CHAPTER 32
CHILDREN'S CODE

ARTICLE 1
THE CHILDREN'S CODE

32-1-1. Short title.

Sections 1 through 45 of this act may be cited as the "Children's Code".

History: 1953 Comp., § 13-14-1, enacted by Laws 1972, ch. 97, § 1.

Cross-references. - For authority to administer social services for children in the social services division of the human services department, see 9-8-13 NMSA 1978.

As to sexually oriented material harmful to minors, see 30-37-1 NMSA 1978.

Children's Code. - The term, "Sections 1 through 45 of this act," referred to in this section, refers to Laws 1972, ch. 97, §§ 1 to 45. However, Laws 1981, ch. 36 referred in its introductory language to "amending, repealing and enacting certain sections of the Children's Code", and Laws 1979, ch. 357 referred in its introductory language to "amending certain sections of the Children's Code". The Children's Code, therefore, can be said to be compiled as 32-1-1 to 32-1-29, 32-1-31 to 32-1-38.1 and 32-1-39 to 32-1-53 NMSA 1978.

Repeals and supersedes provisions of Delinquent Children's Act. - The Children's Code repeals and supersedes many of the provisions of the Delinquent Children's Act, cited as 13-8-1 through 13-8-73, 1953 Comp. 1972 Op. Att'y Gen. No. 72-27.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "Defending the Criminal Alien in New Mexico: Tactics and Strategy to Avoid Deportation," see 9 N.M.L. Rev. 45 (1978-79).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For comment, "The Right to Be Present: Should It Apply to the Involuntary Civil Commitment Hearing," see 17 N.M.L. Rev. 165 (1987).

For annual survey of civil procedure in New Mexico, see 18 N.M.L. Rev. 287 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Failure of state or local government to protect child abuse victim as violation of federal constitutional right, 79 A.L.R. Fed. 514.

32-1-2. Legislative purpose.

The Children's Code shall be interpreted and construed to effectuate the following expressed legislative purposes:

A. first to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code and then to preserve the unity of the family whenever possible. Permanent separation of the child from the family, however, would especially be considered when the child suffered permanent or severe injury or repeated abuse;

B. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of his delinquent act to the extent that the child is reasonably able to do so;

C. to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interests of public safety;

D. to separate clearly in the judicial and other processes affecting children under the Children's Code the neglected child, the abused child, the child in need of supervision and the delinquent child and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children;

E. to provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

F. to provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives;

G. to provide a continuum of services for children and their families from prevention to treatment considering wherever possible prevention, diversion and early intervention, particularly in the schools; and

H. to provide for the cooperation and coordination of the civil and criminal systems for the investigation, intervention and disposition of reports of child abuse and neglect, including child sexual abuse, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of the child victim.

History: 1953 Comp., § 13-14-2, enacted by Laws 1972, ch. 97, § 2; 1981, ch. 36, § 1; 1985, ch. 100, § 1; 1989, ch. 60, § 2.

The 1989 amendment, effective June 16, 1989, added Subsection H.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Intent of code. - The Children's Code is intended to protect children from the consequences of their own acts so long as it is "consistent with the protection of the public interest," and it establishes a system of treatment, care and rehabilitation for children who have committed either "delinquent acts" or who are neglected or in need of supervision. State v. Favela, 91 N.M. 476, 576 P.2d 282 (1978), overruled on other grounds State v. Pitts, 103 N.M. 778, 714 P.2d 582 (1986).

The Children's Code has as its central focus children who are alleged to be delinquent, in need of supervision, abused, or neglected. In re Lupe C., 112 N.M. 116, 812 P.2d 365 (Ct. App. 1991).

With respect to neglected children, the legislative purposes contained in the Children's Code emphasize a legislative objective of keeping the family together whenever possible, separating the child from his parents and family only when necessary for his welfare, and providing services to assist the child and the family. In re Lupe C., 112 N.M. 116, 812 P.2d 365 (Ct. App. 1991).

Best interests of children is paramount consideration. - Parents do not have an absolute right to their children, for any right is secondary to the best interests and welfare of the children. In re Samantha D., 106 N.M. 184, 740 P.2d 1168 (Ct. App. 1987).

Proceedings to further stated purposes and policies. - The court is expected to conduct children's court proceedings in a manner that will further the purposes and policies stated in this section. State v. Doe, 97 N.M. 263, 639 P.2d 72 (Ct. App. 1981), cert. denied, 457 U.S. 1136, 102 S. Ct. 2965, 73 L. Ed. 2d 1354 (1982).

Children's Code must be read in entirety and each section interpreted so as to correlate as faultlessly as possible with all other sections, in order that the ends sought to be accomplished by the legislature shall not be thwarted. State v. Doe, 95 N.M. 88, 619 P.2d 192 (Ct. App. 1980).

