

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE REGULATORY AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 72

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO YOUTHFUL OFFENDERS; ALLOWING THE USE OF THE  
JUVENILE DISPOSITION AND EVIDENCE GIVEN IN A HEARING IN COURT  
FOR A YOUTHFUL OFFENDER WHEN CONSIDERING CONDITIONS OF RELEASE  
OR AN ALTERATION OF A BASIC SENTENCE FOR A CRIME.

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

SECTION 1. A new section of the Criminal Procedure Act is  
enacted to read:

"[NEW MATERIAL] REVIEW OF YOUTHFUL OFFENDER RECORDS.--  
Notwithstanding any other provision of law, when considering  
the setting of bail or other conditions of release of a person  
charged with an offense, the juvenile disposition of a youthful  
offender and any evidence given in a hearing in court for a  
youthful offender may be considered."

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

2 "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--  
3 NONADMISSIBILITY.--

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

18 B. Notwithstanding the provisions of Subsection A  
19 of this section, the juvenile disposition of a youthful  
20 offender and any evidence given in a hearing in court for a  
21 youthful offender may be considered when a judge sentences a  
22 person or imposes a period of parole pursuant to Section  
23 31-18-15 NMSA 1978 or may be presented during a hearing to  
24 consider whether to alter a basic sentence for a crime pursuant  
25 to Section 31-18-15.1 NMSA 1978. If a judge considers the

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1 juvenile disposition of a youthful offender or evidence given  
 2 in a hearing for the youthful offender pursuant to this  
 3 subsection, the disposition and evidence shall be considered  
 4 confidential and shall be reviewed or discussed in camera. All  
 5 evidence, motions or other documents or evidence pertaining to  
 6 the juvenile disposition shall be sealed, unless otherwise  
 7 considered not to be confidential by law.

8 ~~[B-]~~ C. If a judgment resulting from a youthful  
 9 offender or serious youthful offender proceeding under the  
 10 Delinquency Act results in an adult sentence, a record of the  
 11 judgment shall be admissible in any other case or proceeding in  
 12 any other court involving the youthful offender or serious  
 13 youthful offender.

14 ~~[C-]~~ D. If a judgment on a proceeding under the  
 15 Delinquency Act results in an adult sentence, the determination  
 16 of guilt at trial becomes a conviction for purposes of the  
 17 Criminal Code."

18 **SECTION 3.** Section 32A-2-26 NMSA 1978 (being Laws 1993,  
 19 Chapter 77, Section 55, as amended) is amended to read:

20 "32A-2-26. SEALING OF RECORDS.--

21 A. On motion by or on behalf of a person who has  
 22 been the subject of a delinquency petition or on the court's  
 23 own motion, the court shall vacate its findings, orders and  
 24 judgments on the petition and order the legal and social files  
 25 and records of the court, probation services, and any other

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1 agency in the case sealed. If requested in the motion, the  
2 court shall also order law enforcement files and records  
3 sealed. An order sealing records and files shall be entered if  
4 the court finds that:

5 (1) two years have elapsed since the final  
6 release of the person from legal custody and supervision or two  
7 years have elapsed since the entry of any other judgment not  
8 involving legal custody or supervision;

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

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

17 B. Reasonable notice of the motion shall be given  
18 to:

19 (1) the children's court attorney;  
20 (2) the authority granting the release;  
21 (3) the law enforcement officer, department  
22 and central depository having custody of the law enforcement  
23 files and records; and

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

1 C. Upon the entry of the sealing order, the  
2 proceedings in the case shall be treated as if they never  
3 occurred and all index references shall be deleted. The court,  
4 law enforcement officers and departments and agencies shall  
5 reply, and the person may reply, to an inquiry that no record  
6 exists with respect to the person. Copies of the sealing order  
7 shall be sent to each agency or official named in the order.

8 D. Inspection of the files and records or the  
9 release of information in the records included in the sealing  
10 order may thereafter be permitted by the court only:

11 (1) upon motion by the person who is the  
12 subject of the records and only to those persons named in the  
13 motion; and

14 (2) in its discretion, in an individual case,  
15 to any clinic, hospital or agency that has the person under  
16 care or treatment or to other persons engaged in fact finding  
17 or research.

18 E. Any finding of delinquency or need of services  
19 or conviction of a crime subsequent to the sealing order may at  
20 the court's discretion be used by the court as a basis to set  
21 aside the sealing order.

22 F. A court may set aside a sealing order for the  
23 juvenile disposition of a youthful offender and any evidence  
24 given in a hearing in court for a youthful offender when  
25 considering the setting of bail or other conditions of release

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1 of a person charged with an offense whether charged as an adult  
2 or a juvenile. The court also may set aside a sealing order  
3 when rendering a sentence after a conviction.

4 ~~[F-]~~ G. A child who has been the subject of a  
5 petition filed pursuant to the provisions of the Delinquency  
6 Act shall be notified in writing by the department when the  
7 child reaches the age of eighteen or at the expiration of legal  
8 custody and supervision, whichever occurs later, that the  
9 department's records have been sealed and that the court, the  
10 children's court attorney, the child's attorney and the  
11 referring law enforcement agency have been notified that the  
12 child's records are subject sealing.

13 ~~[G-]~~ H. The department shall seal the child's files  
14 and records when the child reaches the age of eighteen or at  
15 the expiration of the disposition, whichever occurs later. The  
16 department shall notify the children's court attorney, the  
17 child's attorney and the referring law enforcement agency that  
18 the child's records are subject to sealing.

19 I. Youthful offender records sealed pursuant to  
20 Subsection H of this section may be unsealed by the court along  
21 with any evidence given in a hearing in court for a youthful  
22 offender when considering the setting of bail or other  
23 conditions of release of a person charged with an offense,  
24 whether charged as an adult or juvenile, and when rendering a  
25 sentence after a conviction.

1           [~~H.~~] J. A child who is determined by the court not  
2 to be a delinquent offender shall have the child's files and  
3 records in the instant proceeding automatically sealed by the  
4 court upon motion by the children's court attorney at the  
5 conclusion of the proceedings.

6           [~~I.~~] K. After sealing, the department may store and  
7 use a person's records for research and reporting purposes,  
8 subject to the confidentiality provisions of Section 32A-2-32  
9 NMSA 1978 and other applicable federal and state laws."

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