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HOUSE BILL 540

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Patricio Ruiloba

AN ACT

RELATING TO JUVENILE JUSTICE; REVISING DEFINITIONS AND
PROCEDURES IN THE DELINQUENCY ACT; REVISING DUTIES OF THE
CHILDREN, YOUTH AND FAMILIES DEPARTMENT.

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

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

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

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

(1) any of the following offenses pursuant to
municipal traffic codes or the Motor Vehicle Code:

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

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1 (b) failure to stop in the event of an
2 accident causing death, personal injury or damage to property;

3 (c) unlawful taking of a vehicle or
4 motor vehicle;

5 (d) receiving or transferring of a
6 stolen vehicle or motor vehicle;

7 (e) homicide by vehicle;

8 (f) injuring or tampering with a
9 vehicle;

10 (g) altering or changing of an engine
11 number or other vehicle identification numbers;

12 (h) altering or forging of a driver's
13 license or permit or any making of a fictitious license or
14 permit;

15 (i) reckless driving;

16 (j) driving with a suspended or revoked
17 license; or

18 (k) an offense punishable as a felony;

19 (2) buying, attempting to buy, receiving,
20 possessing or being served any alcoholic liquor or being
21 present in a licensed liquor establishment, other than a
22 restaurant or a licensed retail liquor establishment, except in
23 the presence of the child's parent, guardian, custodian or
24 adult spouse. As used in this paragraph, "restaurant":

25 (a) means an establishment where meals

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1 are prepared and served primarily for on-premises consumption
2 and that has a dining room, a kitchen and the employees
3 necessary for preparing, cooking and serving meals
4 ["~~Restaurant~~"]; and

5 (b) does not include an establishment,
6 as defined in regulations promulgated by the director of the
7 special investigations [~~division~~] unit of the department of
8 public safety, that serves only hamburgers, sandwiches, salads
9 [~~and~~] or other fast foods;

10 (3) a violation of Section 30-29-2 NMSA 1978,
11 regarding the illegal use of a glue, aerosol spray product or
12 other chemical substance;

13 (4) a violation of the Controlled Substances
14 Act;

15 (5) escape from the custody of a law
16 enforcement officer or a juvenile probation [~~or parole~~] officer
17 or from any placement made by the department by a child who has
18 been adjudicated a delinquent child;

19 (6) a violation of Section 30-15-1.1 NMSA 1978
20 regarding unauthorized graffiti on personal or real property;
21 or

22 (7) a violation of an order of protection
23 issued pursuant to the provisions of the Family Violence
24 Protection Act;

25 B. "delinquent child" means a child ten years of

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1 age or older who has committed a delinquent act;

2 C. "delinquent offender" means a delinquent child
3 who is subject to juvenile sanctions only and who is not a
4 youthful offender or a serious youthful offender;

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

9 E. "diversion" means a program, service or
10 intervention strategy that:

11 (1) may include requirements or conditions
12 that a child must meet to successfully complete diversion; and

13 (2) serves as an alternative to the filing of
14 a formal petition in connection with an allegation of
15 delinquency against the child;

16 [~~E.~~] F. "felony" means an act that would be a
17 felony if committed by an adult;

18 [~~F.~~] G. "misdemeanor" means an act that would be a
19 misdemeanor or petty misdemeanor if committed by an adult;

20 [~~G.~~] H. "restitution" means financial reimbursement
21 by the child to the victim or community service imposed by the
22 court and is limited to easily ascertainable damages for injury
23 to or loss of property, actual expenses incurred for medical,
24 psychiatric and psychological treatment for injury to a person
25 and lost wages resulting from physical injury, which are a

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

10 I. "risk assessment":

11 (1) means an evaluation performed using the
12 validated risk assessment tool adopted by the department that
13 uses a currently accepted standard of assessment to determine
14 the appropriate disposition of a child's case and the
15 appropriate level, length and type of supervision and services
16 for a child; and

17 (2) does not mean a "detention risk assessment
18 instrument";

19 J. "risk screening" means an evaluation performed
20 using the validated risk screening tool adopted by the
21 department that uses a currently accepted standard of
22 assessment to determine whether a child who is the subject of a
23 complaint alleging delinquency is eligible for diversion;

24 ~~[H.]~~ K. "serious youthful offender" means an
25 individual fifteen to eighteen years of age who is charged with

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1 and indicted or bound over for trial for first degree murder.
2 A "serious youthful offender" is not a delinquent child as
3 defined pursuant to the provisions of this section;

