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HOUSE BILL 376

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

JERRY LEE ALWIN

AN ACT

RELATING TO JUVENILE JUSTICE; CHANGING THE AGE DESIGNATIONS FOR  
SERIOUS YOUTHFUL OFFENDERS AND YOUTHFUL OFFENDERS; SPECIFYING  
CONDITIONS OF PAROLE FOR ADJUDICATED YOUTHFUL OFFENDERS;  
PROVIDING VICTIMS WITH NOTICE OF CHILDREN'S COURT PROCEEDINGS;  
ESTABLISHING PROCEDURES FOR COLLECTING DAMAGE CLAIMS; EXPANDING  
PARENTAL RESPONSIBILITY FOR CRIMES COMMITTED BY CHILDREN;  
AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-18-15.2 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 1, as amended) is amended to read:

"31-18-15.2. DEFINITIONS. --As used in the Criminal  
Sentencing Act:

A. "serious youthful offender" means an individual  
fourteen, fifteen, sixteen or seventeen years of age who is

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1 charged with and indicted or bound over for trial for first  
2 degree murder; and

3 B. "youthful offender" means a delinquent child  
4 subject to adult or juvenile sanctions who is:

5 (1) [~~fifteen to eighteen years of age at the~~  
6 ~~time of the offense and who is~~] adjudicated for at least one of  
7 the following offenses:

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

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

12 (c) kidnapping, as provided in Section  
13 30-4-1 NMSA 1978;

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

16 (e) aggravated battery upon a peace  
17 officer, as provided in Subsection C of Section 30-22-25 NMSA  
18 1978;

19 (f) shooting at a dwelling or occupied  
20 building or shooting at or from a motor vehicle, which results  
21 in great bodily harm to another person, as provided in Section  
22 30-3-8 NMSA 1978;

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

25 (h) criminal sexual penetration, as

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1 provided in Section 30-9-11 NMSA 1978;

2 (i) robbery, as provided in Section  
3 30-16-2 NMSA 1978;

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

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

8 (2) [~~fifteen to eighteen years of age at the~~  
9 ~~time of the offense and~~] adjudicated for any felony offense and  
10 who has had three prior, separate felony adjudications within a  
11 [~~two-year~~] three-year time period immediately preceding the  
12 instant offense. The felony adjudications relied upon as prior  
13 adjudications shall not have arisen out of the same transaction  
14 or occurrence or series of events related in time and location.  
15 Successful completion of consent decrees is not considered a  
16 prior adjudication for the purposes of this paragraph; or

17 (3) [~~fifteen years of age~~] thirteen years of  
18 age or younger and adjudicated for first degree murder, as  
19 provided in Section 30-2-1 NMSA 1978. "

20 Section 2. Section 32A-2-3 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 32, as amended by Laws 1995, Chapter 204,  
22 Section 2 and by Laws 1995, Chapter 205, Section 2 and also by  
23 Laws 1995, Chapter 206, Section 10) is amended to read:

24 "32A-2-3. DEFINITIONS. --As used in the Delinquency Act:

25 A. "delinquent act" means an act committed by a

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1 child that would be designated as a crime under the law if  
2 committed by an adult, including [~~but not limited to~~] the  
3 following offenses:

4 (1) pursuant to municipal traffic codes or the  
5 Motor Vehicle Code:

6 (a) any driving while under the influence  
7 of intoxicating liquor or drugs;

8 (b) any failure to stop in the event of  
9 an accident causing death, personal injury or damage to  
10 property;

11 (c) any unlawful taking of a vehicle or  
12 motor vehicle;

13 (d) any receiving or transferring of a  
14 stolen vehicle or motor vehicle;

15 (e) any homicide by vehicle;

16 (f) any injuring or tampering with a  
17 vehicle;

18 (g) any altering or changing of an engine  
19 number or other vehicle identification numbers;

20 (h) any altering or forging of a driver's  
21 license or permit or any making of a fictitious license or  
22 permit;

23 (i) reckless driving;

