child and subject to
2 any existing parental rights and responsibilities. [~~An~~
3 ~~individual~~] A person granted legal custody of a child shall
4 exercise the rights and responsibilities as custodian
5 personally, unless otherwise authorized by the court entering
6 the order;

7 [~~0-~~] N. "parent" or "parents" includes a
8 biological or adoptive parent if the biological or adoptive
9 parent has a constitutionally protected liberty interest in
10 the care and custody of the child. A parent retains all of
11 the duties and authority of guardianship and legal custody of
12 the child, unless otherwise limited or altered by court order;

13 [~~P-~~] 0. "permanency plan" means a determination by
14 the court that the child's interest will be served best by:

- 15 (1) return to the parent;
- 16 (2) placement with a person who will be the
17 child's permanent guardian;
- 18 (3) placement for adoption after the parents'
19 rights have been relinquished or terminated or after a motion
20 has been filed to terminate parental rights;
- 21 (4) placement in the custody of the children,
22 youth and families department until the child reaches the age
23 of majority, unless the child is emancipated, pursuant to the
24 Emancipation of Minors Act; or
- 25 (5) placement in the custody of the children,

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1 youth and families department under a planned permanent living
2 arrangement that meets the department's definition of long-
3 term foster care;

4 ~~[Q.]~~ P. "person" means an individual or any other
5 form of entity recognized by law;

6 ~~[R.]~~ Q. "preadoptive parent" means a person with
7 whom a child has been placed for adoption;

8 ~~[S.]~~ R. "tribal court" means:

9 (1) a court established and operated pursuant
10 to a code or custom of an Indian tribe; or

11 (2) any administrative body of an Indian
12 tribe that is vested with judicial authority;

13 ~~[T.]~~ S. "tribal court order" means a document
14 issued by a tribal court that is signed by an appropriate
15 authority, including a judge, governor or tribal council
16 member, and that orders an action that is within the tribal
17 court's jurisdiction; and

18 ~~[U.]~~ T. "tribunal" means any judicial forum other
19 than the court. "

20 Section 24. Section 32A-1-6 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 15, as amended) is amended to read:

22 "32A-1-6. CHILDREN'S COURT ATTORNEY.--

23 A. The "office of children's court attorney" is
24 established in each judicial district. Except as provided by
25 ~~[Subsection]~~ Subsections C, D ~~[or]~~ and E of this section, each

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1 district attorney is the ex-officio children's court attorney
2 for the judicial district of the district attorney.

3 B. Except as provided by [~~Subsection~~] Subsections
4 C, D [~~or~~] and E of this section, the children's court attorney
5 may represent the state in any matter arising under the
6 Children's Code when the state is the petitioner or
7 complainant. The children's court attorney shall represent
8 the petitioner in matters arising under the Children's Code
9 when, in the discretion of the judge, the matter presents
10 legal complexities requiring representation by the children's
11 court attorney, whether or not the state is petitioner or
12 complainant, but not in those matters when there is a conflict
13 of interest between the petitioner or complainant and the
14 state. A petitioner or complainant may be represented by
15 counsel in any matter arising under the Children's Code.

16 C. In cases involving civil abuse or civil neglect
17 and the periodic review of their dispositions, the attorney
18 selected by and representing the children, youth and families
19 department is the children's court attorney. The attorney
20 selected by and representing the department shall provide the
21 district attorney of the appropriate judicial district with a
22 copy of any abuse or neglect petition filed in that judicial
23 district. Upon the request of the district attorney, the
24 attorney selected by and representing the department shall
25 provide the district attorney with reports, investigations and

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1 pleadings relating to any abuse or neglect petition.

2 D. In cases involving families in need of
3 services, the periodic review of their dispositions and
4 voluntary placements, the attorney selected by and
5 representing the children, youth and families department is
6 the children's court attorney. The attorney selected by and
7 representing the department shall provide the district
8 attorney of the appropriate judicial district with a copy of
9 any family in need of court-ordered services petition filed in
10 that judicial district. Upon the request of the district
11 attorney, the attorney selected by and representing the
12 department shall provide the district attorney with reports,
13 investigations and pleadings relating to any family in need of
14 court-ordered services petition.

15 E. In cases involving a child subject to the
16 provisions of the Children's Mental Health and Developmental
17 Disabilities Act that also involves civil abuse, civil neglect
18 or a family in need of court-ordered services, the attorney
19 selected by and representing the children, youth and families
20 department is the children's court attorney. In cases
21 involving a child subject to the provisions of the Children's
22 Mental Health and Developmental Disabilities Act that does not
23 also involve civil abuse, civil neglect or a family in need of
24 court-ordered services, the district attorney is the ex-
25 officio children's court attorney.

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1 F. In those counties where the children's court
2 attorney has sufficient staff and the workload requires it,
3 the children's court attorney may delegate children's court
4 functions to a staff attorney. "

5 Section 25. Section 32A-1-8 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 17, as amended by Laws 1999, Chapter 46,
7 Section 1 and also by Laws 1999, Chapter 78, Section 1) is
8 amended to read:

9 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
10 JURISDICTION. --

11 A. The court has exclusive original jurisdiction
12 of all proceedings under the Children's Code in which a person
13 is eighteen years of age or older and was a child at the time
14 the alleged act in question was committed or is a child
15 alleged to be:

- 16 (1) a delinquent child;
- 17 (2) a child of a family in need of services;
- 18 (3) a neglected child;
- 19 (4) an abused child;
- 20 (5) a child subject to adoption; or
- 21 (6) a child subject to placement for a
22 developmental disability or a mental disorder.

23 B. The court has exclusive original jurisdiction
24 to emancipate a minor.

25 C. During abuse or neglect proceedings in which

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1 New Mexico is the home state, pursuant to the provisions of
2 the Uniform Child-Custody Jurisdiction and Enforcement Act,
3 the court shall have jurisdiction over both parents to
4 determine the best interest of the child and to decide all
5 matters incident to the court proceedings.

6 D. Nothing in this section shall be construed to
7 in any way abridge the rights of [~~any~~] an Indian tribe to
8 exercise jurisdiction over child custody matters as defined by
9 and in accordance with the federal Indian Child Welfare Act of
10 1978.

11 E. A tribal court order pertaining to an Indian
12 child in an action under the Children's Code shall be
13 recognized and enforced by the district court for the judicial
14 district in which the tribal court is located. A tribal court
15 order pertaining to an Indian child that accesses state
16 resources shall be recognized and enforced pursuant to the
17 provisions of intergovernmental agreements entered into by the
18 Indian child's tribe and the children, youth and families
19 department, the juvenile justice department or another state
20 agency. An Indian child residing on or off a reservation, as
21 a citizen of this state, shall have the same right to services
22 that are available to other children of the state, pursuant to
23 intergovernmental agreements. The cost of the services
24 provided to an Indian child shall be determined and provided
25 for in the same manner as services are made available to other

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1 children of the state, [~~utilizing~~] using tribal, state and
2 federal funds and pursuant to intergovernmental agreements.
3 The tribal court, as the court of original jurisdiction, shall
4 retain jurisdiction and authority over the Indian child. "

5 Section 26. Section 32A-2-1 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 30) is amended to read:

7 "32A-2-1. SHORT TITLE. --Chapter [~~32~~] 32A, Article 2 NMSA
8 1978 may be cited as the "Delinquency Act". "

9 Section 27. Section 32A-2-3 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 32, as amended) is amended to read:

11 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

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

15 (1) pursuant to municipal traffic codes or
16 the Motor Vehicle Code:

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

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

22 (c) any unlawful taking of a vehicle or
23 motor vehicle;

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

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- (e) any homicide by vehicle;
 - (f) any injuring or tampering with a vehicle;
 - (g) any altering or changing of an engine number or other vehicle identification numbers;
 - (h) any altering or forging of a driver's license or permit or any making of a fictitious license or permit;
 - (i) reckless driving;
 - (j) driving with a suspended or revoked license; or
 - (k) any offense punishable as a felony;
- (2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means ~~[any]~~ an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include ~~[establishments]~~ an establishment, as defined in ~~[regulations]~~ rules promulgated by the director of the special investigations division of the department of public safety,

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1 that [~~serve~~] serves only hamburgers, sandwiches, salads and
2 other fast foods;

3 (3) any felony violation of the provisions of
4 Sections 17-1-1 through 17-5-9 NMSA 1978 or any [~~regulations~~]
5 rules adopted by the state game commission that relate to the
6 time, extent, means or manner that game animals, birds or fish
7 may be hunted, taken, captured, killed, possessed, sold,
8 purchased or shipped and for which a fine may be imposed or a
9 civil damage awarded;

10 (4) any violation of Section 30-29-2 NMSA
11 1978, regarding the illegal use of a glue, aerosol spray
12 product or other chemical substance;

13 (5) any violation of the Controlled
14 Substances Act;