Parents' right to custody not absolute. - Parents have a natural and legal right to custody of their children. This right is prima facie and not an absolute right. This right,

however, must yield when the best interests and welfare of the child are at issue. Roberts v. Staples, 79 N.M. 298, 442 P.2d 788 (1968).

Placement with one other than minor's parent. - The court did not violate the spirit and intent of the Children's Code by placing a 16-year-old girl in the custody of a woman who had helped to rear her and had been found to be a positive influence over her where the child felt compelled to run away from her mother's household and would in all likelihood continue to refuse to live with her mother since the children's court is vested with a broad discretion in hearing and deciding matters under it. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Subject of act adequately expressed in title. - Where the "subject" of an act is children and that subject is clearly expressed, a provision within the act authorizing a change in the custody of a neglected child is a detail provided for accomplishing the legislative purpose of protecting children and such detail need not be set forth in the title of the bill to comply with the requirement of N.M. Const., art. IV, § 16, that the subject of every bill be clearly expressed in its title. State ex rel. Health & Social Servs. Dep't v. Natural Father, 93 N.M. 222, 598 P.2d 1182 (Ct. App. 1979).

Right to be treated as child is a statutory, not a constitutional, right. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Same constitutional standards apply to juveniles as to adults. State v. Henry, 78 N.M. 573, 434 P.2d 692 (1967).

Law reviews. - For comment on Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968), see 9 Nat. Resources J. 310 (1969).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For note, "Children's Code - Neglect - State ex rel. Health & Social Services Department v. Natural Father," see 12 N.M.L. Rev. 505 (1982).

32-1-3. Definitions.

As used in the Children's Code:

A. "child" means an individual who is less than eighteen years old;

B. "adult" means an individual who is eighteen years of age or older;

C. "court", when used without further qualification, means the children's court division of the district court, unless the district court has established a family court division in lieu of the children's court division, in which event "court" means the family court division and includes the judge, referee or special master appointed pursuant to the provisions of the Children's Code or supreme court rule;

D. "judge", when used without further qualification, means the judge of the court;

E. "tribunal" means any judicial forum other than a court;

F. "parent" or "parents" includes a natural or adoptive parent;

G. "guardian" means the person having the duty and authority of guardianship;

H. "guardianship" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about his general welfare and includes but is not necessarily limited in either number or kind to:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States or to major medical, psychiatric and surgical treatment;

(2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

(3) the authority and duty of reasonable visitation of the child;

(4) the rights and responsibilities of legal custody when the physical custody of the child is exercised by the child's parents, except when legal custody has been vested in another person; and

(5) when the rights of his parents have been terminated as provided for in the laws governing termination of parental rights or when both of his parents are deceased, the authority to consent to the adoption of the child and to make any other decision concerning him which his parents could have made;

I. "custodian" means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including any employee of a residential facility or any persons providing out-of-home care;

J. "legal custody" means a legal status created by the order of the court or other court of competent jurisdiction that vests in a person or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide him with food, shelter, education and ordinary and emergency medical care; and the right to consent to his enlistment in the armed forces of the United States, all subject to the powers, rights, duties and responsibilities of the guardian of the child

and subject to any existing parental rights and responsibilities. An individual granted legal custody of a child shall exercise his rights and responsibilities as custodian personally, unless otherwise authorized by the court entering the order;

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

L. "neglected child" means a child:

(1) who has been abandoned by his parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parent, guardian or custodian or the neglect or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or other physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law;

provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, is for that reason alone a neglected child within the meaning of the Children's Code;

M. "abused child" means a child:

(1) who has been physically, emotionally or psychologically abused by his parent, guardian or custodian;

(2) who has been sexually abused or exploited by his parent, guardian or custodian. As used in this paragraph:

(a) "sexual abuse" means criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law; and

(b) "sexual exploitation" includes allowing, permitting or encouraging a child to engage in prostitution and allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law;

(3) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger his life or health; or

(4) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished him;

provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, is for that reason alone an abused child within the meaning of the Children's Code;

N. "child in need of supervision" means a child who:

(1) being subject to compulsory school attendance, is absent from school without authorized excuse more than ten days during a school semester or has been suspended from school for nonattendance;

(2) habitually disobeys the reasonable and lawful demands of his parent, guardian or custodian and is ungovernable and beyond control;

(3) has committed an offense not classified as a delinquent act;

(4) violates a local curfew ordinance; or

(5) is a runaway; and

(6) in any of the foregoing situations is in need of care or rehabilitation;

O. "delinquent act" means an act committed by a child which would be designated as a crime under the law if committed by an adult, including but not limited to the following offenses:

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

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

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

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

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

(e) any homicide by vehicle;

(f) any injuring or tampering with a vehicle;

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

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

(i) any offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or permitting himself to be served any alcoholic liquor, except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some court and who is actually, visibly and personally present at the time the alcoholic liquor is bought or received by him or possessed by him or served or delivered to him; or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some court and who is actually, visibly and personally present at the time. As used in this paragraph, "restaurant" means any establishment, having a New Mexico resident as a proprietor or manager, which is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals and does not include establishments, as defined in regulations promulgated by the director of the special investigations division of the public safety department, serving only hamburgers, sandwiches, salads and other fast foods;

