

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 507

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO JUVENILE JUSTICE; AMENDING PROVISIONS OF THE
CHILDREN'S CODE REGARDING PLACEMENT OF CHILDREN, APPELLATE
PROCEDURES, DETENTION PROCEEDINGS AND PAROLE PROCEDURES.

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

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

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

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

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

C. "court", when used without further
qualification, means the children's court division of the
district court and includes the judge, special master or

1 commissioner appointed pursuant to the provisions of the
2 Children's Code or supreme court rule;

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

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

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

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

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

20 I. "guardianship" means the duty and authority to
21 ~~make important decisions in matters having a permanent effect~~
22 ~~on the life and development of a child and to be concerned~~
23 ~~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 major

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

22 K. "Indian child" means an unmarried person who is:

23 (1) less than eighteen years old;

24 (2) a member of an Indian tribe or is eligible
25 for membership in an Indian tribe; and

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

3 L. "Indian child's tribe" means:

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

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

10 M "judge", when used without further
11 qualification, means the judge of the court;

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

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

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

11 P. "permanency plan" means a determination by the
 12 court that the child's interest will be served best by:

13 (1) return to the parent;

14 (2) placement with a person who will be the
 15 child's permanent guardian;

16 (3) placement for adoption after the parents'
 17 rights have been relinquished or terminated or after a motion
 18 has been filed to terminate parental rights;

19 (4) placement in the custody of the department
 20 ~~[until the child reaches the age of majority, unless the child~~
 21 ~~is emancipated, pursuant to the Emancipation of Minors Act]~~
 22 with the child placed in the home of a fit and willing
 23 relative; or

24 (5) placement in the custody of the department
 25 under a planned permanent living arrangement ~~[that meets the~~

~~department's definition of long-term foster care];~~

Q. "person" means an individual or any other form of entity recognized by law;

R. "preadoptive parent" means a person with whom a child has been placed for adoption;

S. "tribal court" means:

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

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

T. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

U. "tribunal" means any judicial forum other than the court."

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

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

A. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their

1 actions to the extent of the child's age, education, mental and
2 physical condition, background and all other relevant factors,
3 and to provide a program of supervision, care and
4 rehabilitation, including rehabilitative restitution by the
5 child to the victims of the child's delinquent act to the
6 extent that the child is reasonably able to do so; [~~and~~]

7 B. to provide effective deterrents to acts of
8 juvenile delinquency, including an emphasis on community-based
9 alternatives; and

10 C. to strengthen families and to successfully
11 reintegrate children into homes and communities. "

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

14 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

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

18 (1) an offense pursuant to municipal traffic
19 codes or the Motor Vehicle Code:

20 (a) [~~any~~] driving while under the
21 influence of intoxicating liquor or drugs;

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

25 (c) [~~any~~] unlawful taking of a vehicle

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1 or motor vehicle;

2 (d) [~~any~~] receiving or transferring of a
3 stolen vehicle or motor vehicle;

4 (e) [~~any~~] homicide by vehicle;

5 (f) [~~any~~] injuring or tampering with a
6 vehicle;

7 (g) [~~any~~] altering or changing of an
8 engine number or other vehicle identification numbers;

9 (h) [~~any~~] altering or forging of a
10 driver's license or permit or any making of a fictitious
11 license or permit;

12 (i) reckless driving;

13 (j) driving with a suspended or revoked
14 license; or

15 (k) [~~any~~] an offense punishable as a
16 felony;

17 (2) buying, attempting to buy, receiving,
18 possessing or being served any alcoholic liquor or being
19 present in a licensed liquor establishment, other than a
20 restaurant or a licensed retail liquor establishment, except in
21 the presence of the child's parent, guardian, custodian or
22 adult spouse. As used in this paragraph, "restaurant" means
23 [~~any~~] an establishment where meals are prepared and served
24 primarily for on-premises consumption and that has a dining
25 room, a kitchen and the employees necessary for preparing,

1 cooking and serving meals. "Restaurant" does not include
 2 [~~establishments~~] an establishment, as defined in regulations
 3 promulgated by the director of the special investigations
 4 division of the department of public safety, that [~~serve~~]
 5 serves only hamburgers, sandwiches, salads and other fast
 6 foods;

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

14 (4) [~~any~~] a violation of Section 30-29-2 NMSA
 15 1978, regarding the illegal use of a glue, aerosol spray
 16 product or other chemical substance;

17 (5) [~~any~~] a violation of the Controlled
 18 Substances Act;

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

23 (7) [~~any~~] a violation of Section 30-15-1.1
 24 NMSA 1978 regarding unauthorized graffiti on personal or real
 25 property; or

