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AN ACT

RELATING TO CHILDREN; ELIMINATING CERTAIN FINES AND FEES
RELATING TO CRIMES COMMITTED BY JUVENILES.

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

SECTION 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
Chapter 84, Section 23, as amended) is amended to read:

"30-31-23. CONTROLLED SUBSTANCES--POSSESSION
PROHIBITED.--

A. It is unlawful for a person intentionally to
possess a controlled substance unless the substance was
obtained pursuant to a valid prescription or order of a
practitioner while acting in the course of professional
practice or except as otherwise authorized by the Controlled
Substances Act. It is unlawful for a person intentionally to
possess a controlled substance analog.

B. A person who violates this section with respect
to:

(1) up to one-half ounce of marijuana shall
be issued a penalty assessment, pursuant to Section 31-19A-1
NMSA 1978 and is subject to a fine of fifty dollars (\$50.00);

(2) more than one-half ounce but up to and
including one ounce of marijuana is, for the first offense,
guilty of a petty misdemeanor and shall be punished by a fine
of not less than fifty dollars (\$50.00) or more than one

1 hundred dollars (\$100) and by imprisonment for not more than
2 fifteen days, and, for a second or subsequent offense, is
3 guilty of a misdemeanor and shall be punished by a fine of
4 not less than one hundred dollars (\$100) or more than one
5 thousand dollars (\$1,000) or by imprisonment for a definite
6 term of less than one year, or both;

7 (3) more than one ounce but less than eight
8 ounces of marijuana is guilty of a misdemeanor and shall be
9 punished by a fine of not less than one hundred dollars
10 (\$100) or more than one thousand dollars (\$1,000) or by
11 imprisonment for a definite term of less than one year, or
12 both; or

13 (4) eight ounces or more of marijuana is
14 guilty of a fourth degree felony and shall be sentenced
15 pursuant to the provisions of Section 31-18-15 NMSA 1978.

16 C. A person who violates this section with respect
17 to:

18 (1) one ounce or less of synthetic
19 cannabinoids is, for the first offense, guilty of a petty
20 misdemeanor and shall be punished by a fine of not less than
21 fifty dollars (\$50.00) or more than one hundred dollars
22 (\$100) and by imprisonment for not more than fifteen days,
23 and, for the second and subsequent offenses, is guilty of a
24 misdemeanor and shall be punished by a fine of not less than
25 one hundred dollars (\$100) or more than one thousand dollars

1 (\$1,000) or by imprisonment for a definite term less than one
2 year, or both;

3 (2) more than one ounce and less than eight
4 ounces of synthetic cannabinoids is guilty of a misdemeanor
5 and shall be punished by a fine of not less than one hundred
6 dollars (\$100) or more than one thousand dollars (\$1,000) or
7 by imprisonment for a definite term less than one year, or
8 both; or

9 (3) eight ounces or more of synthetic
10 cannabinoids is guilty of a fourth degree felony and shall be
11 sentenced pursuant to the provisions of Section 31-18-15 NMSA
12 1978.

13 D. A minor who violates this section with respect
14 to the substances listed in this subsection is guilty of a
15 petty misdemeanor and, notwithstanding the provisions of
16 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be required to
17 perform no more than forty-eight hours of community service.
18 For the third or subsequent violation by a minor of this
19 section with respect to those substances, the provisions of
20 Section 32A-2-19 NMSA 1978 shall govern punishment of the
21 minor. As used in this subsection, "minor" means a person
22 who is less than eighteen years of age. The provisions of
23 this subsection apply to the following substances:

24 (1) synthetic cannabinoids;

25 (2) any of the substances listed in

1 Paragraphs (20) through (25) of Subsection C of Section
2 30-31-6 NMSA 1978; or

3 (3) a substance added to Schedule I by a
4 rule of the board adopted on or after March 31, 2011 if the
5 board determines that the pharmacological effect of the
6 substance, the risk to the public health by abuse of the
7 substance and the potential of the substance to produce
8 psychic or physiological dependence liability is similar to
9 the substances described in Paragraph (1) or (2) of this
10 subsection.