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

(4) any violation of Section 30-29-2 NMSA 1978 dealing with the illegal use of a glue, aerosol spray product or other chemical substance;

(5) any violation of the Controlled Substances Act; or

(6) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any detention, diagnostic or corrections facility operated or certified by the youth authority by a child who has been lawfully committed to the facility;

P. "delinquent child" means a child who has committed a delinquent act;

Q. "protective supervision" means a legal status created by court order under which the child is permitted to remain in his own home or is placed with a relative or other suitable individual and supervision and assistance are provided by the court, the human services department or some other agency designated by the court;

R. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include facilities for the care and rehabilitation of adjudicated delinquent children; and

S. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means any person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32-1-46 NMSA 1978.

History: 1953 Comp., § 13-14-3, enacted by Laws 1972, ch. 97, § 3; 1973, ch. 360, § 1; 1977, ch. 277, § 1; 1979, ch. 357, § 1; 1981, ch. 36, § 2; 1985, ch. 9, § 1; 1987, ch. 308, § 1; 1988, ch. 101, § 18; 1989, ch. 329, § 1.

The 1988 amendment, effective July 1, 1989, substituted "special investigations division of the public safety department" for "department of alcoholic beverage control" near the end of the last sentence in Subsection O(2), and substituted "youth authority" for "corrections department" in Subsection O(6).

The 1989 amendment, effective July 1, 1989, purported to amend this section but made no change.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Controlled Substances Act. - See 30-31-1 NMSA 1978 and notes thereto.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

Section gives fair warning of what amounts to neglect of a child. State ex rel. Health & Social Servs. Dep't v. Natural Father, 93 N.M. 222, 598 P.2d 1182 (Ct. App. 1979).

Children's court not meant by "any other tribunal". - In light of the provisions of 32-1-44 NMSA 1978 and Subsection C of this section, "any other tribunal" as used in 32-1-33 NMSA 1978 means a tribunal other than the children's court, and thus at a transfer hearing 32-1-33 NMSA 1978 did not bar the probation officer's testimony about prior

charges and dispositions, which proceedings were had in a different judicial circuit. In re Doe, 89 N.M. 700, 556 P.2d 1176 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Human services department not "person". - State health and social services (now human services) department is not a "person" within the meaning of the Children's Code. Thus, the department need not be made a party to nor is its presence required in any action filed pursuant to the Children's Code where it may be ordered to assume certain responsibilities pursuant to the Children's Code. In re Doe, 88 N.M. 632, 545 P.2d 491 (Ct. App. 1975).

"Necessary" not vague. - Differences of opinion as to what is "necessary" for a child's well-being do not make the statutory use of that term unconstitutionally vague. State ex rel. Health & Social Servs. Dep't v. Natural Father, 93 N.M. 222, 598 P.2d 1182 (Ct. App. 1979).

"Child in need of supervision" means a child in need of care or rehabilitation, and where the petition alleged that the child was in need of supervision, there was no merit to the claim that the petition was jurisdictionally deficient. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Effect of finding "child in need of supervision." - Pursuant to Subsection N, when a children's court finds a girl a "child in need of supervision," the court implicitly finds that she is "in need of care or rehabilitation." State v. Julia S., 104 N.M. 222, 719 P.2d 449 (Ct. App. 1986).

Use of word "other" in Paragraphs (2) and (3) of Subsection L is not ambiguous. State ex rel. Health & Social Servs. Dep't v. Natural Father, 93 N.M. 222, 598 P.2d 1182 (Ct. App. 1979).

Retardation evidence not required for ruling on neglect. - In a neglect proceeding, evidence that a child is severely retarded is not required for a ruling that the child is neglected. State ex rel. Health & Social Servs. Dep't v. Natural Father, 93 N.M. 222, 598 P.2d 1182 (Ct. App. 1979).

Conviction of crime necessary prerequisite to determination of delinquency. - It is a fundamental right of a party to be convicted of a crime, which is a necessary prerequisite to a determination of delinquency, based upon evidence of the elements of the crime, and in a prosecution for a violation of 30-31-23 NMSA 1978, the state must prove that the respondents had knowledge of the presence and character of the item possessed; a degree of furtiveness on the parts of juvenile respondents, in doing their smoking and passing a pipe around between buildings while changing classes, in light of a school regulation prohibiting the smoking of tobacco, was not conduct sufficient to imply that the smokers knew the character of the substance they were using. Doe v. State, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Reckless driving not delinquent act. - Petition in children's court charging that defendant was a "juvenile delinquent" in that he committed the offense of reckless driving was jurisdictionally defective in that reckless driving was not a delinquent act within the original jurisdiction of the children's court. Doe v. State, 88 N.M. 627, 545 P.2d 93 (Ct. App. 1976).