24 (j) driving with a suspended or revoked  
25 license; or

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- 1 (k) any offense punishable as a felony;
- 2 (2) buying, attempting to buy, receiving,
- 3 possessing or being served any alcoholic liquor or being present
- 4 in a licensed liquor establishment, other than a restaurant or a
- 5 licensed retail liquor establishment, except in the presence of
- 6 the child's parent, guardian, custodian or adult spouse. As
- 7 used in this paragraph, "restaurant" means any establishment
- 8 where meals are prepared and served primarily for on-premises
- 9 consumption and that has a dining room, a kitchen and the
- 10 employees necessary for preparing, cooking and serving meals.
- 11 "Restaurant" does not include establishments, as defined in
- 12 regulations promulgated by the director of the special
- 13 investigations division of the department of public safety, that
- 14 serve only hamburgers, sandwiches, salads and other fast foods;
- 15 (3) any felony violation of the provisions of
- 16 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
- 17 adopted by the state game commission that relate to the time,
- 18 extent, means or manner that game animals, birds or fish may be
- 19 hunted, taken, captured, killed, possessed, sold, purchased or
- 20 shipped and for which a fine may be imposed or a civil damage
- 21 awarded;
- 22 (4) any violation of Section 30-29-2 NMSA 1978,
- 23 regarding the illegal use of a glue, aerosol spray product or
- 24 other chemical substance;
- 25 (5) any violation of the Controlled Substances

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1 Act; ~~[or]~~

2 (6) escape from the custody of a law  
3 enforcement officer or a juvenile probation or parole officer or  
4 from any placement made by the department by a child who has  
5 been adjudicated a delinquent child; or

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

9 B. "delinquent child" means a child who has  
10 committed a delinquent act;

11 C. "delinquent offender" means a delinquent child  
12 who is subject to juvenile sanctions only and who is not a  
13 youthful offender or a serious youthful offender;

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

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

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

22 G. "restitution" means financial reimbursement by  
23 the child to the victim or community service imposed by the  
24 court and is limited to easily ascertainable damages for injury  
25 to or loss of property, actual expenses incurred for medical,

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1 psychiatric and psychological treatment for injury to a person  
2 and lost wages resulting from physical injury, which are a  
3 direct and proximate result of a delinquent act. "Restitution"  
4 does not include reimbursement for damages for mental anguish,  
5 pain and suffering or other intangible losses. As used in this  
6 subsection, "victim" means any person who is injured or suffers  
7 damage of any kind by an act that is the subject of a complaint  
8 or referral to law enforcement officers or juvenile probation  
9 authorities. Nothing contained in this definition limits or  
10 replaces the provisions of [~~Subsections A and B of~~] Section  
11 32A-2-27 NMSA 1978;

12 H. "serious youthful offender" means an individual  
13 fourteen, fifteen sixteen or seventeen years of age who is  
14 charged with and indicted or bound over for trial for first  
15 degree murder. A "serious youthful offender" is not a  
16 delinquent child as defined pursuant to the provisions of this  
17 section; and

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

20 (1) [~~fifteen to eighteen years of age at the~~  
21 ~~time of the offense and who is~~] adjudicated for at least one of  
22 the following offenses:

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

25 (b) assault with intent to commit a

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1 violent felony, as provided in Section 30-3-3 NMSA 1978;

2 (c) kidnapping, as provided in Section  
3 30-4-1 NMSA 1978;

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

6 (e) aggravated battery upon a peace  
7 officer, as provided in Subsection C of Section 30-22-25 NMSA  
8 1978;

9 [~~(e)~~] (f) shooting at a dwelling or  
10 occupied building or shooting at or from a motor vehicle, which  
11 results in great bodily harm to another person, as provided in  
12 Section 30-3-8 NMSA 1978;

13 [~~(f)~~] (g) dangerous use of explosives, as  
14 provided in Section 30-7-5 NMSA 1978;

15 [~~(g)~~] (h) criminal sexual penetration, as  
16 provided in Section 30-9-11 NMSA 1978;

17 [~~(h)~~] (i) robbery, as provided in Section  
18 30-16-2 NMSA 1978;

19 [~~(i)~~] (j) aggravated burglary, as  
20 provided in Section 30-16-4 NMSA 1978; or

21 [~~(j)~~] (k) aggravated arson, as provided  
22 in Section 30-17-6 NMSA 1978;

23 (2) [~~fifteen to eighteen years of age at the~~  
24 ~~time of the offense and~~] adjudicated for any felony offense and  
25 who has had three prior, separate felony adjudications within a