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

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

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

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

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

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

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

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

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

12 I. "youthful offender" means a delinquent child
13 subject to adult or juvenile sanctions who is:

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

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

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

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

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

25 (e) aggravated battery upon a peace

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1 officer, as provided in Subsection C of Section 30-22-25 NMSA
2 1978;

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

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

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

10 (i) robbery, as provided in Section
11 30-16-2 NMSA 1978;

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

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

16 (l) abuse of a child that results in
17 great bodily harm or death to the child, as provided in Section
18 30-6-1 NMSA 1978;

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

1 Successful completion of consent decrees are not considered a
2 prior adjudication for the purposes of this paragraph; or

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

5 Section 4. Section 32A-2-5 NMSA 1978 (being Laws 1993,
6 Chapter 77, Section 34, as amended) is amended to read:

7 "32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
8 ESTABLISHMENT-- JUVENILE PROBATION AND PAROLE OFFICERS-- POWERS
9 AND DUTIES. --

10 A. Juvenile probation and parole services shall be
11 provided by the department.

12 B. To carry out the objectives and provisions of
13 the Delinquency Act, but subject to its limitations, the
14 department has the power and duty to:

15 (1) receive and examine complaints and
16 allegations that a child is a delinquent child for the purpose
17 of considering beginning a proceeding pursuant to the
18 provisions of the Delinquency Act;

19 (2) make case referrals for services as appear
20 appropriate or desirable;

21 (3) make predisposition studies and
22 assessments and submit reports and recommendations to the
23 court;

24 (4) supervise and assist a child placed on
25 probation or parole or under supervision by court order or by

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1 the juvenile parole board;

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

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

8 (7) give notice to the children's court
9 attorney of the receipt of any felony complaint and of any
10 recommended adjustment of such felony complaint;

11 (8) identify an Indian child for the purpose
12 of contacting the Indian child's tribe in delinquency cases;
13 and

14 (9) contact an Indian child's tribe to consult
15 and exchange information for the purpose of preparing a
16 predisposition report when commitment or placement of an Indian
17 child is contemplated or has been ordered and indicate in the
18 report the name of the person contacted in the Indian child's
19 tribe and the results of the contact.

20 C. A juvenile probation and parole officer does not
21 have the powers of a law enforcement officer. A juvenile
22 probation and parole officer may take into physical custody and
23 place in detention, subject to application of a detention risk
24 assessment instrument, a child who is under supervision as a
25 delinquent child or as a youthful offender when there is

1 reasonable cause to believe that the child has violated the
2 conditions of his probation or that the child may leave the
3 jurisdiction of the court. Taking a child into custody under
4 this subsection is subject to and shall proceed in accordance
5 with the provisions of the Delinquency Act relating to custody
6 and detention procedures and criteria. "

7 Section 5. Section 32A-2-10 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 39) is amended to read:

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

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

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

15 (2) release the child to the child's parent,
16 guardian or custodian upon their written promise to bring the
17 child before the court when requested by the court [~~and~~]. If
18 the parent, guardian or custodian fails, when requested, to
19 bring the child before the court as promised, the court may
20 order the child taken into custody and brought before the
21 court;

22 (3) deliver the child to a place of detention
23 as provided in Section [~~32-2-11~~] 32A-2-12 NMSA 1978;

24 (4) deliver the child to a medical facility,
25 if available, if the child is believed to be suffering from a

1 serious illness that requires prompt treatment or prompt
2 diagnosis; or

3 (5) deliver the child to an evaluation
4 facility, if available, if the person taking the child into
5 custody has reasonable grounds to believe the child presents a
6 likelihood of serious harm to himself or others or is suffering
7 from some other serious mental condition or illness that
8 requires prompt treatment or prompt diagnosis.

9 B. When an alleged delinquent child is delivered to
10 a place of detention as provided in Section ~~[32-2-12]~~ 32A-2-12
11 NMSA 1978, ~~[a department designee, prior to the placing of the~~
12 ~~child in detention, shall review the need for detention and~~
13 ~~shall release the child from custody unless detention is~~
14 ~~appropriate under criteria set forth in the Delinquency Act or~~
15 ~~has been ordered by the court pursuant to those criteria]~~ only
16 a department employee or a trained county detention
17 professional designated by the department may place the child
18 in detention, in accordance with the criteria for detention set
19 forth in Section 32A-2-11 NMSA 1978. If the criteria for
20 detention of an alleged delinquent child are not met, the child
21 shall be released from custody.