15 (6) escape from the custody of a law
16 enforcement officer or a juvenile probation [~~or~~] and parole
17 officer or from any placement made by the department by a
18 child who has been adjudicated a delinquent child; or

19 (7) any violation of Section 30-15-1.1 NMSA
20 1978 regarding unauthorized graffiti on personal or real
21 property;

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

24 C. "delinquent offender" means a delinquent child
25 who is subject to juvenile sanctions only and who is not a

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1 youthful offender or a serious youthful offender;

2 D. "department" means the juvenile justice
3 department;

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

8 ~~[E.]~~ F. "felony" means an act that would be a
9 felony if committed by an adult;

10 ~~[F.]~~ G. "misdemeanor" means an act that would be a
11 misdemeanor or petty misdemeanor if committed by an adult;

12 ~~[G.]~~ H. "restitution" means financial
13 reimbursement by the child to the victim or community service
14 imposed by the court and is limited to easily ascertainable
15 damages, which are a direct and proximate result of a
16 delinquent act, for injury to or loss of property; actual
17 expenses incurred for medical, psychiatric and psychological
18 treatment for injury to a person; and lost wages resulting
19 from physical injury [~~which are a direct and proximate result~~
20 ~~of a delinquent act~~]. "Restitution" does not include
21 reimbursement for damages for mental anguish, pain and
22 suffering or other intangible losses. As used in this
23 subsection, "victim" means [~~any~~] a person who is injured or
24 suffers damage of any kind by an act that is the subject of a
25 complaint or referral to law enforcement officers or juvenile

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1 probation authorities. Nothing ~~[contained]~~ in this definition
2 limits or replaces the provisions of Subsections A and B of
3 Section 32A-2-27 NMSA 1978;

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

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

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

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

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

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

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

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

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1 (f) shooting at a dwelling or occupied
2 building or shooting at or from a motor vehicle, as provided
3 in Section 30-3-8 NMSA 1978;

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

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

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

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

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

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

17 (2) fourteen to eighteen years of age at the
18 time of the offense and adjudicated for any felony offense and
19 who has had three prior, separate felony adjudications within
20 a three-year time period immediately preceding the instant
21 offense. The felony adjudications relied upon as prior
22 adjudications shall not have arisen out of the same
23 transaction or occurrence or series of events related in time
24 and location. Successful completion of consent decrees are
25 not considered a prior adjudication for the purposes of this

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1 paragraph; or

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

4 Section 28. Section 32A-2-7 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 36) is amended to read:

6 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
7 TIME WAIVER.--

8 A. [~~Complaints~~] A complaint alleging delinquency
9 shall be referred to [~~probation services~~] the department,
10 which shall conduct a preliminary inquiry to determine the
11 best interests of the child and of the public with regard to
12 any action to be taken.

13 B. During the preliminary inquiry on a delinquency
14 complaint, the matter may be referred to another appropriate
15 agency and conferences may be conducted for the purpose of
16 effecting adjustments or agreements that will obviate the
17 necessity for filing a petition. At the commencement of the
18 preliminary inquiry, the parties shall be advised of their
19 basic rights pursuant to Section [~~32-2-14~~] 32A-2-14 NMSA 1978,
20 and no party may be compelled to appear at any conference, to
21 produce any papers or to visit any place. The preliminary
22 inquiry shall be completed within the time limits set forth in
23 the Children's Court Rules [~~and Forms~~].

24 C. When a child is in detention or custody and the
25 children's court attorney does not file a petition within the

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1 time limits authorized by the Children's Court Rules [~~and~~
2 ~~Forms~~], the child shall be released immediately.

3 D. After completion of the preliminary inquiry on
4 a delinquency complaint involving a misdemeanor, [~~probation~~
5 ~~services~~] the department may notify the children's court
6 attorney and recommend an appropriate disposition for the
7 case. If the child has been referred for three or more prior
8 misdemeanors within two years of the instant offense,
9 [~~probation services~~] the department shall notify the
10 children's court attorney and recommend an appropriate
11 disposition for the case.

12 E. [~~Probation services~~] The department shall
13 notify the children's court attorney of the receipt of [~~any~~] a
14 complaint involving an act that constitutes a felony under the
15 applicable criminal law. [~~Probation services~~] The department
16 shall also recommend a disposition to the children's court
17 attorney.

18 F. The child, through counsel, and the children's
19 court attorney may agree, without judicial approval, to a
20 waiver of time limitations imposed after a petition is filed.
21 A time waiver defers adjudication of the charges. The
22 children's court attorney may place restrictions on a child's
23 behavior as a condition of a time waiver. If the child
24 completes the agreed upon conditions and no new charges are
25 filed against the child, the pending petition shall be

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1 dismissed. If the children's court attorney files a new
2 petition against the child, the children's court attorney may
3 proceed on both the original petition and the new charges.
4 The department shall become a party if probation services are
5 requested as a condition of the time waiver. "

6 Section 29. Section 32A-2-8 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 37) is amended to read:

8 "32A-2-8. PETITION--AUTHORIZATION TO FILE.--A petition
9 alleging delinquency shall not be filed in delinquency
10 proceedings unless the children's court attorney, after
11 consulting with [~~probation services~~] the department, has
12 determined and endorsed upon the petition that the filing of
13 the petition is in the best interest of the public and the
14 child. The children's court attorney shall furnish legal
15 services in connection with the authorization and preparation
16 of the petition. "

17 Section 30. Section 32A-2-21 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 50, as amended) is amended to read:

19 "32A-2-21. DISPOSITION OF A MENTALLY DISORDERED OR
20 DEVELOPMENTALLY DISABLED CHILD IN A DELINQUENCY PROCEEDING.--

21 A. If in a hearing at any stage of a proceeding on
22 a delinquency petition the evidence indicates that the child
23 is or may be developmentally disabled or mentally disordered,
24 the court may:

25 (1) order the child detained if appropriate

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1 under the criteria established pursuant to the provisions of
2 the Delinquency Act; and

3 (2) initiate proceedings for the involuntary
4 placement of the child as a mentally disordered or
5 developmentally disabled minor pursuant to the provisions of
6 the Children's Mental Health and Developmental Disabilities
7 Act.

8 B. If the child is placed for residential
9 treatment or habilitation pursuant to the Children's Mental
10 Health and Developmental Disabilities Act, the children, youth
11 and families department shall retain legal custody during the
12 period of involuntary placement or until further order of the
13 court.

14 C. If a child is committed to a psychiatric
15 hospital for treatment or habilitation and in the event that
16 the children, youth and families department should be required
17 to pay more than four hundred dollars (\$400) per day because
18 of the individualized treatment plan, the annual costs over
19 four hundred dollars (\$400) per child per day will be reported
20 annually by [~~the~~] that department to the legislative finance
21 committee.

22 D. The child may remain in the residential
23 treatment or habilitation facility pending the disposition of
24 the delinquency petition.

25 E. When a child in [~~departmental~~] the custody of

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1 the children, youth and families department needs involuntary
2 placement for residential mental health or developmental
3 disability services as a result of a mental disorder or
4 developmental disability, [~~the~~] that department shall request
5 the children's court attorney to petition for that child's
6 placement pursuant to the provisions of the Children's Mental
7 Health and Developmental Disabilities Act.

8 F. A child subject to the provisions of the
9 Delinquency Act who receives treatment in a residential
10 treatment or habilitation program shall enjoy all the
11 substantive and procedural rights set forth in the Children's
12 Mental Health and Developmental Disabilities Act.

13 G. A child's competency to stand trial or
14 participate in his own defense may be raised by any party at
15 any time during a proceeding. If the court determines that a
16 child is incompetent to stand trial or participate in his own
17 defense, the court may dismiss the petition without prejudice
18 and initiate proceedings pursuant to the provisions of the
19 Children's Mental Health and Developmental Disabilities Act. "

20 Section 31. Section 32A-2-22 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 51, as amended) is amended to read:

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

24 A. At any time after the filing of a delinquency
25 petition and before the entry of a judgment, the court may, on

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1 motion of the children's court attorney or that of counsel for
2 the child, suspend the proceedings and continue the child
3 under supervision in the child's own home under terms and
4 conditions negotiated with [~~probation services~~] the department
5 and agreed to by all the parties affected. The court's order
6 continuing the child under supervision under this section
7 shall be known as a "consent decree".

8 B. If the child objects to a consent decree, the
9 court shall proceed to findings, adjudication and disposition
10 of the case. If the child does not object but an objection is
11 made by the children's court attorney after consultation with
12 [~~probation services~~] the department, the court shall, after
13 considering the objections and the reasons given, proceed to
14 determine whether it is appropriate to enter a consent decree
15 and may, in its discretion, enter the consent decree.

16 C. A consent decree shall remain in force for six
17 months unless the child is discharged sooner by [~~probation~~
18 ~~services~~] the department. Prior to the expiration of the six-
19 month period and upon the application of [~~probation services~~]
20 the department or any other agency supervising the child under
21 a consent decree, the court may extend the decree for an
22 additional six months in the absence of objection to extension
23 by the child. If the child objects to the extension, the
24 court shall hold a hearing and make a determination on the
25 issue of extension.