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1 three-year time period immediately preceding the instant  
2 offense. The felony adjudications relied upon as prior  
3 adjudications shall not have arisen out of the same transaction  
4 or occurrence or series of events related in time and location.  
5 Successful completion of consent decrees are not considered a  
6 prior adjudication for the purposes of this paragraph; or  
7 (3) [~~fifteen years of age~~] thirteen years of  
8 age or younger and adjudicated for first degree murder, as  
9 provided in Section 30-2-1 NMSA 1978. "

10 Section 3. Section 32A-2-13 NMSA 1978 (being Laws 1993,  
11 Chapter 77, Section 42) is amended to read:

12 "32A-2-13. DETENTION HEARING REQUIRED ON DETAINED  
13 CHILDREN-- PROBABLE CAUSE DETERMINATION-- COURT DETERMINATION--  
14 DISPOSITION. --

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

17 (1) a judicial determination of probable cause  
18 shall be made by a judge or special master or magistrate within  
19 [~~forty-eight~~] seventy-two hours, including Saturdays, Sundays  
20 and legal holidays, except for children taken into custody under  
21 an arrest warrant pursuant to the Children's Court Rules and  
22 Forms. A statement by a law enforcement officer, which shall  
23 include the charges, may be the basis of a probable cause  
24 determination. The probable cause determination shall be  
25 nonadversarial, may be held in the absence of the child and

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1 counsel and may be conducted by telephone. If the court finds  
2 no probable cause to believe the child committed an offense, the  
3 child shall be released;

4 (2) a petition shall be filed within [~~forty-~~  
5 ~~eight~~] seventy-two hours from the time the child is taken into  
6 custody, excluding Saturdays, Sundays and legal holidays, and if  
7 not filed within the stated time, the child shall be released;  
8 and

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

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

21 C. Notice of the detention hearing, either oral or  
22 written, stating the time, place and purpose of the hearing  
23 shall be given by the person designated by the court to the  
24 child's parents, guardian or custodian, if they can be found,  
25 and to the child. The department shall be provided with

1 reasonable oral or written notification and an opportunity to be  
2 heard. At any hearing held pursuant to this subsection, the  
3 department may appear as a party.

4 D. At the commencement of the detention hearing, the  
5 judge or special master shall advise the parties of their basic  
6 rights provided in the Children's Code and shall appoint  
7 counsel, guardians and custodians, if appropriate.

8 E. If the judge or special master finds that the  
9 child's detention is appropriate under the criteria established  
10 by the Children's Code, the judge or special master shall order  
11 detention in an appropriate facility in accordance with the  
12 Children's Code.

13 F. If the judge or special master finds that  
14 detention of the child is not appropriate under the criteria  
15 established by the Children's Code, the judge or special master  
16 shall order the release of the child, but, in so doing, may  
17 order one or more of the following conditions:

18 (1) place the child in the custody of a parent,  
19 guardian or custodian or under the supervision of an agency  
20 agreeing to supervise the child;

21 (2) place restrictions on the child's travel,  
22 association with other persons or place of abode during the  
23 period of the child's release; or

24 (3) impose any other condition deemed  
25 reasonably necessary and consistent with the criteria for

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1     detaining children established by the Children's Code, including  
2     a condition requiring that the child return to custody as  
3     required.

4             G. An order releasing a child on any conditions  
5     specified in this section may at any time be amended to impose  
6     additional or different conditions of release or to return the  
7     child to custody or detention for failure to conform to the  
8     conditions originally imposed.

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

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

19            Section 4. Section 32A-2-18 NMSA 1978 (being Laws 1993,  
20    Chapter 77, Section 47) is amended to read:

21            "32A-2-18. JUDGMENT--NONCRIMINAL NATURE--  
22    ~~[NONADMISSIBILITY]~~ NONADMISSIBILITY--CRIMINAL NATURE--  
23    ADMISSIBILITY. --

24            A. The court shall enter a judgment setting forth  
25    the court's findings and disposition in the proceeding. A

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

13 B. If a judgment resulting from a youthful offender  
14 or serious youthful offender proceeding under the Delinquency  
15 Act results in an adult sentence, any evidence given in a  
16 hearing in court during the proceeding shall be admissible as  
17 evidence against the youthful offender or serious youthful  
18 offender in any case or proceeding in any other court whether  
19 before or after reaching the age of majority, including habitual  
20 offender proceedings as described in Sections 31-18-17 through  
21 31-18-20 NMSA 1978.