22 C. If a child is taken into custody and is not
23 released to the child's parent, guardian or custodian, the
24 person taking the child into custody shall give written notice
25 thereof as soon as possible, and in no case later than

1 twenty-four hours, to the child's parent, guardian or custodian
2 and to the court, together with a statement of the reason for
3 taking the child into custody.

4 D. In all cases when a child is taken into custody,
5 the child shall be released to the child's parent, guardian or
6 custodian in accordance with the conditions and time limits set
7 forth in the Children's Court Rules [~~and Forms~~]. "

8 Section 6. Section 32A-2-11 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 40) is amended to read:

10 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN. --

11 A. Unless ordered by the court pursuant to the
12 provisions of the Delinquency Act, a child taken into custody
13 for [a] an alleged delinquent act shall not be placed in
14 detention [~~prior to the court's disposition unless probable~~
15 ~~cause exists to believe that:~~

16 (1) ~~detention of the child is necessary to~~
17 ~~protect the community;~~

18 (2) ~~the child will run away or be taken away~~
19 ~~so as to be unavailable for proceedings of the court or its~~
20 ~~officers;~~

21 (3) ~~the child will commit injury to others; or~~

22 (4) ~~if not detained, the child will cause~~
23 ~~injury to himself or be subject to injury by others] unless a
24 detention risk assessment instrument is completed and a
25 determination is made that the child:~~

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1 (1) poses a substantial risk of harm to
2 himself;

3 (2) poses a substantial risk of harm to
4 others; or

5 (3) has demonstrated that he may leave the
6 jurisdiction of the court.

7 B. The criteria for detention in this section shall
8 govern the decisions of all persons responsible for determining
9 whether detention is appropriate prior to ~~[the court's~~
10 ~~disposition~~

11 ~~C. The department shall promulgate guidelines by~~
12 ~~January 1, 1994 to implement the criteria for detention set~~
13 ~~forth in Subsection A of this section and shall collect data~~
14 ~~regarding the application of the criteria] a detention hearing,~~
15 based upon review of the detention risk assessment instrument.

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

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

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

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

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

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

8 (3) a shelter-care facility provided for in
9 the Children's Shelter Care Act or a detention facility
10 certified by the department for children alleged to be
11 delinquent children; ~~[or]~~

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

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

21 B. A child alleged to be a youthful offender may be
22 detained, pending a court hearing, in any of the following
23 places:

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

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

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

19 D. A child who has previously been incarcerated as
20 an adult or a person older than eighteen years of age shall not
21 be detained in a juvenile detention facility or a facility for
22 the long-term care and rehabilitation of delinquent children,
23 but may be detained in a county jail. In the event that a
24 child is detained in a jail, the director of the jail shall
25 presume that the child is vulnerable to victimization by

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

6 ~~[B-]~~ E. A child alleged to be a serious youthful
 7 offender may be detained pending a court hearing in any of the
 8 following places, prior to arraignment in metropolitan,
 9 magistrate or district court:

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

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

19 (3) a county jail, if a facility in Paragraph
 20 (1) or (2) of this subsection is not appropriate. In the event
 21 that a child is detained in a jail, the director of the
 22 ~~[facility]~~ jail shall presume that the child is vulnerable to
 23 victimization by ~~[detainees]~~ inmates within the adult
 24 population because of his age and shall take measures to
 25 provide protection to the child. However, ~~[no such protective~~

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1 ~~measure should]~~ provision of protective measures shall not
2 result in diminishing a child's civil rights to less than those
3 existing for an incarcerated adult."

4 Section 8. Section 32A-2-13 NMSA 1978 (being Laws 1993,
5 Chapter 77, Section 42) is amended to read:

6 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED
7 CHILDREN-- PROBABLE CAUSE DETERMINATION-- COURT DETERMINATION--
8 DISPOSITION.--

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

11 (1) a judicial determination of probable cause
12 shall be made by a judge or special master or magistrate within
13 forty-eight hours, including Saturdays, Sundays and legal
14 holidays, except for children taken into custody under an
15 arrest warrant pursuant to the Children's Court Rules [~~and~~
16 ~~Forms~~]. A statement by a law enforcement officer, which shall
17 include the charges, may be the basis of a probable cause
18 determination. The probable cause determination shall be
19 nonadversarial, may be held in the absence of the child and
20 counsel and may be conducted by telephone. If the court finds
21 no probable cause to believe the child committed an offense,
22 the child shall be released;

23 (2) a petition shall be filed within [~~forty-~~
24 ~~eight~~] twenty-four hours from the time the child is taken into
25 custody, excluding Saturdays, Sundays and legal holidays, and

1 if not filed within the stated time, the child shall be
2 released; and

3 (3) a detention hearing shall be held within
4 twenty-four hours, excluding Saturdays, Sundays and legal
5 holidays, from the time of filing the petition to determine
6 whether continued detention is required pursuant to the
7 criteria established by the Children's Code.