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1 D. If either prior to discharge by [~~probation~~
2 ~~services~~] the department or expiration of the consent decree
3 the child allegedly fails to fulfill the terms of the decree,
4 the children's court attorney may file a petition to revoke
5 the consent decree. Proceedings on the petition shall be
6 conducted in the same manner as proceedings on petitions to
7 revoke probation. If the child is found to have violated the
8 terms of the consent decree, the court may:

9 (1) extend the period of the consent decree;
10 or

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

13 E. A child who is discharged by [~~probation~~
14 ~~services~~] the department or who completes a period under
15 supervision without reinstatement of the original delinquency
16 petition shall not again be proceeded against in any court for
17 the same offense alleged in the petition or an offense based
18 upon the same conduct and the original petition shall be
19 dismissed with prejudice. Nothing in this subsection
20 precludes a civil suit against the child for damages arising
21 from the child's conduct.

22 F. A judge who pursuant to this section elicits or
23 examines information or material about a child that would be
24 inadmissible in a hearing on the allegations of the petition
25 shall not, over the objection of the child, participate in any

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1 subsequent proceedings on the delinquency if:

2 (1) a consent decree is denied and the
3 allegations in the petition remain to be decided in a hearing
4 where the child denies the allegations; or

5 (2) a consent decree is granted but the
6 delinquency petition is subsequently reinstated.

7 G. If a consent decree has been entered pursuant
8 to the filing of a delinquency petition based on Paragraph
9 (2), (4) or (5) of Subsection A of Section 32A-2-3 NMSA 1978
10 for a child who is fifteen years of age or older, a condition
11 of the consent decree agreement may be the denial of the
12 child's driving privileges or the revocation of the child's
13 driver's license for a period of ninety days. For the second
14 or subsequent adjudication, the child's driving privileges may
15 be denied or the child's driver's license revoked for a period
16 of one year. Within twenty-four hours of the entry by the
17 court of a decree consenting to the revocation or denial of
18 the child's driver's license or driving privileges, the court
19 shall send the decree to the motor vehicle division of the
20 taxation and revenue department. Upon receipt of the decree
21 from the court consenting to the denial or revocation of the
22 child's driving privilege or driver's license, the director of
23 the motor vehicle division of the taxation and revenue
24 department shall revoke or deny the delinquent child's
25 driver's license or driving privileges. Nothing in this

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1 section shall prohibit the delinquent child from applying for
2 a limited driving privilege pursuant to Section 66-5-35 NMSA
3 1978, and nothing in this section precludes the delinquent
4 child's participation in an appropriate educational,
5 counseling or rehabilitation program.

6 H. The court shall not order more than one consent
7 decree for a child within a two-year period. "

8 Section 32. Section 32A-2-25 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 54) is amended to read:

10 "32A-2-25. PAROLE REVOCATION--PROCEDURES. --

11 A. A child on parole from an agency that has legal
12 custody who violates a term of parole may be proceeded against
13 in a parole revocation proceeding conducted by the department
14 or the supervising agency in accordance with procedures
15 established by the department in cooperation with the juvenile
16 parole board. A juvenile probation and parole officer may
17 detain a child on parole status who is alleged to have
18 violated a term or condition of parole until the completion
19 and review of a preliminary parole revocation hearing.

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

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1 the issuance of a retake warrant by the department, [~~the~~
2 ~~juvenile justice services division of~~] the department shall
3 cause the return of the child to this state at the expense of
4 the department. "

5 Section 33. Section 32A-2-26 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 55) is amended to read:

7 "32A-2-26. SEALING OF RECORDS. --

8 A. On motion by or on behalf of [~~an individual~~] a
9 person who has been the subject of a delinquency petition or
10 on the court's own motion, the court shall vacate its
11 findings, orders and judgments on the petition and order the
12 legal and social files and records of the court, [~~probation~~
13 ~~services~~] the department and any other agency in the case
14 sealed [~~and~~]. If requested in the motion, the court shall
15 also order law enforcement files and records sealed. An order
16 sealing records and files shall be entered if the court finds
17 that:

18 (1) two years have elapsed since the final
19 release of the [~~individual~~] person from legal custody and
20 supervision or two years have elapsed since the entry of any
21 other judgment not involving legal custody or supervision; and

22 (2) the [~~individual~~] person has not, within
23 the two years immediately prior to filing the motion, been
24 convicted of a felony or of a misdemeanor involving moral
25 turpitude or been found delinquent by a court and no

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1 proceeding is pending seeking such a conviction or finding.

2 B. Reasonable notice of the motion shall be given
3 to:

4 (1) the children's court attorney;
5 (2) the authority granting the release;
6 (3) the law enforcement officer, department
7 and central depository having custody of the law enforcement
8 files and records if those records are included in the motion;
9 and

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

12 C. Upon the entry of the sealing order, the
13 proceedings in the case shall be treated as if they never
14 occurred and all index references shall be deleted [~~and~~]. The
15 court, law enforcement officers and departments and agencies
16 shall reply, and the [~~individual~~] person may reply, to an
17 inquiry that no record exists with respect to such person.
18 Copies of the sealing order shall be sent to each agency or
19 official named in the order.

20 D. Inspection of the files and records or the
21 release of information in the records included in the sealing
22 order may thereafter be permitted by the court only:

23 (1) upon motion by the [~~individual~~] person
24 who is the subject of the records and only to those persons
25 named in the motion; and

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1 (2) in its discretion, in an individual case,
2 to any clinic, hospital or agency that has the [~~individual~~]
3 person under care or treatment or to persons engaged in fact
4 finding or research.

5 E. Any finding of delinquency or need of services
6 or conviction of a crime subsequent to the sealing order may
7 at the court's discretion be used by the court as a basis to
8 set aside the sealing order.

9 F. A person who has been the subject of a petition
10 filed pursuant to the provisions of the Delinquency Act shall
11 be notified in writing by the [~~juvenile probation and parole~~
12 ~~officer~~] department of the right to have records sealed at the
13 expiration of the disposition. "

14 Section 34. Section 32A-2-32 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 61) is amended to read:

16 "32A-2-32. CONFIDENTIALITY--RECORDS.--

17 A. All social records, including diagnostic
18 evaluation, psychiatric reports, medical reports, social
19 studies reports, pre-parole reports and supervision histories
20 obtained by the [~~juvenile probation office, parole officers~~
21 ~~and~~] juvenile justice department, the parole board or the
22 children, youth and families department or in possession of
23 [~~the department~~] those departments or that board, are
24 privileged and shall not be disclosed directly or indirectly
25 to the public.

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

- 3 (1) court personnel;
4 (2) court appointed special advocates;
5 (3) the child's guardian ad litem;
6 (4) juvenile justice department personnel;
7 (5) children, youth and families department
8 personnel;

9 ~~(5)~~ (6) any local substitute care review
10 board or any agency contracted to implement local substitute
11 care review boards;

- 12 ~~(6)~~ (7) corrections department personnel;
13 ~~(7)~~ (8) law enforcement officials;
14 ~~(8)~~ (9) district attorneys;
15 ~~(9)~~ (10) any state government social
16 services agency in any state;

17 ~~(10)~~ (11) those persons ~~[or entities]~~ of a
18 child's Indian tribe specifically authorized to inspect such
19 records pursuant to the federal Indian Child Welfare Act of
20 1978 or any regulations promulgated thereunder;

21 ~~(11)~~ (12) tribal juvenile justice system
22 and social service representatives;

23 ~~(12)~~ (13) a foster parent, if the records
24 are those of a child currently placed with that foster parent
25 or of a child being considered for placement with that foster

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1 parent when the records concern the social, medical,
2 psychological or educational needs of the child;

3 [~~(13)~~] (14) school personnel involved with
4 the child if the records concern the child's social or
5 educational needs;

6 [~~(14)~~] (15) health care or mental health
7 professionals involved in the evaluation or treatment of the
8 child, the child's [~~parents, guardians~~] parent, guardian or
9 custodian or other family members;

10 [~~(15)~~] (16) representatives of the protection
11 and advocacy system, pursuant to the provisions of the federal
12 Developmental Disabilities Assistance and Bill of Rights Act
13 and the federal Protection and Advocacy for Mentally Ill
14 Individuals Amendments Act of 1991; and

15 [~~(16)~~] (17) any other person [~~or entity~~], by
16 order of the court, having a legitimate interest in the case
17 or the work of the court.