And curfew ordinance not within section's purview. - A village curfew ordinance forbidding any juvenile under the age of 18 years to be upon the streets between certain hours unless accompanied by a parent or guardian does not come within the purview of this section defining a delinquent act since the ordinance relates only to juveniles under the age of 18 years. In re Doe, 87 N.M. 466, 535 P.2d 1092 (Ct. App. 1975), rev'd on other grounds sub nom. State v. Doe, 88 N.M. 137, 537 P.2d 1399 (1975).

"Legal custody" continues until terminated by appropriate authority. - A parent has a legal right to the custody of his child unless that right had been terminated, however temporarily, by appropriate authority. State v. Sanders, 96 N.M. 138, 628 P.2d 1134 (Ct. App. 1981).

A parent's legal right to custody of a child does not end until entry of, and the giving of notice of, a judgment in compliance with Rule 62(a), N.M.R. Child. Ct. (now Rule 10-310), requiring a signed written judgment and disposition. State v. Sanders, 96 N.M. 138, 628 P.2d 1134 (Ct. App. 1981).

Age references are to years of age, not mental age. - The numerous references to age in the Children's Code are references to years of age, not mental age. State v. Doe, 97 N.M. 598, 642 P.2d 201 (Ct. App. 1982).

Magistrate and municipal court jurisdiction. - It appears that municipal and magistrate courts can exercise jurisdiction over children for traffic offenses which are not designated delinquent acts under the Children's Code. 1972 Op. Att'y Gen. No. 72-32.

Double jeopardy claim unsupported where jurisdiction lacking in earlier children's court proceeding. - Where jurisdiction was lacking over an involuntary manslaughter alleged in a children's court proceeding, such allegation provides no basis for a double jeopardy claim in a subsequent prosecution. State v. Montoya, 93 N.M. 346, 600 P.2d 292 (Ct. App. 1979), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

Allegation of delinquency sufficient. - Petition was not jurisdictionally defective for failure to allege that defendant was in need of care or rehabilitation where it alleged defendant was a delinquent child, which is defined to mean a child who has committed a delinquent act and is in need of care or rehabilitation. Doe v. State, 88 N.M. 627, 545 P.2d 93 (Ct. App. 1976).

Probation order void without finding of need of care. - The children's court order which placed a child on probation without a finding that the child was in need of care or

rehabilitation was unauthorized and void; probation is authorized for a child found to be delinquent, and a child is not delinquent unless in need of care or rehabilitation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

If no finding of delinquency, then no diagnostic evaluation. - Although a child was found to have committed delinquent acts, there was no finding that the child was in need of care or rehabilitation, or a finding that the child was a delinquent child, and thus the children's court lacked authority to order a diagnostic evaluation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Delinquent child allegation improper where charge for possession of liquor. - The act of possession of alcoholic beverages with which a 16-year-old child was charged could be characterized as a delinquent act and the allegation of delinquent child under Subsection O (now Subsection P) seemed proper, since an adult, as defined by Subsection B of this section, between the ages of 18 and 21, even though a minor, as defined by former 60-10-16E NMSA 1978, may under certain circumstances be guilty of a crime under former 60-10-16B NMSA 1978 when in possession of alcoholic beverages. However, it cannot apply to any minor under the age of 18 under the Children's Code since the children's court has exclusive jurisdiction of any illegal act committed by a child under the age of 18 and it is not considered a crime, unless there is a specific exception made in the code itself. State v. Doe, 88 N.M. 137, 537 P.2d 1399 (1975).

Law reviews. - For comment on Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968), see 9 Nat. Resources J. 310 (1969).

For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For comment, "Navajo Grandparents - 'Parent' or 'stranger' - A Child Custody Determination," see 9 N.M.L. Rev. 187 (1978-79).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For article, "Children's Waiver of Miranda Rights and the Supreme Court's Decisions in Parham, Bellotti, and Fare," see 10 N.M.L. Rev. 379 (1980).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

For article, "Survey of New Mexico Law, 1979-80: Domestic Relations and Juvenile Law," see 11 N.M.L. Rev. 134 (1981).

For note, "Children's Code - Neglect - State ex rel. Health & Social Services Department v. Natural Father," see 12 N.M.L. Rev. 505 (1982).

For annual survey of domestic relations law in New Mexico, see 18 N.M.L. Rev. 371 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 A.L.R.3d 421.

32-1-4. Children's court established as division of district court; additional family court division authorized; transfer.

A. There is established in the district court for each county a division to be known as the children's court. The district court of each judicial district shall designate one or more district judges to sit as judge of the children's court.

B. The district court of a judicial district may elect to establish a family court division in the district court in addition to the children's court. This election shall be exercised by the issuance of a district court order establishing the organization of a family court but shall become effective only after approval by the director of the administrative office of the courts. The effective date of any order establishing a family court shall be July 1.