11 E. Except as provided in Subsections B, C and G of
12 this section, and for those substances listed in Subsection F
13 of this section, a person who violates this section with
14 respect to any amount of any controlled substance enumerated
15 in Schedule I, II, III or IV or a controlled substance analog
16 of a substance enumerated in Schedule I, II, III or IV is
17 guilty of a misdemeanor and shall be punished by a fine of
18 not less than five hundred dollars (\$500) or more than one
19 thousand dollars (\$1,000) or by imprisonment for a definite
20 term less than one year, or both.

21 F. A person who violates this section with respect
22 to phencyclidine as enumerated in Schedule III or a
23 controlled substance analog of phencyclidine;
24 methamphetamine, its salts, isomers or salts of isomers as
25 enumerated in Schedule II or a controlled substance analog of

1 methamphetamine, its salts, isomers or salts of isomers;
2 flunitrazepam, its salts, isomers or salts of isomers as
3 enumerated in Schedule I or a controlled substance analog of
4 flunitrazepam, including naturally occurring metabolites, its
5 salts, isomers or salts of isomers; gamma hydroxybutyric acid
6 and any chemical compound that is metabolically converted to
7 gamma hydroxybutyric acid, its salts, isomers or salts of
8 isomers as enumerated in Schedule I or a controlled substance
9 analog of gamma hydroxybutyric acid, its salts, isomers or
10 salts of isomers; gamma butyrolactone and any chemical
11 compound that is metabolically converted to gamma
12 hydroxybutyric acid, its salts, isomers or salts of isomers
13 as enumerated in Schedule I or a controlled substance analog
14 of gamma butyrolactone, its salts, isomers or salts of
15 isomers; 1-4 butane diol and any chemical compound that is
16 metabolically converted to gamma hydroxybutyric acid, its
17 salts, isomers or salts of isomers as enumerated in Schedule
18 I or a controlled substance analog of 1-4 butane diol, its
19 salts, isomers or salts of isomers; or a narcotic drug
20 enumerated in Schedule I or II or a controlled substance
21 analog of a narcotic drug enumerated in Schedule I or II is
22 guilty of a fourth degree felony and shall be sentenced
23 pursuant to the provisions of Section 31-18-15 NMSA 1978.

24 G. Except for a minor as defined in Subsection D
25 of this section, a person who violates Subsection A of this

1 section while within a posted drug-free school zone,
2 excluding private property residentially zoned or used
3 primarily as a residence and excluding a person in or on a
4 motor vehicle in transit through the posted drug-free school
5 zone, with respect to:

6 (1) one ounce or less of marijuana or
7 synthetic cannabinoids is, for the first offense, guilty of a
8 misdemeanor and shall be punished by a fine of not less than
9 one hundred dollars (\$100) or more than one thousand dollars
10 (\$1,000) or by imprisonment for a definite term less than one
11 year, or both, and for the second or subsequent offense, is
12 guilty of a fourth degree felony and shall be sentenced
13 pursuant to the provisions of Section 31-18-15 NMSA 1978;

14 (2) more than one ounce and less than eight
15 ounces of marijuana or synthetic cannabinoids is guilty of a
16 fourth degree felony and shall be sentenced pursuant to the
17 provisions of Section 31-18-15 NMSA 1978;

18 (3) eight ounces or more of marijuana or
19 synthetic cannabinoids is guilty of a third degree felony and
20 shall be sentenced pursuant to the provisions of Section
21 31-18-15 NMSA 1978;

22 (4) any amount of any other controlled
23 substance enumerated in Schedule I, II, III or IV or a
24 controlled substance analog of a substance enumerated in
25 Schedule I, II, III or IV, except phencyclidine as enumerated

1 in Schedule III, a narcotic drug enumerated in Schedule I or
2 II or a controlled substance analog of a narcotic drug
3 enumerated in Schedule I or II, is guilty of a fourth degree
4 felony and shall be sentenced pursuant to the provisions of
5 Section 31-18-15 NMSA 1978; and

6 (5) phencyclidine as enumerated in Schedule
7 III, a narcotic drug enumerated in Schedule I or II, a
8 controlled substance analog of phencyclidine or a controlled
9 substance analog of a narcotic drug enumerated in Schedule I
10 or II is guilty of a third degree felony and shall be
11 sentenced pursuant to the provisions of Section 31-18-15 NMSA
12 1978."