4 L. "status offense" means any offense or violation
5 not defined as a "delinquent act" in Subsection A of this
6 section;

7 [~~F.~~] M. "supervised release" means the release of a
8 juvenile, whose term of commitment has not expired, from a
9 facility for the care and rehabilitation of adjudicated
10 delinquent children, with specified conditions to protect
11 public safety and promote successful transition and
12 reintegration into the community. A juvenile on supervised
13 release is subject to monitoring by the department until the
14 term of commitment has expired and may be returned to custody
15 for violating conditions of release; [~~and~~]

16 N. "technical violation" means an act that violates
17 the terms or conditions imposed as part of a child's juvenile
18 probation or supervised release but that does not constitute a
19 new delinquent act; and

20 [~~J.~~] O. "youthful offender" means a delinquent
21 child subject to adult or juvenile sanctions who is:

22 (1) fourteen to eighteen years of age at the
23 time of the offense and who is adjudicated for at least one of
24 the following offenses:

25 (a) second degree murder, as provided in

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1 Section 30-2-1 NMSA 1978;

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

4 (c) kidnapping, as provided in Section
5 30-4-1 NMSA 1978;

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

8 (e) aggravated battery against a
9 household member, as provided in Subsection C of Section
10 30-3-16 NMSA 1978;

11 (f) aggravated battery upon a peace
12 officer, as provided in Subsection C of Section 30-22-25 NMSA
13 1978;

14 (g) shooting at a dwelling or occupied
15 building or shooting at or from a motor vehicle, as provided in
16 Section 30-3-8 NMSA 1978;

17 (h) dangerous use of explosives, as
18 provided in Section 30-7-5 NMSA 1978;

19 (i) criminal sexual penetration, as
20 provided in Section 30-9-11 NMSA 1978;

21 (j) robbery, as provided in Section
22 30-16-2 NMSA 1978;

23 (k) aggravated burglary, as provided in
24 Section 30-16-4 NMSA 1978;

25 (l) aggravated arson, as provided in

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1 Section 30-17-6 NMSA 1978; or

2 (m) abuse of a child that results in
3 great bodily harm or death to the child, as provided in Section
4 30-6-1 NMSA 1978;

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

15 (3) fourteen years of age and who is
16 adjudicated for first degree murder, as provided in Section
17 30-2-1 NMSA 1978."

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

20 "32A-2-5. JUVENILE PROBATION [~~AND PAROLE~~] SERVICES--
21 ESTABLISHMENT--JUVENILE PROBATION [~~AND PAROLE~~] OFFICERS--POWERS
22 AND DUTIES.--

23 A. Juvenile probation [~~and parole~~] services shall
24 be provided by the department.

25 B. [~~To carry out the objectives and provisions of~~

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1 ~~the Delinquency Act, but subject to its limitations]~~ The
2 department ~~[has the power and duty to]~~ shall:

3 (1) receive and examine complaints and
4 allegations that a child is a delinquent child for the purpose
5 of considering ~~[beginning]~~ whether to start a proceeding
6 pursuant to the ~~[provisions of the]~~ Delinquency Act;

7 (2) as appropriate, make case referrals for
8 services ~~[as appear appropriate or desirable]~~;

9 (3) conduct a risk assessment for each child
10 who is the subject of a complaint alleging delinquency and of a
11 related petition and provide the results of the assessment and
12 an according recommended level and length of supervision to the
13 parties of a case and to the court, in accordance with Section
14 32A-2-17 NMSA 1978;

15 ~~[(3)]~~ (4) make reports and recommendations to
16 the court on the results of predisposition studies, screenings
17 and assessments ~~[and submit reports and recommendations to the~~
18 ~~court]~~;

19 ~~[(4)]~~ (5) supervise and assist a child placed
20 on probation or supervised release or under supervision by
21 court order or by the department;

22 ~~[(5)]~~ (6) give notice to any individual who
23 has been the subject of a petition filed pursuant to the
24 provisions of the Delinquency Act of the sealing of that
25 individual's records in accordance with that act;

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1 [~~(6)~~] (7) informally dispose of up to three
2 referrals for misdemeanor [~~charges brought against~~] offenses
3 made for a child within two years;

4 [~~(7)~~] (8) give notice to the children's court
5 attorney of the receipt of any felony complaint and of any
6 recommended adjustment of [~~such~~] that felony complaint;

7 [~~(8)~~] (9) identify an Indian child for the
8 purpose of contacting the Indian child's tribe in delinquency
9 cases; and

10 [~~(9)~~] (10) contact an Indian child's tribe to
11 consult and exchange information for the purpose of preparing a
12 predisposition report when commitment or placement of an Indian
13 child is contemplated or has been ordered and indicate in the
14 report the name of the person contacted in the Indian child's
15 tribe and the results of the contact.