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

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

23 D. At the commencement of the detention hearing,
24 the judge or special master shall advise the parties of their
25 basic rights provided in the Children's Code and shall appoint

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1 counsel, guardians and custodians, if appropriate.

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

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

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

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

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

24 G. An order releasing a child on any conditions
25 specified in this section may at any time be amended to impose

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

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

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

14 J. If a child is not released at the detention
15 hearing, the child's detention may be subsequently reviewed by
16 the court or the court may review the child's detention in
17 conjunction with a pretrial conference.

18 K. If a child is not placed within ten days after a
19 disposition hearing, the child may be released and placed under
20 appropriate supervision, so long as the child does not pose a
21 flight risk or substantial risk of harm to himself or others."

22 Section 9. Section 32A-2-14 NMSA 1978 (being Laws 1993,
23 Chapter 77, Section 43) is amended to read:

24 "32A-2-14. BASIC RIGHTS. --

25 A. A child subject to the provisions of the

1 Delinquency Act is entitled to the same basic rights as an
2 adult, except as otherwise provided in the Children's Code.

3 B. If after due notice to the parent, guardian or
4 custodian and after a hearing determining indigency, the
5 parent, guardian or custodian is declared indigent by the
6 court, the public defender shall represent the child. If the
7 court finds that the parent, guardian or custodian is
8 financially able to pay for an attorney but is unwilling to do
9 so, the court shall order the parent, guardian or custodian to
10 reimburse the state for public defender representation.

11 C. No person subject to the provisions of the
12 Delinquency Act who is alleged or suspected of being a
13 delinquent child shall be interrogated or questioned without
14 first advising the child of the child's constitutional rights
15 and securing a knowing, intelligent and voluntary waiver.

16 D. Before any statement or confession may be
17 introduced at a trial or hearing when a child is alleged to be
18 a delinquent child, the state shall prove that the statement or
19 confession offered in evidence was elicited only after a
20 knowing, intelligent and voluntary waiver of the child's
21 constitutional rights was obtained.

22 E. In determining whether the child knowingly,
23 intelligently and voluntarily waived the child's rights, the
24 court shall consider the following factors:

- 25 (1) the age and education of the respondent;

1 (2) whether [~~or not~~] the respondent is in
2 custody;

3 (3) the manner in which the respondent was
4 advised of his rights;

5 (4) the length of questioning and
6 circumstances under which the respondent was questioned;

7 (5) the condition of the quarters where the
8 respondent was being kept at the time he was questioned;

9 (6) the time of day and the treatment of the
10 respondent at the time that he was questioned;

11 (7) the mental and physical condition of the
12 respondent at the time that he was questioned; and

13 (8) whether [~~or not~~] the respondent had the
14 counsel of an attorney, friends or relatives at the time of
15 being questioned.

16 F. Notwithstanding any other provision to the
17 contrary, no confessions, statements or admissions may be
18 introduced against a child under the age of thirteen years on
19 the allegations of the petition. There is a rebuttable
20 presumption that any confessions, statements or admissions made
21 by a child thirteen or fourteen years old to a person in a
22 position of authority are inadmissible.

23 G. An extrajudicial admission or confession made by
24 the child out of court is insufficient to support a finding
25 that the child committed the delinquent acts alleged in the

1 petition unless it is corroborated by other evidence.

2 H. The child and the parent, guardian or custodian
3 of the child shall be advised by the court or its
4 representative that the child shall be represented by counsel
5 at all stages of the proceedings on a delinquency petition. If
6 counsel is not retained for the child or if it does not appear
7 that counsel will be retained, counsel shall be appointed for
8 the child.

9 I. A child under the age of thirteen alleged or
10 adjudicated to be a delinquent child shall not be fingerprinted
11 or photographed for identification purposes without obtaining a
12 court order.

13 J. The court, at any stage of the proceeding on a
14 petition under the Children's Code, may appoint a guardian ad
15 litem for a child who is a party if the child has no parent,
16 guardian or custodian appearing on behalf of the child or if
17 the parent's, guardian's or custodian's interests conflict with
18 those of the child. A party to the proceeding or an employee
19 or representative of a party shall not be appointed as guardian
20 ad litem.