22 C. If a judgment on a proceeding under the  
23 Delinquency Act results in an adult sentence, the determination  
24 of guilt at trial becomes a conviction for purposes of the  
25 Criminal Code. "

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1           Section 5.   Section 32A-2-19 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 48, as amended by Laws 1995, Chapter 204,  
3 Section 3 and also by Laws 1995, Chapter 206, Section 13) is  
4 amended to read:

5           "32A-2-19.   DISPOSITION OF AN ADJUDICATED DELINQUENT  
6 OFFENDER. --

7           A.   At the conclusion of the dispositional hearing,  
8 the court may make and include in the dispositional judgment its  
9 findings on the following:

10                   (1)   the interaction and interrelationship of  
11 the child with the child's ~~[parent]~~ parents, siblings and any  
12 other person who may significantly affect the child's best  
13 interests;

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

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

18                   (4)   the wishes of the child as to his  
19 custodian;

20                   (5)   the wishes of the child's ~~[parent]~~ parents  
21 as to the child's custody;

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

25                   (7)   the availability of services recommended in

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1 the predisposition report; and

2 (8) the ability of the parents to care for the  
3 child in the home.

4 B. If a child is found to be delinquent, the court  
5 may impose a fine not to exceed the fine that could be imposed  
6 if the child were an adult and may enter its judgment making any  
7 of the following dispositions for the supervision, care and  
8 rehabilitation of the child:

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

12 (2) transfer legal custody to the department or  
13 an agency responsible for the care and rehabilitation of  
14 delinquent children, which shall receive the child at a facility  
15 designated by the secretary of the department as a juvenile  
16 reception facility. The department shall thereafter determine  
17 the appropriate placement, supervision and rehabilitation  
18 program for the child. The judge may include recommendations  
19 for placement of the child. Commitments are subject to  
20 limitations and modifications set forth in Section 32A-2-23 NMSA  
21 1978. The types of commitments include:

22 (a) a short-term commitment of one year;  
23 (b) a long-term commitment for no more  
24 than two years in a long-term facility for the care and  
25 rehabilitation of adjudicated delinquent children; or

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1 (c) if the child is a youthful offender,  
2 a commitment to age twenty-one, unless sooner discharged  
3 pursuant to the provisions of Section 32A-2-23 NMSA 1978, to be  
4 followed by a mandatory parole period of not less than one year  
5 following discharge or release from a commitment. An additional  
6 period of parole beyond the mandatory one-year period may be  
7 assigned by the juvenile parole board, based upon the board's  
8 consideration of the following factors: 1) the seriousness of  
9 the offense; 2) whether the offense was committed in an  
10 aggressive, violent, premeditated or willful manner; 3) whether  
11 the offense was against persons or against property, greater  
12 weight being given to offenses against persons, especially if  
13 personal injury resulted; 4) the sophistication and maturity of  
14 the child; 5) the record and previous history of the child; 6)  
15 the prospects for adequate protection of the public and the  
16 likelihood of rehabilitation of the child by the use of  
17 procedures, services and facilities currently available; 7) the  
18 child's prospects for successfully complying with the terms and  
19 conditions of parole; 8) the child's behavior during the period  
20 of his commitment; 9) the child's demeanor and attitude during  
21 his juvenile parole board hearings; and 10) any other relevant  
22 factor, provided that factor is stated on the record;

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

25 (4) place the child in a local detention



1 facility that has been certified in accordance with the  
2 provisions of Section 32A-2-4 NMSA 1978 for a period not to  
3 exceed fifteen days within a three hundred sixty-five-day time  
4 period;

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

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

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

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1           D. No child found to be delinquent shall be  
2 committed or transferred to a penal institution or other  
3 facility used for the execution of sentences of persons  
4 convicted of crimes.

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

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

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

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

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

19 Section 6. Section 32A-2-20 NMSA 1978 (being Laws 1993,  
20 Chapter 77, Section 49, as amended) is amended to read:

21 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

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

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

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

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

15 (2) find that the child is not eligible for  
16 commitment to an institution for the developmentally disabled or  
17 mentally disordered in order to invoke an adult sentence.