16 C. A juvenile probation [~~and parole~~] officer does
17 not have the powers of a law enforcement officer. A juvenile
18 probation [~~and parole~~] officer may [~~take~~] authorize the taking
19 into physical custody and [~~place~~] placing in detention, subject
20 to application of a detention risk assessment instrument, a
21 child who is under supervision as a delinquent child or a child
22 who is under supervision as a youthful offender when there is
23 reasonable cause to believe [~~that the child has violated the~~
24 ~~conditions of the child's probation~~] either that the child
25 poses a substantial risk of harm to the child's self or others

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

6 SECTION 3. Section 32A-2-7 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 36, as amended) is amended to read:

8 "32A-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--
9 DIVERSION--NOTICE--TIME WAIVER.--

10 A. Complaints alleging delinquency shall be
11 referred to juvenile probation services, [~~which~~] and probation
12 services shall conduct a preliminary inquiry to determine the
13 best interests of the child and of the public with regard to
14 any action to be taken.

15 B. During the preliminary inquiry [~~on a delinquency~~
16 ~~complaint~~]:

17 (1) the matter may be referred to another
18 appropriate agency and conferences may be conducted for the
19 purpose of effecting adjustments or agreements that will
20 obviate the [~~necessity for filing~~] need to file a petition; and

21 (2) juvenile probation services may conduct a
22 risk screening to inform decisions about whether participation
23 in diversion or community-based services would be appropriate
24 for the child.

25 C. At the commencement of the preliminary inquiry,

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1 the parties shall be advised of their basic rights pursuant to
2 Section 32A-2-14 NMSA 1978, and ~~[no party may]~~ a party shall
3 not be compelled to appear at any conference, to produce any
4 papers or to visit any place. The child shall be informed of
5 the child's right to remain silent. The preliminary inquiry
6 shall be completed within the time limits set forth in the
7 Children's Court Rules.

8 ~~[G-]~~ D. Prior to a preliminary inquiry being
9 conducted with a child who is detained, the child's parent,
10 guardian or custodian or the child's attorney shall be given
11 reasonable notice by the juvenile probation ~~[and parole]~~
12 officer and an opportunity to be present at the preliminary
13 inquiry. If a child is not detained, the preliminary inquiry
14 shall be conducted within thirty days of receipt of the
15 referral from law enforcement. The thirty-day time period may
16 be extended upon a determination by the department that an
17 extension is necessary to conduct a thorough preliminary
18 inquiry and that the extension is not prejudicial to the best
19 interests of the child.

20 ~~[D-]~~ E. When a child is in detention or custody and
21 the children's court attorney does not file a petition within
22 the time limits authorized by the Children's Court Rules, the
23 child shall be released immediately. If a child is not
24 detained and a determination is made to file a petition, the
25 petition shall be filed within sixty days of completion of the

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1 preliminary inquiry, unless a motion is granted to extend the
2 time limit for good cause shown. If a child is not in custody
3 or detention, a petition shall not be dismissed for failure to
4 comply with the time limit set forth in this subsection unless
5 there is a showing of prejudice to the child.

6 ~~[E-]~~ F. After completion of the preliminary inquiry
7 on a delinquency complaint involving a misdemeanor, juvenile
8 probation services:

9 (1) may:

10 (a) notify the children's court attorney
11 and recommend an appropriate disposition for the case;

12 (b) conclude that no further action on
13 the case will be taken; or

14 (c) refer the case to appropriate
15 diversion or community-based services; and

16 (2) if the child has been referred for three
17 or more prior misdemeanors within two years of the instant
18 offense [~~probation services~~]:

19 (a) shall notify the children's court
20 attorney and provide the attorney with the results of the
21 child's risk screening; and

22 (b) may recommend the child's
23 participation in preprosecution diversion or an appropriate
24 disposition for the case.

25 ~~[F. probation services shall notify the children's~~

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1 ~~court attorney of the receipt of]~~

2 G. With respect to any complaint [involving]
3 received that involves an act that constitutes a felony under
4 the applicable criminal law, [~~probation services shall also~~]
5 juvenile probation services:

6 (1) shall:

7 (a) notify the children's court attorney
8 of the receipt of the complaint;

9 (b) provide the attorney with the
10 results of the child's risk screening; and

11 (c) recommend a disposition to the
12 children's court attorney; and

13 (2) may recommend participation in
14 preprosecution diversion.