21 K. The court shall appoint a guardian for a child
22 if the court determines that the child does not have a parent
23 or a legally appointed guardian in a position to exercise
24 effective guardianship. No officer or employee of an agency
25 that is vested with the legal custody of the child shall be

1 appointed guardian of the child except when parental rights
2 have been terminated and the agency is authorized to place the
3 child for adoption.

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

7 M A serious youthful offender who is detained
8 prior to trial in an adult facility has a right to bail as
9 provided under SCRA 1986, Rule 5-401. A child held in a
10 juvenile facility designated as a place of detention prior to
11 adjudication does not have a right to bail but may be released
12 pursuant to the provisions of the Delinquency Act.

13 N. The provisions of the Delinquency Act shall not
14 be interpreted to limit the right of a child to petition a
15 court for a writ of habeas corpus."

16 Section 10. Section 32A-2-19 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 48, as amended) is amended to read:

18 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
19 OFFENDER. --

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

23 (1) the interaction and interrelationship of
24 the child with the child's parents, siblings and any other
25 person who may significantly affect the child's best interests;

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

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

5 (4) the wishes of the child as to his
6 custodian;

7 (5) the wishes of the child's parents as to
8 the child's custody;

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

12 (7) the availability of services recommended
13 in the predisposition report; and

14 (8) the ability of the parents to care for the
15 child in the home.

16 B. If a child is found to be delinquent, the court
17 may impose a fine not to exceed the fine that could be imposed
18 if the child were an adult and may enter its judgment making
19 any of the following dispositions for the supervision, care and
20 rehabilitation of the child:

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

24 (2) transfer legal custody to the department,
25 an agency responsible for the care and rehabilitation of

1 delinquent children, which shall receive the child at a
2 facility designated by the secretary of the department as a
3 juvenile reception facility. The department shall thereafter
4 determine the appropriate placement, supervision and
5 rehabilitation program for the child. The judge may include
6 recommendations for placement of the child. Commitments are
7 subject to limitations and modifications set forth in Section
8 32A-2-23 NMSA 1978. The types of commitments include:

9 (a) a short-term commitment of one year,
10 followed by a period of parole for ninety days;

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

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

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

20 (3) place the child on probation under those
21 conditions and limitations as the court may prescribe;

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

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1 period;

2 (5) if a child is found to be delinquent
3 solely on the basis of Paragraph (3) of Subsection A of Section
4 32A-2-3 NMSA 1978, the court shall only enter a judgment
5 placing the child on probation or ordering restitution or
6 imposing a fine not to exceed the fine that could be imposed if
7 the child were an adult or any combination of these
8 dispositions; or

9 (6) if a child is found to be delinquent
10 solely on the basis of Paragraph (2), (4) or (5) of Subsection
11 A of Section 32A-2-3 NMSA 1978, the court may make any
12 disposition provided by this section and may enter its judgment
13 placing the child on probation and, as a condition of
14 probation, transfer custody of the child to the department for
15 a period not to exceed six months without further order of the
16 court; provided that this transfer shall not be made unless the
17 court first determines that the department is able to provide
18 or contract for adequate and appropriate treatment for the
19 child and that the treatment is likely to be beneficial.

20 C. When the child is an Indian child, the Indian
21 child's cultural needs shall be considered in the dispositional
22 judgment and reasonable access to cultural practices and
23 traditional treatment shall be provided.

24 D. No child found to be delinquent shall be
25 committed or transferred to a penal institution or other

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1 facility used for the execution of sentences of persons
2 convicted of crimes.

3 E. Whenever the court vests legal custody in an
4 agency, institution or department, it shall transmit with the
5 dispositional judgment copies of the clinical reports,
6 predisposition study and report and other information it has
7 pertinent to the care and treatment of the child.

8 F. Prior to any child being placed in the custody
9 of the department, the department shall be provided with
10 reasonable oral or written notification and an opportunity to
11 be heard.

12 G. In addition to any other disposition pursuant to
13 this section or any other penalty provided by law, if a child
14 fifteen years of age or older is adjudicated delinquent on the
15 basis of Paragraph (2), (4) or (5) of Subsection A of Section
16 32A-2-3 NMSA 1978, the child's driving privileges may be denied
17 or the child's driver's license may be revoked for a period of
18 ninety days. For a second or a subsequent adjudication, the
19 child's driving privileges may be denied or the child's
20 driver's license revoked for a period of one year. Within
21 twenty-four hours of the dispositional judgment, the court may
22 send to the motor vehicle division of the taxation and revenue
23 department the order adjudicating delinquency. Upon receipt of
24 an order from the court adjudicating delinquency, the director
25 of the motor vehicle division of the taxation and revenue

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1 department may revoke or deny the delinquent's driver's license
2 or driving privileges. Nothing in this section may prohibit
3 the delinquent from applying for a limited driving privilege
4 pursuant to Section 66-5-35 NMSA 1978, and nothing in this
5 section precludes the delinquent's participation in an
6 appropriate educational, counseling or rehabilitation program.