C. The supreme court shall adopt rules of procedure not in conflict with the Children's Code governing proceedings in the children's court and family court including rules and procedures for juries.

D. If, in a criminal action, it appears to a court other than the children's court division of the district court that jurisdiction is properly within the children's court division, the other court shall transfer the matter to the children's court division. Upon transfer, the children's court division obtains jurisdiction over the matter for proceedings in accordance with the provisions of the Children's Code.

History: 1953 Comp., § 13-14-4, enacted by Laws 1972, ch. 97, § 4; 1979, ch. 187, § 1; 1981, ch. 36, § 3.

Cross-references. - For Rules of Appellate Procedure, see Judicial Pamphlet 12.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

No constitutional violation. - Since the 1921 Juvenile Court Law was applicable only to special statutory proceedings set up therein, it did not abrogate the jurisdiction of

district courts over minors and therefore was not in violation of N.M. Const., art. VI, § 13. In re Santillanes, 47 N.M. 140, 138 P.2d 503 (1943)(decision under former law).

Division created. - The Juvenile (now Children's) Code created a division of the district court. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

Court not inferior to district court. - The N.M. Const., art. VI, § 1, authorizing creation of inferior courts did not require that jurisdiction of district courts over juveniles, provided in N.M. Const., art. VI, § 13, be transferred to courts inferior to district courts; the juvenile court (now children's court) created in 1955 was not a court inferior to the district court but rather a division of the district court and was constitutionally created. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968)(decided under former law).

Right to disqualify judge. - The fact that the Juvenile (now Children's) Code created special procedures and special handling for minors accused of criminal offenses, and no provision is made in the Juvenile (now Children's) Code for the disqualification of a juvenile (now children's court) judge, does not mean that the provisions of 38-3-9 NMSA 1978 are inapplicable to juvenile (now children's) court proceedings. The juvenile (now children's court) judge is none other than the district judge serving in another division of the district court and the juvenile is a party to the action or proceeding and entitled to exercise the right of disqualification given her by 38-3-9 NMSA 1978. Frazier v. Stanley, 83 N.M. 719, 497 P.2d 230 (1972).

When judge not proper respondent in habeas corpus proceeding. - Juvenile (now children's) court justice is not the proper party in habeas corpus proceeding since only the person having the physical custody of a petitioner (here the sheriff), and who is able to produce him in court, may properly be named as respondent in the habeas corpus proceeding. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

Where presentation of habeas corpus petition useless. - Where a juvenile was in the custody of the sheriff and the judge of the juvenile court was named as respondent in a habeas corpus proceeding, under such circumstances, whether the juvenile court (now children's court) is a separate court, inferior to the district court presided over by the same individual who is also the district judge or is a part or branch of the district court, requiring the presentation of a petition for habeas corpus in the first instance in juvenile (now children's) court case to the district judge would be a vain and useless prerequisite. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968)(decided under former law).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 1 to 7.

43 C.J.S. Infants § 6.

32-1-5. Children's court attorney.

A. The office of children's court attorney is established in each judicial district. Except as provided by Subsection C of this section, each district attorney is ex-officio children's court attorney for the judicial district of the district attorney.

B. Except as provided by Subsection C of this section, the children's court attorney may represent the state in any matter arising under the Children's Code when the state is the petitioner or complainant. He shall represent the petitioner in matters arising under the Children's Code when in the discretion of the judge the matter presents legal complexities requiring his representation, whether or not the state is petitioner or complainant, but not in those matters when there is a conflict of interest between the petitioner or complainant and the state. A petitioner or complainant may be represented by counsel in any matter arising under the Children's Code.

C. In cases involving civil abuse or civil neglect and voluntary placement and the periodic review of their dispositions, the attorney selected by and representing the human services department is the children's court attorney. The attorney selected by and representing the human services department shall provide to the district attorney of the appropriate judicial district reports, investigations and pleadings related to charges of abuse and neglect filed in that judicial district.

D. In those counties where the children's court attorney has sufficient staff and the workload requires it, he may delegate his functions to an attorney on his staff.

History: 1953 Comp., § 13-14-5, enacted by Laws 1972, ch. 97, § 5; 1984, ch. 89, § 1.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Judge's interference with children's court attorney not permitted. - A judge is without authority to direct the juvenile probation office to refrain from referring juvenile cases to the district attorney without the judge's prior written consent, or to relieve the district attorney as children's court attorney and to appoint private attorneys to act and to be compensated out of the district attorney's budget, and to do so constitutes bad faith, malicious abuse of judicial power and willful misconduct in office. In re Martinez, 99 N.M. 198, 656 P.2d 861 (1982).

Attorney has authority to execute affidavit of disqualification of judge. - The power and duty of the children's court attorney to represent the state necessarily includes the authority to execute an affidavit of disqualification of a judge when the disqualification is done on behalf of the state. Smith v. Martinez, 96 N.M. 440, 631 P.2d 1308 (1981).