15 [~~G.~~] H. The child, through counsel, and the
16 children's court attorney may agree, without judicial approval,
17 to a waiver of time limitations imposed after a petition is
18 filed. A time waiver defers adjudication of the charges. The
19 children's court attorney may place restrictions on a child's
20 behavior as a condition of a time waiver. If the child
21 completes the agreed upon conditions and no new charges are
22 filed against the child, the pending petition shall be
23 dismissed. If the children's court attorney files a new
24 petition against the child, the children's court attorney may
25 proceed on both the original petition and the new charges. The

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1 department shall become a party if juvenile probation services
2 are requested as a condition of the time waiver."

3 SECTION 4. Section 32A-2-10 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 39, as amended) is amended to read:

5 "32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

6 A. A person taking a child into custody shall, with
7 all reasonable speed:

8 (1) release the child to the child's parent,
9 guardian or custodian or an adult authorized by the child's
10 parent, guardian or custodian and issue verbal counsel or
11 warning as may be appropriate;

12 (2) release the child to the child's parent,
13 guardian or custodian or an adult authorized to sign on behalf
14 of the child's parent, guardian or custodian upon written
15 promise to bring the child before the court when requested by
16 the court. If the parent, guardian or custodian or an adult
17 authorized to sign on behalf of the child's parent, guardian or
18 custodian fails, when requested, to bring the child before the
19 court as promised, the court may order the child taken into
20 custody and brought before the court;

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

23 (4) deliver the child to a medical facility,
24 if available, if the child is believed to be suffering from a
25 serious illness that requires prompt treatment or prompt

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1 diagnosis;

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

8 (6) deliver the child to a center or
9 organization that the court or the department recognizes as an
10 alternative to secure detention.

11 B. When an alleged delinquent child is delivered to
12 a place of detention or a center or organization recognized as
13 an alternative to secure detention as provided in Section
14 32A-2-12 NMSA 1978, only a department employee or a trained
15 county detention professional designated by the department may
16 place the child in detention or with a center or organization
17 recognized as an alternative to secure detention in accordance
18 with the criteria for detention set forth in Section 32A-2-11
19 NMSA 1978. If the criteria for detention of an alleged
20 delinquent child are not met, the child shall be released from
21 custody.

22 C. A child under the age of [~~eleven~~] twelve shall
23 not be held in detention. If a child under the age of [~~eleven~~]
24 twelve poses a substantial risk of harm to the child's self or
25 others, a peace officer may detain and transport that child for

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1 emergency mental health evaluation and care in accordance with
2 Section 32A-6A-19 NMSA 1978.

3 D. If a child is taken into custody and is not
4 released to the child's parent, guardian or custodian or an
5 adult authorized by the child's parent, guardian or custodian,
6 the person taking the child into custody shall give written
7 notice thereof as soon as possible, and in no case later than
8 twenty-four hours, to the child's parent, guardian or custodian
9 or an adult authorized by the child's parent, guardian or
10 custodian and to the court, together with a statement of the
11 reason for taking the child into custody.

12 E. In all cases when a child is taken into custody,
13 the child shall be released to the child's parent, guardian or
14 custodian or an adult authorized by the child's parent,
15 guardian or custodian in accordance with the conditions and
16 time limits set forth in the Children's Court Rules."

17 **SECTION 5.** Section 32A-2-11 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 40, as amended) is amended to read:

19 "32A-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

20 A. Unless ordered by the court pursuant to the
21 provisions of the Delinquency Act, a child taken into custody
22 for an alleged delinquent act shall not be placed in detention
23 unless a detention risk assessment instrument is completed and
24 a determination is made that the child:

25 (1) poses a substantial risk of harm to

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1 ~~[himself]~~ the child's self;

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

4 (3) has demonstrated that ~~[he]~~ the child may
5 leave the jurisdiction of the court.

6 B. A child shall not be placed in detention solely
7 based on a technical violation, unless a written determination
8 is made by the court that:

9 (1) the technical violation is based on the
10 child absconding from supervision;

11 (2) the child has been referred to a specialty
12 court;

13 (3) the child poses a substantial risk of harm
14 to the child's self;

15 (4) the child poses a substantial risk of harm
16 to others;

17 (5) the child has demonstrated that the child
18 may leave the jurisdiction of the court; or

19 (6) no alternatives to detention are available
20 or appropriate.