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

18 Section 11. Section 32A-2-20 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 49, as amended) is amended to read:

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

21 A. The court has the discretion to invoke either an
22 adult sentence or juvenile sanctions on a youthful offender.
23 The children's court attorney shall file a notice of intent to
24 invoke an adult sentence within ten working days of the filing
25 of the petition, provided that the court may extend the time

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

8 B. If the children's court attorney has filed a
9 notice of intent to invoke an adult sentence and the child is
10 adjudicated as a youthful offender, the court shall make the
11 following findings in order to invoke an adult sentence:

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

14 (2) the child is not eligible for commitment
15 to an institution for the developmentally disabled or mentally
16 disordered.

17 C. In making the findings set forth in Subsection B
18 of this section, the judge shall consider the following
19 factors:

- 20 (1) the seriousness of the alleged offense;
21 (2) whether the alleged offense was committed
22 in an aggressive, violent, premeditated or willful manner;
23 (3) whether a firearm was used to commit the
24 alleged offense;
25 (4) whether the alleged offense was against

1 persons or against property, greater weight being given to
2 offenses against persons, especially if personal injury
3 resulted;

4 (5) the sophistication and maturity of the
5 child as determined by consideration of the child's home,
6 environmental situation, emotional attitude and pattern of
7 living;

8 (6) the record and previous history of the
9 child;

10 (7) the prospects for adequate protection of
11 the public and the likelihood of reasonable rehabilitation of
12 the child by the use of procedures, services and facilities
13 currently available; and

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

16 D. If a child has previously been sentenced as an
17 adult pursuant to the provisions of this section, there shall
18 be a rebuttable presumption that the child is not amenable to
19 treatment or rehabilitation as a child in available facilities.

20 [~~D.~~] E. If the court invokes an adult sentence, the
21 court may sentence the child to less than, but shall not
22 exceed, the mandatory adult sentence. A youthful offender
23 given an adult sentence shall be treated as an adult offender
24 and shall be transferred to the legal custody of an agency
25 responsible for incarceration of persons sentenced to adult

1 sentences. This transfer terminates the jurisdiction of the
2 court over the child with respect to the delinquent acts
3 alleged in the petition.

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

10 ~~[F-]~~ G. A fourteen to eighteen year old child
11 charged with first degree murder, but convicted of an offense
12 less than first degree murder, is subject to the dispositions
13 set forth in this section."

14 Section 12. Section 32A-2-23 NMSA 1978 (being Laws 1993,
15 Chapter 77, Section 52, as amended) is amended to read:

16 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
17 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

18 A. A judgment transferring legal custody of an
19 adjudicated delinquent child to an agency responsible for the
20 care and rehabilitation of delinquent children divests the
21 court of jurisdiction at the time of transfer of custody,
22 unless the transfer of legal custody is for a commitment not
23 exceeding fifteen days pursuant to the provisions of Section
24 32A-2-19 NMSA 1978, in which case the court retains
25 jurisdiction, and:

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underscored material = new
[bracketed material] = delete

1 (1) the juvenile parole board pursuant to the
2 Juvenile Parole Board Act has the exclusive power to parole or
3 release the child, subject to the provisions of Section 32A-7-8
4 NMSA 1978;

5 (2) the supervision of a child after release
6 under Paragraph (1) of this subsection [~~may~~] shall be conducted
7 by the [~~juvenile parole board in conjunction with the~~
8 ~~department or any other suitable state agency or under any~~
9 ~~contractual arrangements the juvenile parole board deems~~
10 ~~appropriate; and~~] department;

11 (3) a child who completes a short-term
12 commitment of one year, upon his release shall be placed on
13 parole and supervised by the department for a period of ninety
14 days; and

15 [~~(3)~~] (4) the period of time a child absconds
16 from parole or probation supervision shall toll all time limits
17 for the requirement of filing a petition to revoke probation or
18 parole and shall toll the computation of the period of
19 probation or parole supervision pursuant to the provisions of
20 the Delinquency Act.

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

24 C. A child shall be released by an agency and
25 probation or supervision shall be terminated by juvenile

1 probation and parole services or the agency providing
2 supervision when it appears that the purpose of the order has
3 been achieved before the expiration of the period of the
4 judgment. A release or termination and the reasons therefor
5 shall be reported promptly to the court in writing by the
6 releasing authority.