13 SECTION 2. Section 31-15-12 NMSA 1978 (being Laws 1973,
14 Chapter 156, Section 12, as amended) is amended to read:

15 "31-15-12. EXPLANATION OF RIGHTS--WAIVER OF COUNSEL--
16 APPLICATION FEE--INDIGENCY DETERMINATION.--

17 A. If any person charged with any crime or a
18 delinquent act that carries a possible sentence of
19 imprisonment appears in any court without counsel, the judge
20 shall inform the person of the person's right:

21 (1) to confer with the district public
22 defender; and

23 (2) if the person is financially unable to
24 obtain counsel, to be represented by the district public
25 defender at all stages of the proceedings against the person.

1 B. Following notification of any person under
2 Subsection A of this section, the judge shall notify the
3 district public defender and continue the proceedings until
4 the person has applied with the district public defender.

5 C. A person shall pay a nonrefundable application
6 fee of ten dollars (\$10.00) at the time the person applies
7 with the public defender for representation. The fee shall
8 be deposited in the public defender automation fund. The
9 public defender shall determine if the person is indigent and
10 unable to pay the fee, subject to review by the court. When
11 the person remains in custody and is unable to pay the fee,
12 the court may waive payment of the fee. A child subject to
13 the provisions of the Delinquency Act shall not be required
14 to pay the application fee.

15 D. Peace officers shall notify the district public
16 defender of any person not represented by counsel who is
17 being forcibly detained and who is charged with, or under
18 suspicion of, the commission of any crime that carries a
19 possible sentence of imprisonment, unless the person has
20 previously appeared in court upon that charge.

21 E. Any person entitled to representation by the
22 district public defender may intelligently waive the right to
23 representation. The waiver may be for all or any part of the
24 proceedings. The waiver shall be in writing and
25 countersigned by a district public defender."

1 SECTION 3. Section 32A-1-19 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 28, as amended) is amended to read:

3 "32A-1-19. COURT COSTS AND EXPENSES.--

4 A. The following expenses shall be a charge upon
5 the funds of the court upon their certification by the court:

6 (1) reasonable compensation for services and
7 related expenses for counsel appointed by the court;

8 (2) reasonable compensation for services and
9 related expenses of a guardian ad litem or a child's attorney
10 appointed by the court; and

11 (3) the expenses of service of summonses,
12 notices, subpoenas, traveling expenses of witnesses and other
13 like expenses incurred in any proceeding under the Children's
14 Code.

15 B. A child, the family of a child or a person
16 legally obligated to care for and support a child who is
17 subject to the provisions of the Delinquency Act shall not be
18 required to pay any court costs, expenses pursuant to
19 Subsection A of this section, fees or fines.

20 C. Whenever legal custody of an adjudicated child
21 is vested in someone other than the child's parents,
22 including an agency, institution or department of this state,
23 if the court, after notice to the parents or other persons
24 legally obligated to support the child and after a hearing,
25 finds that the parents or other legally obligated persons are

1 financially able to pay all or part of the costs and expenses
2 of the support and treatment, the court may order the parents
3 or other legally obligated persons to pay to the custodian in
4 the manner the court directs a reasonable sum that will cover
5 all or part of the expenses of the support and treatment of
6 the child subsequent to the entry of the custody order. The
7 court may use the child support guidelines set forth in
8 Section 40-4-11.1 NMSA 1978 to calculate a reasonable
9 payment. If the parents or other legally obligated persons
10 willfully fail or refuse to pay the sum ordered, the court
11 may proceed with contempt charges and the order for payment
12 may be filed and if filed shall have the effect of a civil
13 judgment."