21 ~~[B-]~~ C. The criteria for detention in this section
22 shall govern the decisions of all persons responsible for
23 determining whether detention is appropriate prior to a child's
24 detention hearing, based upon a review of the detention risk
25 assessment instrument.

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1 ~~[G.]~~ D. The department shall:

2 (1) develop and implement a detention risk
3 assessment instrument ~~[The department shall]; and~~

4 (2) collect and analyze data regarding the
5 application of the detention risk assessment instrument. ~~[On~~
6 ~~January 1, 2004, the department shall provide the legislature~~
7 ~~with a written report with respect to its collection and~~
8 ~~analysis of data regarding the application of the detention~~
9 ~~risk assessment instrument.]"~~

10 SECTION 6. Section 32A-2-17 NMSA 1978 (being Laws 1993,
11 Chapter 77, Section 46, as amended) is amended to read:

12 "32A-2-17. RISK ASSESSMENTS--MENTAL HEALTH SCREENING--
13 PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

14 A. After a petition has been filed and either a
15 finding with respect to the allegations of the petition has
16 been made or a notice of intent to admit the allegations of the
17 petition has been filed, the court may direct that a
18 predisposition study and report to the court be made in writing
19 by the department or an appropriate agency designated by the
20 court concerning the child, the family of the child, the
21 environment of the child and any other matters relevant to the
22 need for treatment or to appropriate disposition of the case.
23 The following predisposition reports shall be provided to the
24 parties and the court five days before actual disposition or
25 sentencing:

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1 (1) the adult probation and parole division of
2 the corrections department shall prepare a predisposition
3 report for a serious youthful offender;

4 (2) the department shall prepare a
5 predisposition report for a serious youthful offender who is
6 convicted of an offense other than first degree murder;

7 (3) the department shall prepare a
8 predisposition report for a youthful offender concerning the
9 youthful offender's amenability to treatment and if:

10 (a) the court determines that a juvenile
11 disposition is appropriate, the department shall prepare a
12 subsequent predisposition report; or

13 (b) the court makes the findings
14 necessary to impose an adult sentence pursuant to Section
15 32A-2-20 NMSA 1978, the adult probation and parole division of
16 the corrections department shall prepare a subsequent
17 predisposition report; and

18 (4) the department shall prepare a
19 predisposition report for a delinquent offender, upon the
20 court's request.

21 B. Where there are indications that the child may
22 have a mental disorder or developmental disability, the court,
23 on motion by the children's court attorney or that of counsel
24 for the child, may order the child to be examined at a suitable
25 place by a physician or psychiatrist, a licensed psychologist,

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1 a licensed professional clinical counselor or a licensed
2 independent social worker prior to a hearing on the merits of
3 the petition. An examination made prior to the hearing or as a
4 part of the predisposition study and report shall be conducted
5 on an outpatient basis, unless the court finds that placement
6 in a hospital or other appropriate facility is necessary.
7 Prior to the adjudication of a case, the department shall
8 conduct a risk assessment of the child. Before the
9 adjudicatory hearing, juvenile probation services shall provide
10 to the parties of a case and to the court the results of the
11 risk assessment, an identification of the child's risk of
12 reoffending and an according recommended level, length and type
13 of supervision and services for the child.

14 C. Any admission, confession or incriminating
15 information obtained from a child in the course of conducting a
16 risk assessment shall not be admitted into evidence in a case
17 against the child, except as rebuttal or impeachment evidence,
18 and shall not be used as a basis for introducing related
19 evidence in any future adjudication hearing or criminal
20 proceeding in which the child is accused. An admission,
21 confession or incriminating information may be considered by
22 the court at disposition of the case.

23 [~~G.~~] D. The court, after a hearing, may order the
24 examination, by a physician or psychiatrist, a licensed
25 psychologist or a licensed professional clinical counselor or a

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1 licensed independent social worker, of a parent, guardian or
2 custodian whose ability to care for or supervise a child is an
3 issue before the court.

4 ~~[D.]~~ E. The court may order that a child
5 adjudicated ~~[as a]~~ delinquent ~~[child]~~ be administered a
6 predispositional evaluation by a professional designated by the
7 department for purposes of diagnosis, with direction that the
8 court be given a report indicating what disposition appears
9 most suitable when the interests of the child and the public
10 are considered. The evaluation shall be completed within
11 fifteen days of the court's order and the preference shall be
12 for performing the evaluation in the child's community.