18 C. Whoever intentionally and unlawfully releases
19 any information or records closed to the public pursuant to
20 this section or releases or makes other unlawful use of
21 records in violation of this section is guilty of a petty
22 misdemeanor. "

23 Section 35. Section 32A-2-33 NMSA 1978 (being Laws 1999,
24 Chapter 216, Section 1) is amended to read:

25 "32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL

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1 PREMISES-- DETENTION-- HEARING. --

2 A. If a public school administrator or employee
3 has reasonable cause to believe that a child is in possession
4 of or has been in possession of a firearm on school premises
5 in violation of the federal Gun-Free Schools Act of 1994 or
6 Section 30-7-2.1 NMSA 1978, the administrator or employee
7 shall immediately report the child's actions to a law
8 enforcement agency and the [~~children, youth and families~~]
9 department.

10 B. Upon receipt of a report pursuant to Subsection
11 A of this section, the law enforcement agency shall
12 immediately conduct an investigation to determine if there is
13 probable cause to believe that the child possessed a firearm
14 on school premises.

15 C. If the law enforcement agency determines there
16 is probable cause to believe that the child possessed a
17 firearm on school premises, the law enforcement agency shall
18 immediately take the child into custody and deliver the child
19 to a detention facility [~~licensed~~] certified by the
20 department. After the child is delivered to a detention
21 facility, the department shall comply with the notification
22 provisions set forth in Subsection C of Section 32A-2-10 NMSA
23 1978. The child shall be detained in the detention facility,
24 pending a detention hearing pursuant to the provisions of
25 Section 32A-2-13 NMSA 1978.

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1 D. As used in this section, "firearm" means any
2 weapon [~~which~~] that will or is designed to or may readily be
3 converted to expel a projectile by the action of an explosion;
4 the frame or receiver of any such weapon; or any firearm
5 muffler or firearm silencer. "Firearm" includes any handgun,
6 rifle or shotgun. "

7 Section 36. Section 32A-3-1 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 62) is amended to read:

9 "32A-3-1. SHORT TITLE. -- Chapter [~~32~~] 32A, Articles 3A
10 and 3B NMSA 1978 may be cited as the "Family in Need of
11 Services Act". "

12 Section 37. Section 32A-3A-2 NMSA 1978 (being Laws 1993,
13 Chapter 77, Section 64) is amended to read:

14 "32A-3A-2. DEFINITIONS. -- As used in the Family in Need
15 of Services Act:

16 A. "family in need of services" means:

17 (1) a family whose child, subject to
18 compulsory school attendance, is absent from school without
19 authorized excuse more than ten days during a school semester;

20 (2) a family whose child is absent from the
21 child's place of residence for twenty-four hours or more
22 without the consent of the parent, guardian or custodian;

23 (3) a family in which the parent, guardian or
24 custodian of a child refuses to permit the child to live with
25 the parent, guardian or custodian; or

1 (4) a family in which the child refuses to
2 live with his parent, guardian or custodian;

3 B. "family needs assessment" means an evaluation
4 of a child and family for the purpose of identifying the
5 family's specific strengths as well as the problems and needs
6 of the child and family;

7 C. "family services" means services that address
8 specific needs of the family and include:

- 9 (1) family preservation services;
10 (2) child care services;
11 (3) homemaker services;
12 (4) crisis counseling;
13 (5) transportation services;
14 (6) community mental health services;
15 (7) individual, family or group counseling
16 services;

- 17 (8) parent training services;
18 (9) recreational services; and
19 (10) community-based services;

20 D. "plan for family services" or "plan" means an
21 intervention plan based on the needs of the child and family
22 that incorporates the family's strengths and is developed as
23 part of the assessment and referral process; and

24 E. "department" means the children, youth and
25 families department. "

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1 Section 38. Section 32A-4-1 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 95) is amended to read:

3 "32A-4-1. SHORT TITLE. -- Chapter [~~32~~] 32A, Article 4 NMSA
4 1978 may be cited as the "Abuse and Neglect Act". "

5 Section 39. Section 32A-4-2 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 96, as amended) is amended to read:

7 "32A-4-2. DEFINITIONS. -- As used in the Abuse and Neglect
8 Act:

9 A. "abandonment" includes instances when the
10 parent, without justifiable cause:

11 (1) left the child without provision for the
12 child's identification for a period of fourteen days; or

13 (2) left the child with others, including the
14 other parent or an agency, without provision for support and
15 without communication for a period of:

16 (a) three months if the child was under
17 six years of age at the commencement of the three-month
18 period; or

19 (b) six months if the child was over
20 six years of age at the commencement of the six-month period;

21 B. "abused child" means a child:

22 (1) who has suffered or who is at risk of
23 suffering serious harm because of the action or inaction of
24 the child's parent, guardian or custodian;

25 (2) who has suffered physical abuse,

1 emotional abuse or psychological abuse inflicted or caused by
2 the child's parent, guardian or custodian;

3 (3) who has suffered sexual abuse or sexual
4 exploitation inflicted by the child's parent, guardian or
5 custodian;

6 (4) whose parent, guardian or custodian has
7 knowingly, intentionally or negligently placed the child in a
8 situation that may endanger the child's life or health; or

9 (5) whose parent, guardian or custodian has
10 knowingly or intentionally tortured, cruelly confined or
11 cruelly punished the child;

12 C. "aggravated circumstances" include those
13 circumstances in which the parent, guardian or custodian has:

14 (1) attempted, conspired to cause or caused
15 great bodily harm to the child or great bodily harm or death
16 to the child's sibling;

17 (2) attempted, conspired to cause or caused
18 great bodily harm or death to another parent, guardian or
19 custodian of the child;

20 (3) attempted, conspired to subject or has
21 subjected the child to torture, chronic abuse or sexual abuse;
22 or

23 (4) had his parental rights over a sibling of
24 the child terminated involuntarily;

25 D. "great bodily harm" means an injury to a person

1 that creates a high probability of death, that causes serious
2 disfigurement or that results in permanent or protracted loss
3 or impairment of the function of [~~any~~] a member or organ of
4 the body;

5 E. "neglected child" means a child:

6 (1) who has been abandoned by the child's
7 parent, guardian or custodian;

8 (2) who is without proper parental care and
9 control or subsistence, education, medical or other care or
10 control necessary for the child's well-being because of the
11 faults or habits of the child's parent, guardian or custodian
12 or the failure or refusal of the parent, guardian or
13 custodian, when able to do so, to provide them;

14 (3) who has been physically or sexually
15 abused, when the child's parent, guardian or custodian knew or
16 should have known of the abuse and failed to take reasonable
17 steps to protect the child from further harm;

18 (4) whose parent, guardian or custodian is
19 unable to discharge his responsibilities to and for the child
20 because of incarceration, hospitalization or physical or
21 mental disorder or incapacity; or

22 (5) who has been placed for care or adoption
23 in violation of the law; provided that nothing in the
24 Children's Code shall be construed to imply that a child who
25 is being provided with treatment by spiritual means alone

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1 through prayer, in accordance with the tenets and practices of
2 a recognized church or religious denomination, by a duly
3 accredited practitioner thereof is for that reason alone a
4 neglected child within the meaning of the Children's Code; and
5 further provided that no child shall be denied the protection
6 afforded to all children under the Children's Code;

7 F. "physical abuse" includes [~~but is not limited~~
8 ~~to~~] any case in which the child exhibits evidence of skin
9 bruising, bleeding, malnutrition, failure to thrive, burns,
10 fracture of any bone, subdural hematoma, soft tissue swelling
11 or death and:

12 (1) there is not a justifiable explanation
13 for the condition or death;

14 (2) the explanation given for the condition
15 is at variance with the degree or nature of the condition;

16 (3) the explanation given for the death is at
17 variance with the nature of the death; or

18 (4) circumstances indicate that the condition
19 or death may not be the product of an accidental occurrence;

20 G. "sexual abuse" includes [~~but is not limited to~~]
21 criminal sexual contact, incest or criminal sexual
22 penetration, as those acts are defined by state law; [~~and~~]

23 H. "sexual exploitation" includes [~~but is not~~
24 ~~limited to~~]:

25 (1) allowing, permitting or encouraging a

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1 child to engage in prostitution;

2 (2) allowing, permitting, encouraging or
3 engaging a child in obscene or pornographic photographing; or

4 (3) filming or depicting a child for obscene
5 or pornographic commercial purposes, as those acts are defined
6 by state law; and

7 I. "department" means the children, youth and
8 families department."

9 Section 40. Section 32A-5-1 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 128) is amended to read:

11 "32A-5-1. SHORT TITLE. -- Chapter [~~32~~] 32A, Article 5 NMSA
12 1978 may be cited as the "Adoption Act". "

13 Section 41. Section 32A-5-3 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 130, as amended) is amended to read:

15 "32A-5-3. DEFINITIONS. -- As used in the Adoption Act:

16 A. "adoptee" means a person who is the subject of
17 an adoption petition;

18 B. "agency" means a person certified, licensed or
19 otherwise specially empowered by law to place a child in a
20 home in this or any other state for the purpose of adoption;

21 C. "agency adoption" means an adoption when the
22 adoptee is in the custody of an agency prior to placement;

23 D. "acknowledged father" means a father who:

24 (1) acknowledges paternity of the adoptee
25 pursuant to the putative father registry, as provided for in

