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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 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:

"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  
a felony, the juvenile disposition of a youthful offender and  
any evidence given in a hearing in court for a youthful  
offender may be considered. The juvenile disposition and  
evidence used pursuant to this section may be considered only  
if the person is thirty years old or younger. If a judge  
considers the juvenile disposition of a youthful offender or  
evidence given in a hearing for the youthful offender  
pursuant to this section, the disposition and evidence shall  
be considered confidential and shall be reviewed or discussed  
in camera. All evidence, motions or other documents or  
evidence pertaining to the juvenile disposition shall be  
sealed, unless otherwise considered not to be confidential by  
law."

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

3           "32A-2-26. SEALING OF RECORDS.--

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

13                   (1) two years have elapsed since the final  
14 release of the person from legal custody and supervision or  
15 two years have elapsed since the entry of any other judgment  
16 not involving legal custody or supervision;

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

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

25           B. Reasonable notice of the motion shall be given

1 to:

2 (1) the children's court attorney;

3 (2) the authority granting the release;

4 (3) the law enforcement officer, department  
5 and central depository having custody of the law enforcement  
6 files and records; and

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

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

17 D. Inspection of the files and records or the  
18 release of information in the records included in the sealing  
19 order may thereafter be permitted by the court only:

20 (1) upon motion by the person who is the  
21 subject of the records and only to those persons named in the  
22 motion; and

23 (2) in its discretion, in an individual  
24 case, to any clinic, hospital or agency that has the person  
25 under care or treatment or to other persons engaged in fact

1 finding or research.

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

6 F. A court may set aside a sealing order for the  
7 juvenile disposition of a youthful offender and any evidence  
8 given in a hearing in court for a youthful offender for the  
9 purpose of considering the setting of bail or other  
10 conditions of release of a person charged with a felony  
11 whether charged as an adult or a juvenile.

12 G. A child 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 department when the child  
15 reaches the age of eighteen or at the expiration of legal  
16 custody and supervision, whichever occurs later, that the  
17 department's records have been sealed and that the court, the  
18 children's court attorney, the child's attorney and the  
19 referring law enforcement agency have been notified that the  
20 child's records are subject to sealing.

21 H. The department shall seal the child's files and  
22 records when the child reaches the age of eighteen or at the  
23 expiration of the disposition, whichever occurs later. The  
24 department shall notify the children's court attorney, the  
25 child's attorney and the referring law enforcement agency

1 that the child's records are subject to sealing.

2 I. Youthful offender records sealed pursuant to  
3 Subsection H of this section may be unsealed by the court  
4 along with any evidence given in a hearing in court for a  
5 youthful offender for the purpose of considering the setting  
6 of bail or other conditions of release of a person charged  
7 with a felony, whether charged as an adult or juvenile.

8 J. A child who is determined by the court not to  
9 be a delinquent offender shall have the child's files and  
10 records in the instant proceeding automatically sealed by the  
11 court upon motion by the children's court attorney at the  
12 conclusion of the proceedings.

13 K. After sealing, the department may store and use  
14 a person's records for research and reporting purposes,  
15 subject to the confidentiality provisions of Section 32A-2-32  
16 NMSA 1978 and other applicable federal and state laws."=====

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