District attorneys' pay. - The legal basis for continuing to pay district attorneys at their pre-Children's Code rate is found in N.M. Const., art. IV, § 27. 1972 Op. Att'y Gen. No. 72-45.

32-1-6. Detention facilities; standards; reports.

A. The youth authority shall promulgate updated standards for all detention facilities, including standards for the site, design, construction, equipment, care, program, personnel and clinical services, no later than January 1, 1990. The youth authority shall certify as authority-approved all detention facilities in the state meeting the standards promulgated. The youth authority may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the youth authority, except as otherwise provided in the Children's Code.

B. A child alleged or adjudicated as a child in need of supervision may not be detained in any facility used for detention of alleged or adjudicated delinquents except in accordance with the provisions of Paragraph (3) of Subsection F of Section 32-1-34 NMSA 1978. The youth authority shall promulgate updated standards for the certification of facilities for this purpose no later than January 1, 1990.

C. The youth authority shall inspect all detention facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the youth authority. If, as the result of an inspection, a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the youth authority.

D. The youth authority shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities standards adoption and changes. The youth authority shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the youth authority, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules required to be promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

E. Any person aggrieved by an administrative decision of the youth authority rendered under the provisions of this section may petition for the review of the administrative decision by filing a petition requesting judicial review in the district court for the county in which the detention facility involved in the decision is located. The court's review shall be of the written transcript of the administrative hearing and the decision of the youth

authority. The court shall uphold the decision of the youth authority unless it finds that decision to be:

(1) illegal or unconstitutional;

(2) the result of arbitrary or capricious youth authority action; or

(3) not supported by substantial evidence;

in which cases it shall reverse the youth authority's administrative decision and remand the matter for appropriate action by the youth authority.

History: 1953 Comp., § 13-14-6, enacted by Laws 1972, ch. 97, § 6; 1977, ch. 257, § 16; 1977, ch. 381, § 1; 1981, ch. 36, § 4; 1988, ch. 101, § 19; 1989, ch. 328, § 1.

The 1988 amendment, effective July 1, 1989, rewrote the section to the extent that a detailed analysis is impracticable.

The 1989 amendment, effective July 1, 1989, in Subsection B, substituted "for this purpose" for "for the detention of alleged or adjudicated children in need of supervision" near the end of the second sentence; and, in Subsection D, substituted "shall provide" for "must provide" in the next-to-last sentence.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Legislative intent. - The provisions of this section are clear - no child shall be detained in a detention facility unless it has met all standards and is certified as approved by the youth authority. To be so certified and approved, a detention facility must provide detained children with complete sight and sound segregation from adult inmates. A waiver of these requirements by the child and his parents would not relieve the Youth Authority of its statutory duty to enforce its certification standards as required by law. 1990 Op. Att'y Gen. No. 90-16.

Child in need of supervision may not be held in jail. - A child alleged to be delinquent or in need of supervision, and the child's parents, cannot sign a waiver which would allow the child to be detained pending final adjudication in a local jail facility with total sight and only partial sound segregation from adult jail detainees. 1990 Op. Att'y Gen. No. 90-16.

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 29 to 33.

32-1-7. Probation services; establishment; reporting.

A. Juvenile probation and parole services shall be provided by the community services division of the youth authority.

B. The community services division of the youth authority shall provide to the administrative office of the courts that information required by that office about children coming into contact with probation and parole services or the court under the provisions of the Children's Code.

History: 1953 Comp., § 13-14-7, enacted by Laws 1972, ch. 97, § 7; 1977, ch. 257, § 17; 1981, ch. 36, § 5; 1988, ch. 101, § 20; 1989, ch. 328, § 2.

The 1988 amendment, effective July 1, 1989, deleted "contracts" from the end of the catchline; rewrote Subsection A; and substituted "The community services division of the youth authority" for "Probation services" at the beginning of Subsection B.

The 1989 amendment, effective July 1, 1989, inserted "and parole" in both Subsections.

Temporary provisions. - Laws 1988, ch. 101, § 47 provides that on July 1, 1989, all appropriations, money, records, property, equipment and supplies of each juvenile probation office in each judicial district shall be transferred to the youth authority.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Counties are required to provide the services specified in 34-6-24 NMSA 1978 for juvenile probation facilities operated by the youth authority. 1989 Op. Att'y Gen. No. 89-29.

Employee denied workmen's compensation. - A deputy district court clerk who was also employed as a county juvenile probation officer was not an employee of the county at the time of his injury and was thus not entitled to workmen's compensation. Perea v. Board of Torrance County Comm'rs, 77 N.M. 543, 425 P.2d 308 (1967).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 31.

43 C.J.S. Infants § 34.

32-1-8. Powers and duties of probation officers.