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1 Section 32A-5-20 NMSA 1978;

2 (2) is named, with his consent, as the
3 adoptee's father on the adoptee's birth certificate;

4 (3) is obligated to support the adoptee under
5 a written voluntary promise or pursuant to a court order; or

6 (4) has openly held out the adoptee as his
7 own child by establishing a custodial, personal or financial
8 relationship with the adoptee as follows:

9 (a) for an adoptee under six months old
10 at the time of placement: 1) has initiated an action to
11 establish paternity; 2) is living with the adoptee at the time
12 the adoption petition is filed; 3) has lived with the mother a
13 minimum of ninety days during the two-hundred-eighty-day-
14 period prior to the birth or placement of the adoptee; 4) has
15 lived with the adoptee within the ninety days immediately
16 preceding the adoptive placement; 5) has provided reasonable
17 and fair financial support to the mother during the pregnancy
18 and in connection with the adoptee's birth in accordance with
19 his means and when not prevented from doing so by the person
20 or authorized agency having lawful custody of the adoptee or
21 the adoptee's mother; 6) has continuously paid child support
22 to the mother since the adoptee's birth in an amount at least
23 equal to the amount provided in Section 40-4-11.1 NMSA 1978,
24 or has brought current any delinquent child support payments;
25 or 7) any other factor the court deems necessary to establish

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1 a custodial, personal or financial relationship with the
2 adoptee; or

3 (b) for an adoptee over six months old
4 at the time of placement: 1) has initiated an action to
5 establish paternity; 2) has lived with the adoptee within the
6 ninety days immediately preceding the adoptive placement; 3)
7 has continuously paid child support to the mother since the
8 adoptee's birth in an amount at least equal to the amount
9 provided in Section 40-4-11.1 NMSA 1978, or is making
10 reasonable efforts to bring delinquent child support payments
11 current; 4) has contact with the adoptee on a monthly basis
12 when physically and financially able and when not prevented by
13 the person or authorized agency having lawful custody of the
14 adoptee; or 5) has regular communication with the adoptee, or
15 with the person or agency having the care or custody of the
16 adoptee, when physically and financially unable to visit the
17 adoptee and when not prevented from doing so by the person or
18 authorized agency having lawful custody of the adoptee;

19 E. "alleged father" means ~~[an individual]~~ a person
20 whom the biological mother has identified as the biological
21 father, but the ~~[individual]~~ person has not acknowledged
22 paternity or registered with the putative father registry as
23 provided for in Section 32A-5-20 NMSA 1978;

24 F. "consent" means a document:

25 (1) signed by a biological parent whereby the

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1 parent grants consent to the adoption of the parent's child by
2 another; or

3 (2) whereby the department or an agency
4 grants its consent to the adoption of a child in its custody;

5 G. "counselor" means a person certified by the
6 department to conduct adoption counseling in independent
7 adoptions;

8 H. "department" means the children, youth and
9 families department;

10 [~~H.~~] I. "department adoption" means an adoption
11 when the child is in the custody of the department;

12 [~~I.~~] J. "former parent" means a parent whose
13 parental rights have been terminated or relinquished;

14 [~~J.~~] K. "full disclosure" means mandatory and
15 continuous disclosure by the investigator, agency, department
16 or petitioner throughout the adoption proceeding and after
17 finalization of the adoption of all known, nonidentifying
18 information regarding the adoptee, including:

- 19 (1) health history;
- 20 (2) psychological history;
- 21 (3) mental history;
- 22 (4) hospital history;
- 23 (5) medication history;
- 24 (6) genetic history;
- 25 (7) physical descriptions;

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1 (8) social history;

2 (9) placement history; and

3 (10) education;

4 [~~K-~~] L. "independent adoption" means an adoption
5 when the child is not in the custody of the department or an
6 agency;

7 [~~L-~~] M. "investigator" means [~~an individual~~] a
8 person certified by the department to conduct pre-placement
9 studies and post-placement reports;

10 [~~M-~~] N. "office" means a place for the regular
11 transaction of business or performance of particular services;

12 [~~N-~~] O. "parental rights" means all rights of a
13 parent with reference to a child, including parental right to
14 control, to withhold consent to an adoption or to receive
15 notice of a hearing on a petition for adoption;

16 [~~O-~~] P. "placement" means the selection of a
17 family for an adoptee or matching of a family with an adoptee
18 and physical transfer of the adoptee to the family in all
19 adoption proceedings, except in adoptions filed pursuant to
20 Paragraphs (1) and (2) of Subsection C of Section 32A-5-12
21 NMSA 1978, in which case placement occurs when the parents
22 consent to the adoption, parental rights are terminated or
23 parental consent is implied;

24 [~~P-~~] Q. "post-placement report" means a written
25 evaluation of the adoptive family and the adoptee after the

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1 adoptee is placed for adoption;

2 [Q-] R. "pre-placement study" means a written
3 evaluation of the adoptive family, the adoptee's biological
4 family and the adoptee;

5 [R-] S. "presumed father" means:

6 (1) the husband of the biological mother at
7 the time the adoptee was born;

8 (2) [~~an individual~~] a person who was married
9 to the mother and either the adoptee was born during the term
10 of the marriage or the adoptee was born within three hundred
11 days after the marriage was terminated by death, annulment,
12 declaration of invalidity or divorce; or

13 (3) before the adoptee's birth, [~~an~~
14 ~~individual~~] a person who attempted to marry the adoptee's
15 biological mother by a marriage solemnized in apparent
16 compliance with law, although the attempted marriage is or
17 could be declared invalid and if the attempted marriage:

18 (a) could be declared invalid only by a
19 court, the adoptee was born during the attempted marriage or
20 within three hundred days after its termination by death,
21 annulment, declaration of invalidity or divorce; or

22 (b) is invalid without a court order,
23 the adoptee was born within three hundred days after the
24 termination of cohabitation;

25 [S-] T. "record" means any petition, affidavit,

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1 consent or relinquishment form, transcript or notes of
2 testimony, deposition, power of attorney, report, decree,
3 order, judgment, correspondence, document, photograph,
4 invoice, receipt, certificate or other printed, written,
5 videotaped or tape-recorded material pertaining to an adoption
6 proceeding;

7 ~~[T-]~~ U. "relinquishment" means the document by
8 which a parent relinquishes parental rights to the department
9 or an agency to enable placement of the parent's child for
10 adoption;

11 ~~[U-]~~ V. "resident" means a person who, prior to
12 filing an adoption petition, has lived in the state for at
13 least six months immediately preceding filing of the petition
14 for adoption or a person who has become domiciled in the state
15 by establishing legal residence with the intention of
16 maintaining the residency indefinitely; and

17 ~~[V-]~~ W. "stepparent adoption" means an adoption of
18 the adoptee by the adoptee's stepparent when the adoptee has
19 lived with the stepparent for at least one year following the
20 marriage of the stepparent to the custodial parent. "

21 Section 42. Section 32A-6-1 NMSA 1978 (being Laws 1995,
22 Chapter 207, Section 1) is amended to read:

23 "32A-6-1. SHORT TITLE. -- ~~[This act]~~ Chapter 32A, Article
24 6 NMSA 1978 may be cited as the "Children's Mental Health and
25 Developmental Disabilities Act". "

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1 Section 43. Section 32A-6-2 NMSA 1978 (being Laws 1995,
2 Chapter 207, Section 2, as amended) is amended to read:

3 "32A-6-2. DEFINITIONS. --As used in the Children's Mental
4 Health and Developmental Disabilities Act:

5 A. "aversive stimuli" means anything that, because
6 it is believed to be unreasonably unpleasant, uncomfortable or
7 distasteful to the child, is administered or done to the child
8 for the purpose of reducing the frequency of a behavior, but
9 does not include verbal therapies, physical restrictions to
10 prevent imminent harm to self or others or psychotropic
11 medications that are not used for purposes of punishment;

12 B. "clinician" means a physician, licensed
13 psychologist, licensed independent social worker or licensed
14 professional clinical counselor;

15 C. "consistent with the least drastic means
16 principle" means that the habilitation or treatment and the
17 conditions of habilitation or treatment for the child,
18 separately and in combination:

19 (1) are no more harsh, hazardous or intrusive
20 than necessary to achieve acceptable treatment objectives for
21 the child;

22 (2) involve no restrictions on physical
23 movement and no requirement for residential care, except as
24 reasonably necessary for the administration of treatment or
25 for the protection of the child or others from physical

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1 injury; and

2 (3) are conducted at the suitable available
3 facility closest to the child's place of residence;

4 D. "convulsive treatment" means any form of mental
5 health treatment that depends upon creation of a convulsion by
6 any means, including electroconvulsive treatment and insulin
7 coma treatment;

8 E. "developmental disability" means a severe
9 chronic disability that:

10 (1) is attributable to a mental or physical
11 impairment or a combination of mental or physical impairments;

12 (2) is manifested before a person reaches
13 twenty-two years of age;