18 C. In ~~making the findings set forth in Subsection B~~  
19 ~~of this section~~ determining whether to invoke an adult  
20 sentence, the judge shall consider the following factors:

21 (1) the seriousness of the alleged offense;

22 (2) whether the alleged offense was committed  
23 in an aggressive, violent, premeditated or willful manner;

24 (3) whether the alleged offense was against  
25 persons or against property, greater weight being given to

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1 offenses against persons, especially if personal injury  
2 resulted;

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

7 (5) the record and previous history of the  
8 child;

9 (6) the prospects for adequate protection of  
10 the public; [~~and~~]

11 (7) the likelihood of [~~reasonable~~]  
12 rehabilitation of the child by the use of procedures, services  
13 and facilities currently available; and

14 [~~(7)~~] (8) any other relevant factor, provided  
15 that factor is stated on the record.

16 D. If the court invokes an adult sentence, the court  
17 may sentence the child to less than, but shall not exceed, the  
18 mandatory adult sentence. A youthful offender given an adult  
19 sentence shall be treated as an adult offender and shall be  
20 transferred to the legal custody of an agency responsible for  
21 incarceration of persons sentenced to adult sentences. This  
22 transfer terminates the jurisdiction of the court over the child  
23 with respect to the delinquent acts alleged in the petition.

24 E. If a juvenile disposition is appropriate, the  
25 court shall follow the provisions set forth in Section

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1 32A-2-19 NMSA 1978. A youthful offender may be subject to  
2 extended commitment in the care of the department until the age  
3 of twenty-one, pursuant to the provisions of Section 32A-2-23  
4 NMSA 1978.

5 F. A fourteen, fifteen, sixteen or seventeen year  
6 old child charged with first degree murder, but convicted of an  
7 offense less than first degree murder, is subject to the  
8 dispositions set forth in this section."

9 Section 7. Section 32A-2-23 NMSA 1978 (being Laws 1993,  
10 Chapter 77, Section 52, as amended) is amended to read:

11 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--  
12 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

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

20 (1) the juvenile parole board pursuant to the  
21 Juvenile Parole Board Act has the exclusive power to parole or  
22 release the child;

23 (2) the supervision of a child after release  
24 under Paragraph (1) of this subsection may be conducted by the  
25 juvenile parole board in conjunction with the department or any

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1 other suitable state agency or under any contractual  
2 arrangements the juvenile parole board deems appropriate; and

3 (3) the period of time a child absconds from  
4 parole or probation supervision shall toll all time limits for  
5 the requirement of filing a petition to revoke probation or  
6 parole and shall toll the computation of the period of probation  
7 or parole supervision pursuant to the provisions of the  
8 Delinquency Act.

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

12 C. A ~~[child]~~ delinquent offender shall be released  
13 by an agency and probation or supervision shall be terminated by  
14 juvenile probation and parole services or the agency providing  
15 supervision when it appears that the purpose of the order has  
16 been achieved before the expiration of the period of the  
17 judgment. A youthful offender may be released from department  
18 custody only by the juvenile parole board. A release or  
19 termination and the reasons therefor shall be reported promptly  
20 to the court in writing by the releasing authority.

21 D. Prior to the expiration of a long-term  
22 commitment, as provided for in Section 32A-2-19 NMSA 1978, the  
23 court may extend the judgment for additional periods of one year  
24 until the child reaches the age of twenty-one if the court finds  
25 that the extension is necessary to safeguard the welfare of the

1 child or the public interest.

2 E. Prior to the expiration of a judgment of  
3 probation, the court may extend the judgment for an additional  
4 period of one year until the child reaches the age of twenty-one  
5 if the court finds that the extension is necessary to protect  
6 the community or to safeguard the welfare of the child.

7 F. The court may dismiss a motion if it finds after  
8 preliminary investigation that the motion is without substance.  
9 If the court is of the opinion that the matter should be  
10 reviewed, it may, upon notice to all necessary parties,  
11 including a victim of an offense for which a child was  
12 adjudicated as a delinquent offender or a youthful offender,  
13 proceed to a hearing in the manner provided for hearings on  
14 petitions alleging delinquency. The court may terminate a  
15 judgment if it finds that the child is no longer in need of  
16 care, supervision or rehabilitation or it may enter a judgment  
17 extending or modifying the original judgment if it finds that  
18 action necessary to safeguard the child or the public interest.