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

13 E. Prior to the expiration of a judgment of
14 probation, the court may extend the judgment for an additional
15 period of one year until the child reaches the age of twenty-
16 one if the court finds that the extension is necessary to
17 protect the community or to safeguard the welfare of the child.

18 F. The court may dismiss a motion if it finds after
19 preliminary investigation that the motion is without substance.
20 If the court is of the opinion that the matter should be
21 reviewed, it may, upon notice to all necessary parties, proceed
22 to a hearing in the manner provided for hearings on petitions
23 alleging delinquency. The court may terminate a judgment if it
24 finds that the child is no longer in need of care, supervision
25 or rehabilitation or it may enter a judgment extending or

1 modifying the original judgment if it finds that action
2 necessary to safeguard the child or the public interest.

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

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

11 "32A-2-26. SEALING OF RECORDS. --

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

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

25 (2) the [~~individual~~] person has not, within

1 the two years immediately prior to filing the motion, been
2 convicted of a felony or of a misdemeanor involving moral
3 turpitude or been found delinquent by a court and no proceeding
4 is pending seeking such a conviction or finding.

5 B. Reasonable notice of the motion shall be given
6 to:

- 7 (1) the children's court attorney;
8 (2) the authority granting the release;
9 (3) the law enforcement officer, department
10 and central depository having custody of the law enforcement
11 files and records if those records are included in the motion;
12 and
13 (4) any other agency having custody of records
14 or files subject to the sealing order.

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

23 D. Inspection of the files and records or the
24 release of information in the records included in the sealing
25 order may thereafter be permitted by the court only:

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

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

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

12 F. A person who has been the subject of a petition
13 filed pursuant to the provisions of the Delinquency Act shall
14 be notified in writing by the juvenile probation and parole
15 officer of the right to have records sealed at the expiration
16 of the disposition.

17 G. A person who is not the subject of a delinquency
18 petition or a person who is determined by the court not to be a
19 delinquent offender shall have his files and records
20 automatically sealed by the court.

21 H. If two years have elapsed since a person was
22 released from legal custody and supervision and the department
23 has not received any new allegations of delinquency regarding
24 the person, that person's files and records shall be
25 automatically sealed."

1 Section 14. Section 32A-2-29 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 58) is amended to read:

3 "32A-2-29. MOTOR VEHICLE CODE VIOLATIONS. --

4 A. The municipal, magistrate or metropolitan court
5 shall have original exclusive jurisdiction over all Motor
6 Vehicle Code or municipal traffic code violations when the
7 person alleged to have committed the violation is a child, with
8 the exception of those violations contained in Paragraph (1) of
9 Subsection A of Section [~~32-2-3~~] 32A-2-3 NMSA 1978 and all
10 traffic offenses alleged to have been committed by the child
11 arising out of the same occurrence pursuant to Subsection B of
12 this section.

13 B. If the [~~children's~~] court acquires jurisdiction
14 over a child pursuant to any of those Motor Vehicle Code
15 violations contained in Paragraph (1) of Subsection A of
16 Section [~~32-2-3~~] 32A-2-3 NMSA 1978, it shall have jurisdiction
17 over all traffic offenses alleged to have been committed by the
18 child arising out of the same occurrence.

19 C. All traffic offenses which the child is found to
20 have committed by the municipal, magistrate or metropolitan
21 court or for which the child is adjudicated delinquent by the
22 children's court shall be subject to the reporting requirements
23 and the suspension and revocation provisions of the Motor
24 Vehicle Code and shall not be subject to the confidentiality
25 provisions of the Delinquency Act.

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1 D. ~~[No tribunal]~~ Only the children's court may
2 incarcerate ~~[any]~~ a child who has been found guilty of any
3 Motor Vehicle Code or municipal traffic code violations
4 ~~[without first securing the approval of the children's court.]"~~

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

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

8 A. All social records, including diagnostic
9 evaluation, psychiatric reports, medical reports, social
10 studies reports, pre-parole reports and supervision histories
11 obtained by the juvenile probation office, parole officers and
12 parole board or in possession of the department, are privileged
13 and shall not be disclosed directly or indirectly to the
14 public.