14 (3) is expected to continue indefinitely;

15 (4) results in substantial functional
16 limitations in three or more of the following areas of major
17 life activities:

18 (a) self-care;

19 (b) receptive and expressive language;

20 (c) learning;

21 (d) mobility;

22 (e) self-direction;

23 (f) capacity for independent living; or

24 (g) economic self-sufficiency; and

25 (5) reflects a person's need for a

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1 combination and sequence of special, interdisciplinary or
2 generic treatments or other supports and services that are of
3 lifelong or extended duration and that are individually
4 planned or coordinated;

5 F. "evaluation facility" means a community mental
6 health or developmental disability program, a medical facility
7 having psychiatric or developmental disability services
8 available or, if none of the foregoing is reasonably available
9 or appropriate, the office of a licensed physician or a
10 licensed psychologist, any of which shall be capable of
11 performing a mental status examination adequate to determine
12 the need for involuntary treatment;

13 G. "experimental treatment" means any mental
14 health or developmental disabilities treatment that presents
15 significant risk of physical harm, but does not include
16 accepted treatment used in the competent practice of medicine
17 and psychology and supported by scientifically acceptable
18 studies;

19 H. "grave passive neglect" means failure to
20 provide for basic personal or medical needs or for one's own
21 safety to such an extent that it is more likely than not that
22 serious bodily harm will result in the near future;

23 I. "habilitation" means the process by which
24 professional persons and their staff assist the
25 developmentally disabled child in acquiring and maintaining

1 those skills and behaviors that enable the child to cope more
2 effectively with the demands of his own person and of his
3 environment and to raise the level of his physical, mental and
4 social efficiency. "Habilitation" includes programs of
5 formal, structured education and treatment;

6 J. "likelihood of serious harm to oneself" means
7 that it is more likely than not that in the near future the
8 child will attempt to commit suicide or will cause serious
9 bodily harm to himself by violent or other self-destructive
10 means, including grave passive neglect;

11 K. "likelihood of serious harm to others" means
12 that it is more likely than not that in the near future the
13 child will inflict serious, unjustified bodily harm on another
14 person or commit a criminal sexual offense, as evidenced by
15 behavior causing, attempting or threatening such harm, which
16 behavior gives rise to a reasonable fear of such harm from the
17 child;

18 L. "mental disorder" means a substantial disorder
19 of the child's emotional processes, thought or cognition that
20 grossly impairs judgment, behavior or capacity to recognize
21 reality, but does not mean developmental disability;

22 M "mental health or developmental disabilities
23 professional" means a physician or other professional who, by
24 training or experience, is qualified to work with individuals
25 with mental disorders or developmental disabilities;

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1 N. "physician" or "licensed psychologist", when
2 used for the purpose of hospital admittance or discharge,
3 means a physician or licensed psychologist who has been
4 granted admitting privileges at a hospital licensed by the
5 department of health, if such privileges are required;

6 O. "psychosurgery" means those operations
7 currently referred to as lobotomy, psychiatric surgery and
8 behavioral surgery and all other forms of brain surgery if the
9 surgery is performed for the following purposes:

10 (1) modification or control of thoughts,
11 feelings, actions or behavior rather than the treatment of a
12 known and diagnosed physical disease of the brain;

13 (2) treatment of abnormal brain function or
14 normal brain tissue in order to control thoughts, feelings,
15 actions or behavior; or

16 (3) treatment of abnormal brain function or
17 abnormal brain tissue in order to modify thoughts, feelings,
18 actions or behavior when the abnormality is not an established
19 cause for those thoughts, feelings, actions or behavior.

20 "Psychosurgery" does not include prefrontal sonic
21 treatment in which there is no destruction of brain tissue;

22 P. "residential treatment or habilitation program"
23 means diagnosis, evaluation, care, treatment or habilitation
24 rendered inside or on the premises of a mental health or
25 developmental disabilities facility, hospital, clinic,

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1 institution, supervisory residence or nursing home when the
2 individual resides on the premises and where one or more of
3 the following measures is available for use:

4 (1) a mechanical device to restrain or
5 restrict the child's movement;

6 (2) a secure seclusion area from which the
7 child is unable to exit voluntarily;

8 (3) a facility or program designed for the
9 purpose of restricting the child's ability to exit
10 voluntarily; or

11 (4) the involuntary emergency administration
12 of psychotropic medication; ~~and~~

13 Q. "treatment" means any effort to accomplish a
14 significant change in the mental or emotional condition or
15 behavior of the child; and

16 R. "department" means the children, youth and
17 families department."

18 Section 44. Section 32A-7-1 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 194) is amended to read:

20 "32A-7-1. SHORT TITLE. -- Chapter ~~[32]~~ 32A, Article 7 NMSA
21 1978 may be cited as the "Juvenile Parole Board Act". "

22 Section 45. Section 32A-7-2 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 195) is amended to read:

24 "32A-7-2. JUVENILE PAROLE BOARD--TERMS--DIRECTOR. --

25 A. The "juvenile parole board" is created,

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1 consisting of three members appointed by the governor. The
2 juvenile parole board is administratively attached to the
3 juvenile justice department. The terms of members of the
4 board shall be six years.

5 B. A director will be appointed by the governor as
6 the administrative officer of the juvenile parole board. The
7 director shall employ other staff as is necessary to carry out
8 the duties of the board. Employees shall be employed in
9 classified positions and shall be subject to the provisions of
10 the Personnel Act. "

11 Section 46. Section 32A-8-1 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 203) is amended to read:

13 "32A-8-1. SHORT TITLE. -- Chapter [~~32~~] 32A, Article 8 NMSA
14 1978 may be cited as the "Citizen Substitute Care Review
15 Act". "

16 Section 47. Section 32A-8-2 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 204) is amended to read:

18 "32A-8-2. PURPOSE OF ACT. -- The purpose of the Citizen
19 Substitute Care Review Act is to provide a permanent system
20 for independent and objective monitoring of children placed in
21 the custody of the children, youth and families department. "

22 Section 48. Section 32A-8-4 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 206) is amended to read:

24 "32A-8-4. STATE ADVISORY COMMITTEE-- MEMBERS--
25 COMPENSATION-- RESPONSIBILITIES. --

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1 A. A state advisory committee shall be composed of
2 three persons with expertise in the area of substitute care,
3 appointed by the secretary of finance and administration, and
4 [~~also~~] one representative of each local substitute care review
5 board. Each local board shall select its representative to
6 the state advisory committee in accordance with procedures
7 established by that committee. No person employed by the
8 department of finance and administration, children, youth and
9 families department or a district court may serve on the state
10 advisory committee.

11 B. Terms of office of local substitute care review
12 board members of the state advisory committee shall be
13 coterminous with their terms as members of the local boards.
14 Terms of office of members who are appointed by the secretary
15 of finance and administration shall be for three years;
16 provided, however, that appointment of the first state
17 advisory committee members shall be to staggered terms so that
18 one member shall serve for a term of three years, one member
19 shall serve for a term of two years and one member shall serve
20 for a term of one year. The term of each member shall expire
21 on June 30 of the appropriate year. In the event that a
22 vacancy occurs among the members of the state advisory
23 committee appointed by the secretary of finance and
24 administration, the secretary shall appoint another person to
25 serve the unexpired portion of the term.

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1 C. The state advisory committee shall select a
2 chairperson, a vice chairperson, an executive committee and
3 other officers as it deems necessary.

4 D. The state advisory committee shall meet no less
5 than twice annually and more frequently upon the call of the
6 chairperson or as the executive committee may determine. The
7 state advisory committee [~~is authorized to~~] may adopt
8 reasonable rules relating to the functions and procedures of
9 the local substitute care review boards and the state advisory
10 committee in accordance with the duties of the boards as
11 provided in the Citizen Substitute Care Review Act. These
12 rules shall include guidelines for the determination of the
13 appropriate type of review and the information needed for all
14 cases to be monitored by the local substitute care review
15 boards. The state advisory committee shall review and
16 coordinate the activities of the local substitute care review
17 boards and make recommendations to the children, youth and
18 families department, the courts and the legislature, on or
19 before January 1 of each year, regarding statutes, policies
20 and procedures relating to substitute care.

21 E. State advisory committee members shall receive
22 per diem and mileage as provided for nonsalaried public
23 officers in the Per Diem and Mileage Act and shall receive no
24 other compensation, perquisite or allowance. "

25 Section 49. Section 32A-8-5 NMSA 1978 (being Laws 1993,

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1 Chapter 77, Section 207) is amended to read:

2 "32A-8-5. LOCAL BOARDS--APPOINTMENTS--EXCLUSION--TERMS--
3 TRAINING--COMPENSATION--MEETINGS.--

4 A. The contractor, selected by the department of
5 finance and administration pursuant to the provisions of
6 Section [~~32-8-3~~] 32A-8-3 NMSA 1978, shall establish and
7 maintain local substitute care review boards to review, as
8 provided in the Citizen Substitute Care Review Act, the
9 disposition of children in the custody of the children, youth
10 and families department prior to judicial review. Each board
11 shall, to the maximum extent feasible, represent the various
12 socioeconomic, racial and ethnic groups of the community that
13 they serve.