A. To carry out the objectives and provisions of the Children's Code, but subject to its limitations, a probation officer has the power and duty to:

(1) receive and examine complaints and allegations that a child is a delinquent child or a child in need of supervision for the purpose of considering beginning a proceeding under the Children's Code in the court;

(2) make appropriate referrals of cases presented to him to other agencies if their assistance appears to be needed or desirable;

(3) make predisposition studies and submit reports and recommendations to the court;

(4) supervise and assist a child placed on probation or under his supervision by court order;

(5) provide referrals to marital and family counseling;

(6) assist in supervising any child placed on probation by court order or on parole by the juvenile parole board and directly supervise any such child who is placed under his supervision by court order or by the juvenile parole board;

(7) give notice in all delinquency cases to the agency initiating the complaint of the dispositional hearing and any disposition made by either the court or probation services and, upon request, advise any victim of an alleged delinquent act at the victim's last known address of any disposition made by either the court or probation services;

(8) give notice to any person who has been the subject of a petition filed under the Children's Code of the sealing of his records in accordance with the provisions of the Children's Code;

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

(10) when requested, assist a child or a child's parent, guardian or custodian in the filing of a child in need of supervision petition; and

(11) perform any other functions designated by the court.

B. A probation officer does not have the powers of a law enforcement officer. A probation officer may take into custody and place in detention a child who is under his supervision as a delinquent child when the probation officer has reasonable cause to believe that the child has violated the conditions of his probation or that the child may leave the jurisdiction of the court. A probation officer taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Children's Code relating to custody and detention procedures and criteria.

History: 1953 Comp., § 13-14-8, enacted by Laws 1972, ch. 97, § 8; 1981, ch. 36, § 6; 1989, ch. 328, § 3.

Cross-references. - As to creation of youth authority, see 9-20-4 NMSA 1978.

The 1989 amendment, effective July 1, 1989, in Subsection A, inserted "referrals to" in Paragraph (5) and, in Paragraph (7), deleted "children's" preceding "court" in two places.

Temporary provisions. - Laws 1988, ch. 101, § 47 provides 1) that on July 1, 1989, all juvenile probation officers, their support staffs, and the respective chiefs in each of the thirteen judicial districts transferred from the district courts to the youth authority shall remain in their respective districts and shall be subject only to voluntary transfer, if necessary; 2) that an equalization formula shall be developed to determine the needs and caseloads of each district and shall be applied to all employees who assume their duties after July 1, 1989; 3) that at the time of transfer the aforementioned groups shall retain their current classification and salary; 4) that benefits including but not limited to annual leave, sick leave, pension and insurance benefits shall be established in accordance with the Personnel Act, provided no accrued benefits shall be forfeited; and 5) that those juvenile probation officers and chiefs employed after July 1, 1988 shall be subject to a classification and compensation plan that will be established in accordance with the Personnel Act.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Juvenile may be taken into custody when a police officer or probation officer believes that the juvenile's surroundings are such as to endanger his (the juvenile's) welfare. 1961-62 Op. Att'y Gen. No. 62-107 (opinion rendered under former law).

Police may not "pick up" juvenile probation violators on orders of probation officers. - Municipal police officers may not pick up delinquent children for suspected probation violations pursuant to "pick up" orders issued by juvenile probation officers since such orders are not warrants, directives of a law enforcement official or valid process of the court. 1983-84 Op. Att'y Gen. No. 84-1.

Not considered policeman for social security coverage. - The primary duties of a probation officer, as evidenced by the enumeration in the statute, are to supervise and attempt to rehabilitate both minor and adult offenders when placed on probation by the court. This is not normally thought to be the duty of a policeman, therefore, a probation officer is not to be considered a policeman for purposes of social security coverage. 1959-60 Op. Att'y Gen. No. 60-223 (opinion rendered under former law).

Authority to petition for parole extension. - Probation officer has authority to petition the court for extension of the period of parole supervision of a child where such action is necessary to safeguard the welfare of the child or the public interest. State v. Doe, 92 N.M. 589, 592 P.2d 189 (Ct. App. 1979).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

32-1-9. Jurisdiction of the court.

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child; or

(2) a child in need of supervision; or

(3) a neglected child; or

(4) an abused child.

B. The court has exclusive original jurisdiction of the following proceedings under other laws which will be controlled by the provisions of the other laws without regard to provisions of the Children's Code:

(1) for the termination of parental rights;

(2) for the adoption of a minor;

(3) under the Interstate Compact on Juveniles [32-3-1 to 32-3-8 NMSA 1978];

(4) under the Interstate Compact on the Placement of Children [32-4-1 to 32-4-7 NMSA 1978];

(5) to determine the custody of or to appoint a custodian or a guardian for a minor;

(6) for the commitment of a developmentally disabled or mentally disordered minor; and

(7) to authorize the marriage of a minor who does not have a parent or guardian reasonably available within this state, or when a parent or guardian refuses to consent, when the law requires consent to the marriage by a parent or guardian.

C. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the Indian Child Welfare Act of 1978, 25 U.S.C., Sections 1901 through 1963.