13 ~~[E.]~~ F. If a child is detained for purposes of
14 performing a predispositional evaluation, ~~[it]~~ the evaluation
15 shall be completed within fifteen days and in no event shall a
16 child be detained for more than fifteen days within a three-
17 hundred-sixty-five-day period for a predispositional
18 evaluation, unless for good cause shown.

19 G. The court shall use the predisposition report,
20 including the results of the assessments and screening
21 performed in accordance with this section, to assist the court
22 in determining the disposition of a child's case.

23 H. A predisposition report shall also be used by
24 the department to inform a decision to place a child in a
25 facility for the care and rehabilitation of adjudicated

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1 delinquent children and the education, counseling and treatment
2 provided to the child while committed to the facility.

3 I. Every six months or when a significant change to
4 a child's case is made:

5 (1) a facility for the care and rehabilitation
6 of adjudicated delinquent children shall conduct a risk
7 assessment of each child who is adjudicated delinquent and is:

8 (a) committed to a short- or long-term
9 placement in that facility; or

10 (b) committed to the facility until the
11 child reaches the age of twenty-one; and

12 (2) juvenile probation services shall conduct
13 a risk assessment of each child who is adjudicated delinquent
14 and is placed on probation."

15 SECTION 7. Section 32A-2-19 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 48, as amended) is amended to read:

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

19 A. At the conclusion of the dispositional hearing,
20 the court ~~may~~ shall make and include in the dispositional
21 judgment its findings ~~[on the]~~, including findings on the
22 results of assessments and screenings of the child conducted in
23 accordance with Section 32A-2-17 NMSA 1978.

24 B. The court may make and include in the
25 dispositional judgment its findings on the following:

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

4 (2) the child's adjustment to the child's
5 home, school and community;

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

10 (4) the wishes of the child as to the child's
11 custodian;

12 (5) the wishes of the child's parents as to
13 the child's custody;

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

17 (7) the availability of services recommended
18 in the predisposition report; and

19 (8) the ability of the parents to care for the
20 child in the home.

21 [~~B-~~] C. If a child is found to be delinquent, the
22 court may impose a fine not to exceed the fine that could be
23 imposed if the child were an adult and may [~~enter its judgment~~
24 ~~making~~] make any of the following dispositions for the
25 supervision, care and rehabilitation of the child:

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1 (1) transfer legal custody to the department,
2 ~~[an agency responsible for the care and rehabilitation of~~
3 ~~delinquent children]~~ which shall receive the child at a
4 facility designated by the ~~[secretary of the]~~ department as a
5 juvenile reception facility. If a child is committed to the
6 custody of a facility for the care and rehabilitation of
7 delinquent children, the court shall make a finding that an
8 appropriate alternative service or program in the community
9 does not exist or was previously used by the child without
10 success and that the child poses a risk to the community based
11 on the child's risk assessment, the seriousness of the act
12 committed by the child and the child's history of delinquency
13 and any other relevant factors. The department shall
14 thereafter determine the appropriate placement, supervision and
15 rehabilitation program for the child. The judge may include
16 recommendations for placement of the child. Commitments are
17 subject to limitations and modifications set forth in Section
18 32A-2-23 NMSA 1978. The types of commitments include:
19 (a) a short-term commitment of one year
20 in a facility for the care and rehabilitation of adjudicated
21 delinquent children. No more than nine months shall be served
22 at the facility and no less than ninety days shall be served on
23 supervised release, unless: 1) a petition to extend the
24 commitment has been filed prior to the commencement of
25 supervised release; 2) the commitment has been extended

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1 pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised
2 release is revoked pursuant to Section 32A-2-25 NMSA 1978;

3 (b) a long-term commitment [~~for~~] of no
4 more than two years in a facility for the care and
5 rehabilitation of adjudicated delinquent children. No more
6 than twenty-one months shall be served at the facility and no
7 less than ninety days shall be served on supervised release,
8 unless: 1) supervised release is revoked pursuant to Section
9 32A-2-25 NMSA 1978; or 2) the commitment is extended pursuant
10 to Section 32A-2-23 NMSA 1978;

11 (c) if the child is a delinquent
12 offender who committed one of the criminal offenses set forth
13 in Subsection [~~F~~] Q of Section 32A-2-3 NMSA 1978, a commitment
14 to age twenty-one, unless sooner discharged; or

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

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

19 (3) place the child in a local detention
20 facility that has been certified in accordance with the
21 provisions of Section 32A-2-4 NMSA 1978 for a period not to
22 exceed fifteen days within a three-hundred-sixty-five-day time
23 period; or if a child is found to be delinquent solely on the
24 basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA
25 1978, the court shall only enter a judgment placing the child

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1 on probation or ordering restitution or imposing a fine not to
2 exceed the fine that could be imposed if the child were an
3 adult or any combination of these dispositions; or

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

16 [~~G-~~] D. When the child is an Indian child, the
17 Indian child's cultural needs shall be considered in the
18 dispositional judgment and reasonable access to cultural
19 practices and traditional treatment shall be provided.