14 B. Criteria for membership and tenure on local
15 substitute care review boards shall be determined by the state
16 advisory committee, after consultation with the department of
17 finance and administration and the contractor. No person
18 employed by the department of finance and administration, the
19 children, youth and families department or a district court
20 may serve on a local substitute care review board.

21 C. Each local substitute care review board shall
22 elect a chairperson, a vice chairperson and other officers as
23 it deems necessary.

24 D. Local substitute care review board members may
25 receive per diem and mileage as provided for nonsalaried

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1 public officers in the Per Diem and Mileage Act and shall
2 receive no other compensation, perquisite or allowance. "

3 Section 50. Section 32A-8-6 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 208) is amended to read:

5 "32A-8-6. CITIZEN REVIEW BOARD REVIEWS OF DISPOSITIONAL
6 JUDGMENTS. --

7 A. Prior to any judicial review by the court
8 pursuant to Section [~~32-4-23~~] 32A-4-23 NMSA 1978, the local
9 substitute care review board shall review any dispositional
10 order or the continuation of the order and the children, youth
11 and families department's progress report on the child and
12 submit a report to the court. The parties in the children's
13 court proceedings shall be given prior notice of the review
14 board meeting and be afforded the opportunity to participate
15 fully in the meeting.

16 B. The report of the local substitute care review
17 board submitted to the court pursuant to this section shall
18 become a part of the child's permanent court record. "

19 Section 51. Section 32A-9-1 NMSA 1978 (being Laws 1978,
20 Chapter 108, Section 1) is amended to read:

21 "32A-9-1. SHORT TITLE. -- [~~Sections 1 through 7 of this~~
22 ~~act~~] Chapter 32A, Article 9 NMSA 1978 may be cited as the
23 "Children's Shelter Care Act". "

24 Section 52. Section 32A-10-4 NMSA 1978 (being Laws 1973,
25 Chapter 238, Section 4, as amended) is amended to read:

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1 "32A- 10- 4. COMPACT ADMINISTRATOR. -- The secretary of
2 [~~children, youth and families~~] juvenile justice is the compact
3 administrator of the Interstate Compact on Juveniles and,
4 acting jointly with like officers of other party states, shall
5 promulgate rules and regulations to carry out more effectively
6 the terms of the compact. The compact administrator may
7 cooperate with all departments and agencies of this state and
8 its political subdivisions in facilitating the proper
9 administration of the compact and any amendments or
10 supplementary agreements [~~thereunder~~] to the compact entered
11 into by this state. "

12 Section 53. Section 32A- 10- 6 NMSA 1978 (being Laws 1973,
13 Chapter 238, Section 6, as amended) is amended to read:

14 "32A- 10- 6. FINANCIAL ARRANGEMENTS. -- Subject to
15 legislative appropriations, the compact administrator of the
16 Interstate Compact on Juveniles shall arrange for any payments
17 necessary to discharge any financial obligations imposed upon
18 this state by the compact or any supplementary agreement
19 [~~entered into thereunder. The children, youth and families~~]
20 to the compact. The juvenile justice department shall
21 supervise out-of-state probationers and parolees residing in
22 New Mexico under the provisions of Article 7 of the compact. "

23 Section 54. Section 32A- 11- 3 NMSA 1978 (being Laws 1977,
24 Chapter 151, Section 3) is amended to read:

25 "32A- 11- 3. NOTICES-- [~~HEALTH AND SOCIAL SERVICES~~]

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1 CHILDREN, YOUTH AND FAMILIES DEPARTMENT. -- The "appropriate
2 public authorities" as used in Article 3 of the Interstate
3 Compact on the Placement of Children shall, with reference to
4 New Mexico, mean the [~~health and social services~~] children,
5 youth and families department, and [~~said~~] that department
6 shall receive and act with reference to notices required by
7 [~~said~~] Article 3. "

8 Section 55. Section 32A-11-4 NMSA 1978 (being Laws 1977,
9 Chapter 151, Section 4) is amended to read:

10 "32A-11-4. "APPROPRIATE AUTHORITY"-- [~~HEALTH AND SOCIAL~~
11 ~~SERVICES~~] CHILDREN, YOUTH AND FAMILIES DEPARTMENT. -- As used in
12 Paragraph A of Article 5 of the Interstate Compact on the
13 Placement of Children, the phrase "appropriate authority in
14 the receiving state" with reference to New Mexico, shall mean
15 the [~~health and social services~~] children, youth and families
16 department. "

17 Section 56. Section 32A-13-2 NMSA 1978 (being Laws 1979,
18 Chapter 300, Section 2, as amended) is amended to read:

19 "32A-13-2. JUVENILE FORENSIC EVALUATION PROGRAM --

20 A. There is created within the [~~children, youth~~
21 ~~and families~~] juvenile justice department the "juvenile
22 forensic evaluation program". The program shall be staffed by
23 juvenile forensic evaluation teams and shall provide
24 evaluation of children alleged or found to be in need of
25 supervision and alleged delinquents upon request of the court,

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1 law enforcement agencies and juvenile probation officers.

2 B. The juvenile forensic evaluation teams shall
3 recommend referral of children alleged or found to be in need
4 of supervision or alleged delinquents to the [~~children, youth~~
5 ~~and families~~] juvenile justice department or department of
6 health [~~or human services department~~] or recommend any other
7 appropriate legal disposition based on the diagnostic
8 evaluation. Juvenile forensic evaluation teams shall follow
9 the juvenile in each stage of treatment, [~~utilizing~~] using a
10 data management system established by the [~~children, youth and~~
11 ~~families~~] juvenile justice department, and shall provide
12 information upon request to state agencies, pursuant to
13 applicable confidentiality provisions pertaining to children. "

14 Section 57. Section 32A-14-1 NMSA 1978 (being Laws 1987,
15 Chapter 25, Section 1) is amended to read:

16 "32A-14-1. SHORT TITLE. -- [~~Sections 1 through 4 of this~~
17 ~~act~~] Chapter 32A, Article 14 NMSA 1978 may be cited as the
18 "Missing Child Reporting Act". "

19 Section 58. Section 32A-15-1 NMSA 1978 (being Laws 1985,
20 Chapter 103, Section 1 and also Laws 1985, Chapter 140,
21 Section 1) is amended to read:

22 "32A-15-1. SHORT TITLE. -- [~~This act~~] Chapter 32A, Article
23 15 NMSA 1978 may be cited as the "New Mexico Children's and
24 Juvenile Facility Criminal Records Screening Act". "

25 Section 59. Section 32A-15-3 NMSA 1978 (being Laws 1985,

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1 Chapter 103, Section 3 and also Laws 1985, Chapter 140,
2 Section 3, as amended) is amended to read:

3 "32A-15-3. CRIMINAL RECORDS CHECK--BACKGROUND CHECKS.--

4 A. Nationwide criminal record checks shall be
5 conducted of all operators, staff and employees and
6 prospective operators, staff and employees of child care
7 facilities, including every facility or program having primary
8 custody of children for twenty hours or more per week,
9 juvenile detention, correction or treatment facilities, with
10 the objective of protecting the children involved and
11 promoting the children's safety and welfare while receiving
12 service through such facilities or ~~[program]~~ programs.

13 B. The juvenile justice department, the children,
14 youth and families department and the department of health
15 shall conduct a background check of all operators, staff and
16 employees and prospective operators, staff and employees of
17 child care facilities under their purview by submitting a
18 fingerprint card for those ~~[individuals]~~ persons to the
19 department of public safety and the federal bureau of
20 investigation. "

21 Section 60. Section 32A-15-4 NMSA 1978 (being Laws 1985,
22 Chapter 103, Section 3 and also Laws 1985, Chapter 140,
23 Section 4, as amended) is amended to read:

24 "32A-15-4. PROCEDURES.--By December 31, 1993, procedures
25 shall be established by regulation to provide for employment

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1 history and background checks for all present and prospective
2 personnel identified in Section [~~32-9-3~~] 32A-15-3 NMSA 1978:

3 A. by the secretary of children, youth and
4 families for child care facilities [~~and~~];

5 B. by the secretary of juvenile justice for
6 juvenile detention and correction facilities; and

7 [~~B.~~] C. by the secretary of health for health and
8 treatment facilities."