19 G. A child may make a motion to modify a children's  
20 court or adult disposition within thirty days of the judge's  
21 decision. If the court is of the opinion that the matter should  
22 be reviewed, it may, upon notice to all necessary parties,  
23 including a victim of an offense for which a child was  
24 adjudicated as a delinquent offender or a youthful offender,  
25 proceed to a hearing in the manner provided for hearings on



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1 petitions alleging delinquency. "

2 Section 8. Section 32A-2-26 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 55) is amended to read:

4 "32A-2-26. SEALING OF RECORDS. --

5 A. On motion by or on behalf of an individual who  
6 has been the subject of a delinquency petition or on the court's  
7 own motion, the court shall vacate its findings, orders and  
8 judgments on the petition and order the legal and social files  
9 and records of the court, probation services and any other  
10 agency in the case sealed [and]. If requested in the motion,  
11 the court shall also order law enforcement files and records  
12 sealed. An individual adjudicated as a serious youthful  
13 offender or a youthful offender may not file a motion with the  
14 court for the purpose of sealing records or files. An order  
15 sealing records and files shall be entered if the court finds  
16 that:

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

21 (2) the individual has not, within the two  
22 years immediately prior to filing the motion, been convicted of  
23 a felony or of a misdemeanor involving moral turpitude or been  
24 found delinquent by a court and no proceeding is pending seeking  
25 such a conviction or finding.

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

- 3                   (1) the children's court attorney;  
4                   (2) the authority granting the release;  
5                   (3) the law enforcement officer, department and  
6 central depository having custody of the law enforcement files  
7 and records if those records are included in the motion; [~~and~~]  
8                   (4) any other agency having custody of records  
9 or files subject to the sealing order; and  
10                   (5) a victim of an offense for which a child  
11 was adjudicated as a delinquent offender.

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

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

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

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

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

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

14 Section 9. Section 32A-2-27 NMSA 1978 (being Laws 1993,  
15 Chapter 77, Section 56) is amended to read:

16 "32A-2-27. INJURY TO PERSON OR DESTRUCTION OF PROPERTY--  
17 LIABILITY--COSTS AND ATTORNEYS' FEES-- RESTITUTION. --

18 A. Any person may recover damages [~~not to exceed~~  
19 ~~four thousand dollars (\$4,000) in a civil action in a court or~~  
20 ~~tribunal of competent jurisdiction]~~ from the parent, guardian or  
21 custodian having custody and control of a child when the child  
22 has maliciously or willfully injured a person or damaged,  
23 destroyed or deprived use of property, real or personal,  
24 belonging to the person bringing the action.

25 B. A person's damage claim may be filed as a civil

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1 action in a court of competent jurisdiction or may be filed in  
2 the court that has jurisdiction over the disposition of the  
3 child who allegedly caused the damages. When a person's damage  
4 claim is filed in the court that has jurisdiction over the  
5 disposition of the child who allegedly caused the damages, the  
6 court may award damages to the person regardless of whether the  
7 child is adjudicated as a delinquent offender or a youthful  
8 offender. A judgment for damages, issued by the court that has  
9 disposition over the child who allegedly caused the damages,  
10 shall be enforced in the same manner as a judgment for damages  
11 resulting from a civil action in a court of competent  
12 jurisdiction.

13 [B-] C. Recovery of damages under this section is  
14 limited to the actual damages proved in the action, [not to  
15 exceed four thousand dollars (\$4,000)] taxable court costs and,  
16 in the discretion of the court, reasonable attorneys' fees to be  
17 fixed by the court or tribunal.

18 [C-] D. Nothing contained in this section limits the  
19 discretion of the court to issue an order requiring damages or  
20 restitution to be paid by the child when the child has been  
21 found to be within the provisions of the Delinquency Act.

22 [D-] E. Nothing contained in this section shall be  
23 construed so as to impute liability to any foster parent."