20 [~~D-~~] E. A child found to be delinquent shall not be
21 committed or transferred to a penal institution or other
22 facility used for the execution of sentences of persons
23 convicted of crimes.

24 [~~E-~~] F. Whenever the court vests legal custody in
25 an agency, institution or department, it shall transmit with

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1 the dispositional judgment copies of the clinical reports,
2 predisposition study and report and other information it has
3 pertinent to the care and treatment of the child.

4 ~~[F-]~~ G. Prior to any child being placed in the
5 custody of the department, the department shall be provided
6 with reasonable oral or written notification and an opportunity
7 to be heard.

8 ~~[G-]~~ H. In addition to any other disposition
9 pursuant to Subsection ~~[B]~~ C of this section, the court may
10 make an abuse or neglect report for investigation and
11 proceedings as provided for in the Abuse and Neglect Act. The
12 report may be made to a local law enforcement agency, the
13 department or a tribal law enforcement or social service agency
14 for an Indian child residing in Indian country.

15 ~~[H-]~~ I. In addition to any other disposition
16 pursuant to this section or any other penalty provided by law,
17 if a child who is fifteen years of age or older is adjudicated
18 delinquent on the basis of Paragraph (2), (3) or (4) of
19 Subsection A of Section 32A-2-3 NMSA 1978, the child's driving
20 privileges may be denied or the child's driver's license may be
21 revoked for a period of ninety days. For a second or a
22 subsequent adjudication, the child's driving privileges may be
23 denied or the child's driver's license revoked for a period of
24 one year. Within twenty-four hours of the dispositional
25 judgment, the court may send to the motor vehicle division of

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1 the taxation and revenue department the order adjudicating
2 delinquency. Upon receipt of an order from the court
3 adjudicating delinquency, the director of the motor vehicle
4 division of the taxation and revenue department may revoke or
5 deny the delinquent's driver's license or driving privileges.
6 Nothing in this section may prohibit the delinquent from
7 applying for a limited driving privilege pursuant to Section
8 66-5-35 NMSA 1978 or an ignition interlock license pursuant to
9 the Ignition Interlock Licensing Act, and nothing in this
10 section precludes the delinquent's participation in an
11 appropriate educational, counseling or rehabilitation program.

12 ~~[F.]~~ J. In addition to any other disposition
13 pursuant to this section or any other penalty provided by law,
14 when a child is adjudicated delinquent on the basis of
15 Paragraph (6) of Subsection A of Section 32A-2-3 NMSA 1978, the
16 child shall perform the mandatory community service set forth
17 in Section 30-15-1.1 NMSA 1978. When a child fails to
18 completely perform the mandatory community service, the name
19 and address of the child's parent or legal guardian shall be
20 published in a newspaper of general circulation, accompanied by
21 a notice that the parent or legal guardian is the parent or
22 legal guardian of a child adjudicated delinquent for committing
23 graffiti."

24 **SECTION 8.** Section 32A-2-23 NMSA 1978 (being Laws 1993,
25 Chapter 77, Section 52, as amended) is amended to read:

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1 "32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--
2 MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

3 A. A judgment transferring legal custody of an
4 adjudicated delinquent child to an agency responsible for the
5 care and rehabilitation of delinquent children divests the
6 court of jurisdiction at the time of transfer of custody,
7 unless the transfer of legal custody is for a commitment not
8 exceeding fifteen days pursuant to the provisions of Section
9 32A-2-19 NMSA 1978, in which case the court retains
10 jurisdiction.