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

16 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
17 OFFENDER.--

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

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

25 (2) the child's adjustment to the child's

1 home, school and community;

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

6 (4) the wishes of the child as to the
7 child's custodian;

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

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

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

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

17 B. If a child is found to be delinquent, the court
18 may enter its judgment making any of the following
19 dispositions for the supervision, care and rehabilitation of
20 the child:

21 (1) transfer legal custody to the
22 department, an agency responsible for the care and
23 rehabilitation of delinquent children, which shall receive
24 the child at a facility designated by the secretary of the
25 department as a juvenile reception facility. The department

1 shall thereafter determine the appropriate placement,
2 supervision and rehabilitation program for the child. The
3 judge may include recommendations for placement of the child.
4 Commitments are subject to limitations and modifications set
5 forth in Section 32A-2-23 NMSA 1978. The types of
6 commitments include:

7 (a) a short-term commitment of one year
8 in a facility for the care and rehabilitation of adjudicated
9 delinquent children. No more than nine months shall be
10 served at the facility and no less than ninety days shall be
11 served on supervised release, unless: 1) a petition to
12 extend the commitment has been filed prior to the
13 commencement of supervised release; 2) the commitment has
14 been extended pursuant to Section 32A-2-23 NMSA 1978; or 3)
15 supervised release is revoked pursuant to Section 32A-2-25
16 NMSA 1978;

17 (b) a long-term commitment for no more
18 than two years in a facility for the care and rehabilitation
19 of adjudicated delinquent children. No more than twenty-one
20 months shall be served at the facility and no less than
21 ninety days shall be served on supervised release, unless:
22 1) supervised release is revoked pursuant to Section 32A-2-25
23 NMSA 1978; or 2) the commitment is extended pursuant to
24 Section 32A-2-23 NMSA 1978;

25 (c) if the child is a delinquent

1 offender who committed one of the criminal offenses set forth
2 in Subsection J of Section 32A-2-3 NMSA 1978, a commitment to
3 age twenty-one, unless sooner discharged; or

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

7 (2) place the child on probation under those
8 conditions and limitations as the court may prescribe;

9 (3) place the child in a local detention
10 facility that has been certified in accordance with the
11 provisions of Section 32A-2-4 NMSA 1978 for a period not to
12 exceed fifteen days within a three hundred sixty-five day
13 time period; or if a child is found to be delinquent solely
14 on the basis of Paragraph (3) of Subsection A of Section
15 32A-2-3 NMSA 1978, the court shall only enter a judgment
16 placing the child on probation or ordering restitution or
17 both; or

18 (4) if a child is found to be delinquent
19 solely on the basis of Paragraph (2), (3) or (4) of
20 Subsection A of Section 32A-2-3 NMSA 1978, the court may make
21 any disposition provided by this section and may enter its
22 judgment placing the child on probation and, as a condition
23 of probation, transfer custody of the child to the department
24 for a period not to exceed six months without further order
25 of the court; provided that this transfer shall not be made

1 unless the court first determines that the department is able
2 to provide or contract for adequate and appropriate treatment
3 for the child and that the treatment is likely to be
4 beneficial.

5 C. When the child is an Indian child, the Indian
6 child's cultural needs shall be considered in the
7 dispositional judgment and reasonable access to cultural
8 practices and traditional treatment shall be provided.

9 D. A child found to be delinquent shall not be
10 committed or transferred to a penal institution or other
11 facility used for the execution of sentences of persons
12 convicted of crimes.

13 E. Whenever the court vests legal custody in an
14 agency, institution or department, it shall transmit with the
15 dispositional judgment copies of the clinical reports,
16 predisposition study and report and other information it has
17 pertinent to the care and treatment of the child.

18 F. Prior to any child being placed in the custody
19 of the department, the department shall be provided with
20 reasonable oral or written notification and an opportunity to
21 be heard.

22 G. In addition to any other disposition pursuant
23 to Subsection B of this section, the court may make an abuse
24 or neglect report for investigation and proceedings as
25 provided for in the Abuse and Neglect Act. The report may be

1 made to a local law enforcement agency, the department or a
2 tribal law enforcement or social service agency for an Indian
3 child residing in Indian country.

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

1 counseling or rehabilitation program.

2 I. In addition to any other disposition pursuant
3 to this section or any other penalty provided by law, when a
4 child is adjudicated delinquent on the basis of Paragraph (6)
5 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall
6 perform the mandatory community service set forth in Section
7 30-15-1.1 NMSA 1978. When a child fails to completely perform
8 the mandatory community service, the name and address of the
9 child's parent or legal guardian shall be published in a
10 newspaper of general circulation, accompanied by a notice that
11 the parent or legal guardian is the parent or legal guardian
12 of a child adjudicated delinquent for committing graffiti."

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