24 Section 10. Section 32A-2-28 NMSA 1978 (being Laws 1993,  
25 Chapter 77, Section 57) is amended to read:

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1 "32A-2-28. PARENTAL RESPONSIBILITY. --

2 A. In any complaint alleging delinquency or any  
3 petition seeking a youthful offender disposition, a parent of  
4 the child alleged to be delinquent [~~may~~] or a youthful offender  
5 shall be made a party in the complaint or petition, unless the  
6 court finds that making a parent a party in the petition would  
7 be detrimental to the child's rehabilitation program. If a  
8 parent is made a party and if a child is adjudicated a  
9 delinquent or youthful offender, the court may order the parent  
10 or parents to submit to counseling, participate in any  
11 probation, [~~or other~~] treatment program, rehabilitation program  
12 or other program ordered by the court and, if the child is  
13 committed for institutionalization, participate in any  
14 institutional treatment or counseling program, including  
15 attendance at the site of the institution. The court shall  
16 order the [~~parent~~] parents to support the child committed for  
17 institutionalization, placed on supervised probation or parole  
18 or placed in a rehabilitation or treatment program by paying the  
19 reasonable costs of support, maintenance, [~~and~~] treatment or  
20 supervised probation or parole of the child that the parent is  
21 financially able to pay. The court may use the child support  
22 guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate  
23 a reasonable payment.

24 B. A child shall be responsible for payments that  
25 defray the reasonable costs of his support, maintenance,

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1 treatment or supervised probation or parole, following the date  
2 that he is emancipated or reaches eighteen years of age. The  
3 court may order such payments by the child.

4 C. Payments by a child or his parent that defray the  
5 reasonable costs of the child's support, maintenance, treatment  
6 or supervised probation or parole shall be made to the juvenile  
7 justice division of the department. The department is  
8 responsible for collection of the payments.

9 ~~[B.]~~ D. If a fine is imposed against a child by a  
10 court of this state, the ~~[parent]~~ parents of the child ~~[is not]~~  
11 are liable to pay the fine unless the court finds that the  
12 parents adequately supervised the child.

13 ~~[C.]~~ E. The court may enforce any of its orders  
14 issued pursuant to this section by use of its contempt power."

15 Section 11. Section 32A-2-32 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 61) is amended to read:

17 "32A-2-32. CONFIDENTIALITY--RECORDS. --

18 A. All social records, including diagnostic  
19 evaluation, psychiatric reports, medical reports, social studies  
20 reports, pre-parole reports and supervision histories obtained  
21 by the juvenile probation office, parole officers and juvenile  
22 parole board or in possession of the department, are privileged  
23 and shall not be disclosed directly or indirectly to the public.  
24 For the purposes of this section, names and referral histories  
25 are not privileged and may be disclosed to the public.

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- 1                   B. The records described in Subsection A of this  
2 section shall be open to inspection only by:
- 3                   (1) court personnel;
- 4                   (2) court-appointed special advocates;
- 5                   (3) the child's guardian ad litem;
- 6                   (4) department personnel;
- 7                   (5) any local substitute care review board or  
8 any agency contracted to implement local substitute care review  
9 boards;
- 10                  (6) corrections department personnel;
- 11                  (7) law enforcement officials;
- 12                  (8) district attorneys;
- 13                  (9) any state government social services agency  
14 in any state;
- 15                  (10) those persons or entities of a child's  
16 Indian tribe specifically authorized to inspect such records  
17 pursuant to the federal Indian Child Welfare Act of 1978 or any  
18 regulations promulgated thereunder;
- 19                  (11) tribal juvenile justice system and social  
20 service representatives;
- 21                  (12) a foster parent, if the records are those  
22 of a child currently placed with that foster parent or of a  
23 child being considered for placement with that foster parent  
24 when the records concern the social, medical, psychological or  
25 educational needs of the child;

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

3 (14) health care or mental health professionals  
4 involved in the evaluation or treatment of the child, the  
5 child's parents, guardians or custodian or other family members;

6 (15) representatives of the protection and  
7 advocacy system, pursuant to the provisions of the federal  
8 Developmental Disabilities Assistance and Bill of Rights Act and  
9 the federal Protection and Advocacy for Mentally Ill Individuals  
10 Amendments Act of 1991; and

11 (16) any other person or entity, by order of  
12 the court, having a legitimate interest in the case or the work  
13 of the court.

14 C. Whoever intentionally and unlawfully releases any  
15 information or records closed to the public pursuant to this  
16 section or releases or makes other unlawful use of records in  
17 violation of this section is guilty of a petty misdemeanor. "

18 Section 12. EFFECTIVE DATE. --The effective date of the  
19 provisions of this act is July 1, 1996.