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

- 17 (1) court personnel;
- 18 (2) court appointed special advocates;
- 19 (3) the child's attorney or guardian ad litem;
- 20 (4) department personnel;
- 21 (5) any local substitute care review board or
22 any agency contracted to implement local substitute care review
23 boards;
- 24 (6) corrections department personnel;
- 25 (7) law enforcement officials;

1 (8) district attorneys;

2 (9) any state government social services
3 agency in any state;

4 (10) those persons or entities of a child's
5 Indian tribe specifically authorized to inspect such records
6 pursuant to the federal Indian Child Welfare Act of 1978 or any
7 regulations promulgated thereunder;

8 (11) tribal juvenile justice system and social
9 service representatives;

10 (12) a foster parent, if the records are those
11 of a child currently placed with that foster parent or of a
12 child being considered for placement with that foster parent
13 when the records concern the social, medical, psychological or
14 educational needs of the child;

15 (13) school personnel involved with the child
16 if the records concern the child's social or educational needs;

17 (14) health care or mental health
18 professionals involved in the evaluation or treatment of the
19 child, the child's parents, guardians or custodian or other
20 family members;

21 (15) representatives of the protection and
22 advocacy system, pursuant to the provisions of the federal
23 Developmental Disabilities Assistance and Bill of Rights Act
24 and the federal Protection and Advocacy for Mentally Ill
25 Individuals Amendments Act of 1991; and

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underscored material = new
[bracketed material] = delete

1 (16) any other person or entity, by order of
2 the court, having a legitimate interest in the case or the work
3 of the court.

4 C. Whoever intentionally and unlawfully releases
5 any information or records closed to the public pursuant to
6 this section or releases or makes other unlawful use of records
7 in violation of this section is guilty of a petty misdemeanor. "

8 Section 16. Section 32A-2-33 NMSA 1978 (being Laws 1999,
9 Chapter 216, Section 1) is amended to read:

10 "32A-2-33. CHILD IN POSSESSION OF A FIREARM ON SCHOOL
11 PREMISES--DETENTION--HEARING. --

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

19 B. Upon receipt of a report pursuant to Subsection
20 A of this section, the law enforcement agency [~~shall~~
21 ~~immediately~~] may conduct an investigation to determine if there
22 is probable cause to believe that the child possessed a firearm
23 on school premises.

24 C. If the law enforcement agency determines there
25 is probable cause to believe that the child possessed a firearm

1 on school premises, the law enforcement agency [~~shall~~
 2 ~~immediately~~] may take the child into custody and deliver the
 3 child to a detention facility licensed by the department.
 4 After the child is delivered to a detention facility, the
 5 department shall comply with the notification provisions set
 6 forth in Subsection C of Section 32A-2-10 NMSA 1978. The child
 7 shall be detained in the detention facility, pending a
 8 detention hearing pursuant to the provisions of Section
 9 32A-2-13 NMSA 1978.

10 D. As used in this section, "firearm" means any
 11 weapon [~~which~~] that will or is designed to or may readily be
 12 converted to expel a projectile by the action of an explosion;
 13 the frame or receiver of any such weapon; or any firearm
 14 muffler or firearm silencer. "Firearm" includes any handgun,
 15 rifle or shotgun. "

16 Section 17. Section 32A-7-8 NMSA 1978 (being Laws 1993,
 17 Chapter 77, Section 201) is amended to read:

18 "32A-7-8. PAROLE ELIGIBILITY. --

19 A. A child is eligible to appear before the
 20 juvenile parole board forty days after the entry of a judgment
 21 transferring legal custody to an agency for the care and
 22 rehabilitation of delinquent children, unless recommended for
 23 an earlier appearance by the agency responsible for such care
 24 and rehabilitation.

25 B. In the event parole is denied, the child shall

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1 be eligible for review sixty days thereafter.

2 C. Consistent with the provisions of the Victims of
3 Crime Act, in the event parole for a child is denied by the
4 juvenile parole board, but parole is recommended for the child
5 by the department, within ten days after the denial of parole
6 the department shall transmit all records for review by the
7 court of the judicial district from which legal custody of the
8 child was transferred. The court shall have jurisdiction to
9 review the matter without conducting a formal hearing and to
10 issue an order that affirms the parole board's denial of parole
11 or that grants parole to the child.

12 [~~C.~~] D. The juvenile parole board may review the
13 case of any child upon its own motion at any time after parole
14 is denied.

15 [~~D.~~] E. The provisions of the Juvenile Parole Board
16 Act apply to all children who, on [~~the effective date of that~~
17 ~~act~~] July 1, 1993, are on parole or eligible to be placed on
18 parole with the same effect as if that act had been in effect
19 at the time they were placed on parole or became eligible to be
20 placed on parole. "

21 Section 18. EFFECTIVE DATE. --The effective date of the
22 provisions of this act is July 1, 2003.