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

14 C. A child shall be released by an agency and
15 probation or supervision shall be terminated by juvenile
16 probation [~~and parole~~] services or the agency providing
17 supervision [~~when it appears that the purpose of the order has~~
18 ~~been achieved before the expiration of the period of the~~
19 ~~judgment.~~ A] based on the child's risk of reoffending, as
20 determined by the child's risk assessment, the seriousness of
21 the act for which the child was adjudicated delinquent and the
22 child's progress in meeting treatment goals. The releasing
23 entity shall promptly report a child's release or termination
24 and the reasons therefor [~~shall be reported promptly~~] to the
25 court in writing [~~by the releasing authority~~].

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1 D. Prior to the expiration of a child's short-term
2 commitment of one year, as provided for in Section 32A-2-19
3 NMSA 1978, the court may extend the [~~judgment~~] commitment for
4 up to one six-month period if, based on a child's risk of
5 reoffending, as determined by a risk assessment, the
6 seriousness of the act for which the child was adjudicated
7 delinquent and the child's progress in meeting treatment goals,
8 the court finds that the extension is necessary to safeguard
9 the welfare of the child or [~~the~~] public safety. If a short-
10 term commitment is extended, the mandatory ninety-day
11 supervised release, as required by Section 32A-2-19 NMSA 1978,
12 shall be included in the extension. Notice and hearing are
13 required for any extension of a [~~juvenile's~~] child's
14 commitment.

15 E. Prior to the expiration of a child's long-term
16 commitment, as provided for in Section 32A-2-19 NMSA 1978, the
17 court may extend the judgment for additional periods of up to
18 one year until the child reaches the age of twenty-one if,
19 based on a child's risk of reoffending, as determined by a risk
20 assessment, the seriousness of the act for which the child was
21 adjudicated delinquent and the child's progress in meeting
22 treatment goals, the court finds that the extension is
23 necessary to safeguard the welfare of the child or [~~the~~] public
24 safety. If a long-term commitment is extended, the mandatory
25 ninety-day supervised release, as required by Section 32A-2-19

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1 NMSA 1978, shall be included in the extension. Notice and
2 hearing are required for any extension of a [~~juvenile's~~]
3 child's commitment.

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

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

19 H. 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
22 should be reviewed, it may, upon notice to all necessary
23 parties, proceed to a hearing in the manner provided for
24 hearings on petitions alleging delinquency.

25 I. The department may seek a bench warrant from the

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1 court when ~~the~~ a child absconds from supervised release."

2 SECTION 9. Section 32A-2-23.1 NMSA 1978 (being Laws 2009,
3 Chapter 239, Section 23) is amended to read:

4 "32A-2-23.1. RELEASE ELIGIBILITY.--

5 A. The department shall have exclusive jurisdiction
6 and authority to release an adjudicated delinquent child during
7 the term of the child's commitment, consistent with the
8 provisions of the Victims of Crime Act. In determining whether
9 to release a child, the department shall give due consideration
10 to a child's risk of reoffending, as determined by a risk
11 assessment, the seriousness of the act for which the child was
12 adjudicated delinquent, the child's progress in meeting
13 treatment goals, public safety, the extent to which the child
14 has been rehabilitated, the adequacy and suitability of the
15 proposed release plan and the needs and best interests of the
16 child, including the child's need for behavioral health or
17 medical services that are not available in facilities for
18 adjudicated delinquent children.

19 B. The decision to grant or deny release shall be
20 made by the secretary of children, youth and families or the
21 secretary's designee. The department may impose such
22 conditions of release as it deems appropriate.

23 C. A child is eligible for release any time after
24 the entry of a judgment transferring legal custody to the
25 department, and the department may consider a reasonable

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1 request for release from the child at any time sixty days after
2 the child has been committed.

3 D. In the event release for a child is denied by
4 the department after release is recommended for the child by
5 the juvenile public safety advisory board, or release is
6 approved by the department after the board has recommended that
7 the child not be released, within ten days, the board may
8 request a review of the decision by the court of the judicial
9 district from which legal custody of the child was transferred,
10 and the department shall transmit the child's records to the
11 court. The court shall have jurisdiction to review the matter
12 without conducting a formal hearing and to issue an order that
13 either denies or grants release to the child. If the board
14 requests review ~~[under]~~ in accordance with this section, the
15 child shall not be released until such time as the court has
16 issued a decision. If the board does not petition the district
17 court for review of the department's decision to grant or deny
18 release within ten days of the department's decision, the
19 department's decision shall be final, and the department shall
20 release the child or continue the commitment in accordance with
21 the terms of its decision.

22 E. The secretary of children, youth and families or
23 the secretary's designee may review the case of any child upon
24 the child's or the juvenile public safety advisory board's
25 reasonable request at any time after release is denied."

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SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.