9 Section 61. Section 32A-17-1 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 218) is amended to read:

11 "32A-17-1. SHORT TITLE. -- Chapter [~~32~~] 32A, Article 17
12 NMSA 1978 may be cited as the "Family Preservation Act". "

13 Section 62. Section 32A-17-2 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 219) is amended to read:

15 "32A-17-2. DEFINITIONS. -- As used in the Family
16 Preservation Act:

17 A. "department" means the children, youth and
18 families department; and

19 B. "family preservation services" means short-
20 term, intensive services, provided to a family whose child may
21 reasonably be expected to face out-of-home placement, that are
22 designed to teach a family new skills to help the family
23 remain intact and able to care for the child at home. "

24 Section 63. Section 32A-18-2 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 225) is amended to read:

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1 "32A-18-2. COORDINATION OF TRAINING. -- The children,
2 youth and families department shall coordinate the training
3 required pursuant to the provisions of Section [~~32-18-1~~] 32A-
4 18-1 NMSA 1978. "

5 Section 64. Section 32A-19-1 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 228, as amended) is amended to read:

7 "32A-19-1. QUALITY ASSURANCE OFFICE. --

8 A. The [~~department~~] children, youth and families
9 and juvenile justice departments shall maintain a quality
10 assurance office under the [~~office~~] offices of the [~~secretary~~]
11 secretaries.

12 B. The purpose of the quality assurance office
13 [~~shall be~~] is to facilitate department efforts to efficiently
14 implement the purposes of the Children's Code.

15 C. In order to measure the quality of services
16 provided, to facilitate satisfactory outcomes for children and
17 families that receive services and to provide a continuing
18 opportunity to improve service delivery, the quality assurance
19 office shall:

20 (1) monitor the system for receiving and
21 resolving complaints and grievances;

22 (2) perform periodic investigations and
23 evaluations to assure compliance with the Children's Code and
24 other applicable state and federal laws and regulations;

25 (3) facilitate monitoring of indicators of

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1 [the] each department's performance to determine whether the
2 department is:

3 (a) providing children and families
4 with individualized, needs-based service plans;

5 (b) providing services in a timely
6 manner; and

7 (c) in compliance with applicable state
8 and federal laws and regulations;

9 (4) identify any deficiencies and recommend
10 corrective action to the secretary of the department;

11 (5) have access to any records maintained by
12 the department, including confidential information; and

13 (6) promote continuous improvement of all
14 department processes serving children and families.

15 D. The quality assurance office shall contribute
16 to and facilitate the publication of public reports assessing
17 the performance of the department. The reports shall not
18 disclose the identity of any ~~[individual]~~ person mentioned in
19 the report, including children or families that receive or are
20 eligible for services or any department employee. "

21 Section 65. Section 32A-21-1 NMSA 1978 (being Laws 1995,
22 Chapter 206, Section 47) is amended to read:

23 "32A-21-1. SHORT TITLE. -- ~~[Sections 47 through 53 of this~~
24 ~~act]~~ Chapter 32A, Article 21 NMSA 1978 may be cited as the
25 "Emancipation of Minors Act". "

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1 Section 66. Section 33-9A-2 NMSA 1978 (being Laws 1988,
2 Chapter 101, Section 40, as amended) is amended to read:

3 "33-9A-2. DEFINITIONS. --As used in the Juvenile
4 Community Corrections Act:

5 A. "delinquent" means a child adjudicated
6 delinquent pursuant to the Children's Code;

7 B. "department" means the [~~children, youth and~~
8 ~~families~~] juvenile justice department;

9 C. "fund" means the juvenile community corrections
10 grant fund;

11 D. "secretary" means the secretary of [~~children,~~
12 ~~youth and families~~] juvenile justice; and

13 E. "volunteer services" means services provided by
14 [~~individuals or organizations~~] persons without compensation. "

15 Section 67. Section 33-12-1 NMSA 1978 (being Laws 1994,
16 Chapter 16, Section 1) is amended to read:

17 "33-12-1. SHORT TITLE. -- [~~This act~~] Chapter 33, Article
18 12 NMSA 1978 may be cited as the "Regional Juvenile Services
19 Act". "

20 Section 68. Section 33-12-2 NMSA 1978 (being Laws 1994,
21 Chapter 16, Section 2) is amended to read:

22 "33-12-2. PURPOSE. --The purpose of the Regional Juvenile
23 Services Act is to:

24 A. establish a regional system of juvenile
25 services, including secure detention facilities for juveniles

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1 and nonsecure alternatives to detention;

2 B. provide cost-effective care, through a
3 continuum of services, to juveniles referred to the juvenile
4 ~~[probation and parole offices]~~ justice department; and

5 C. encourage the state, counties and
6 municipalities to act in a cooperative fashion to provide
7 juvenile services. "

8 Section 69. Section 33-12-4 NMSA 1978 (being Laws 1994,
9 Chapter 16, Section 4) is amended to read:

10 "33-12-4. ADMINISTRATION OF REGIONAL JUVENILE SERVICES
11 GRANT FUND- - ~~[REGULATIONS]~~ RULES- - DISBURSEMENTS FROM FUND. - -

12 A. The ~~[children, youth and families]~~ juvenile
13 justice department shall administer the regional juvenile
14 services grant fund and make grants pursuant to the provisions
15 of the Regional Juvenile Services Act.

16 B. The juvenile justice advisory committee of the
17 ~~[children, youth and families]~~ juvenile justice department
18 shall review and approve all grant applications submitted
19 pursuant to the provisions of the Regional Juvenile Services
20 Act. The department of finance and administration, in
21 conjunction with the ~~[children, youth and families]~~ juvenile
22 justice department, shall stipulate the format and absolute
23 deadlines for grant applications and the manner in which
24 expenditures shall be reported.

25 C. After proper notice and public hearings, the

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1 [children, youth and families] juvenile justice department
2 shall adopt [regulations] rules regarding qualifications for
3 grants from the regional juvenile services grant fund.

4 D. Disbursements from the regional juvenile
5 services grant fund shall be made upon warrants drawn by the
6 secretary of finance and administration pursuant to vouchers
7 signed by the secretary of [children, youth and families]
8 juvenile justice. "

9 Section 70. Section 33-12-6 NMSA 1978 (being Laws 1994,
10 Chapter 16, Section 6) is amended to read:

11 "33-12-6. CRITERIA FOR APPROVAL OF APPLICATIONS. --

12 A. Upon receipt of an application for a grant from
13 the regional juvenile services grant fund for a nonsecure
14 alternative program or service, the [children, youth and
15 families] juvenile justice department shall certify that the
16 alternative program will serve juveniles who would otherwise
17 have been placed in secure detention.

18 B. Upon receipt of an application for planning,
19 assessment and design of a regional system of juvenile
20 services, the [children, youth and families] juvenile justice
21 department shall certify that the application is for a project
22 that will serve multiple contiguous counties, municipalities,
23 Indian tribes or pueblos.

24 C. Upon receipt of an application to develop a
25 multipurpose regional facility from the regional juvenile

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1 services grant fund, the [~~children, youth and families~~]
2 juvenile justice department shall certify that the proposed
3 development of a multipurpose regional facility set forth in
4 the application conforms to standards for detention facilities
5 set forth in the Children's Code and administrative
6 [~~regulations~~] rules promulgated by the [~~children, youth and~~
7 ~~families~~] juvenile justice department. For those applicants
8 for a multipurpose regional facility, priority shall be given
9 to an applicant whose plan includes:

10 (1) provisions for a regional system of
11 juvenile services within an area composed of multiple
12 contiguous counties, municipalities, Indian tribes or pueblos;

13 (2) an executed agreement between all
14 judicial districts within the area pledging the respective
15 districts' intent to use the proposed multipurpose regional
16 facility for the detention of juveniles; and

17 (3) joint powers agreements between all units
18 of local and tribal government within the area. "

19 Section 71. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
20 APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND
21 STATUTORY REFERENCES. --

22 A. On the effective date of this act, personnel,
23 appropriations, money, records, furniture, equipment, supplies
24 and other property belonging to the juvenile justice division
25 or pertaining to juvenile detention and corrections functions

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1 of the children, youth and families department shall be
2 transferred to the juvenile justice department.

3 B. On the effective date of this act, contractual
4 obligations of the juvenile justice division or other juvenile
5 detention and corrections functions of the children, youth and
6 families department shall be binding on the juvenile justice
7 department.

8 C. References in the law to the juvenile justice
9 division of the children, youth and families department or to
10 juvenile detention and corrections functions of the children,
11 youth and families department shall be deemed to be references
12 to the juvenile justice department.

13 Section 72. APPROPRIATION.--Seven hundred fifty thousand
14 dollars (\$750,000) is appropriated from the general fund to
15 the juvenile justice department for expenditure in fiscal
16 years 2002 and 2003 to carry out the purposes of the Juvenile
17 Justice Department Act. Any unexpended or unencumbered
18 balance remaining at the end of fiscal year 2003 shall revert
19 to the general fund.

20 Section 73. REPEAL.--Sections 9-2A-5 and 9-2A-14 through
21 9-2A-18 NMSA 1978 (being Laws 1992, Chapter 57, Sections 5 and
22 14 through 16, Laws 1993, Chapter 120, Section 1 and Laws
23 1997, Chapter 110, Section 1) are repealed.

24 Section 74. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2002.