History: 1953 Comp., § 13-14-9, enacted by Laws 1972, ch. 97, § 9; 1981, ch. 36, § 7.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Vested with sole jurisdiction. - The sole jurisdiction over juveniles in the state of New Mexico has been vested in the juvenile (now children's) court. 1959-60 Op. Att'y Gen. No. 59-131 (opinion rendered under former law).

Children's court is empowered to enter injunction conducive to purposes of Children's Code. State v. Echols, 99 N.M. 517, 660 P.2d 607 (Ct. App. 1983).

District court has jurisdiction in guardianship, paternity and parental rights disputes. - The district court, whether or not sitting as children's court, has jurisdiction over disputes concerning guardianship, paternity and termination of parental rights. Thatcher v. Arnall, 94 N.M. 306, 610 P.2d 193 (1980).

Sections 32-1-9A NMSA 1978 and 40-10-15A(1) NMSA 1978 are in pari materia because both deal with jurisdiction of the children's court; and, being in pari materia, they are to be construed together, if possible, to give effect to the provisions of both statutes. The construction that 32-1-9A NMSA 1978 gives the children's court the exclusive jurisdiction to act and that 40-10-15A(1) NMSA 1978 limits when that authority is to be exercised, gives effect to both statutes. State ex rel. Department of Human Servs. v. Avinger, 104 N.M. 355, 721 P.2d 781 (Ct. App. 1985), aff'd, 104 N.M. 255, 720 P.2d 290 (1986).

Section 40-10-15A NMSA 1978 limits the court's exercise of jurisdiction in a "neglected child" proceeding brought under 32-1-9A NMSA 1978 where that proceeding could result in the modification of another state's custody decree where the other state has not given up jurisdiction. State ex rel. Department of Human Servs. v. Avinger, 104 N.M. 255, 720 P.2d 290 (1986).

Jurisdiction of other courts. - There is no limitation in the Children's Code providing that only children's courts may issue subpoenas to children. Therefore, if a witness fails to appear as ordered, the court with jurisdiction over the case may issue a bench warrant for that witness' arrest, whether or not that witness is a child. 1989 Op. Att'y Gen. No. 89-14.

Subsection B does not limit district court's jurisdiction. - The words "exclusive original jurisdiction" used in Subsection B of this section were not intended to limit or abrogate the jurisdiction of the district court. Thatcher v. Arnall, 94 N.M. 306, 610 P.2d 193 (1980).

Jurisdiction not expanded. - It has been suggested that the language used in 32-1-22 NMSA 1978 may broaden or extend the jurisdiction of the court. While this language establishes the point in time of the court's jurisdiction, it does not extend nor expand the jurisdiction of the juvenile (now children's) court as is otherwise set out by this section of this same act (Children's Code). 1959-60 Op. Att'y Gen. No. 59-52 (opinion rendered under former law).

Failure to bring proceeding in children's court not jurisdictional defect. - It is proper and preferable that guardianships of minors, termination proceedings and other matters enumerated in Subsection B of this section be brought in children's or family court, but the failure to do so does not constitute a jurisdictional defect. Thatcher v. Arnall, 94 N.M. 306, 610 P.2d 193 (1980).

Neglect proceeding is not bar to termination proceeding. - A prior proceeding concerned with the fact of neglect is not a jurisdictional bar to a later, separate termination proceeding. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982).

Being found within county without more, held not to suffice. - Juveniles who are merely found within a county in which a particular juvenile (now children's) court has jurisdiction, but who are not otherwise within the provisions of the code, may not be held. For a child under 18 years of age to be within the provisions of the Juvenile (now Children's) Code so as to permit him to be taken into custody and lawfully held requires that the juvenile shall have fallen into one of the following situations: (1) violated a law of the state or ordinance or regulation of a political subdivision of the state; (2) has by habitual disobedience of parental or other authority become habitually disobedient, wayward or uncontrollable; (3) is habitually truant from home or school; and (4) habitually deports himself in a manner to injure or endanger the morals, health or welfare of himself or others. 1959-60 Op. Att'y Gen. No. 59-52 (opinion rendered under former law).

Juvenile to be cited to children's court by police officer. - No town or city police officer may knowingly cite a juvenile offender into any court other than the juvenile (now children's) court; and if a juvenile is mistakenly cited into any other court, the case must be transferred to the juvenile (now children's) court. That court may, in its discretion, allow the juvenile to be treated as an adult, and taken before another court of competent jurisdiction, but all cases of traffic violations by juveniles must first be submitted to the juvenile (now children's) court, as that court has exclusive original jurisdiction. 1959-60 Op. Att'y Gen. No. 60-199 (opinion rendered under former law).

Jurisdiction to be affirmatively established when defendant's minority at issue. - Exclusive original jurisdiction over juveniles under 18 years of age is vested in the children's court and where the minority of the defendant appears during the course of the trial, the jurisdiction of the trial court must, at that point, be affirmatively established. Trujillo v. Cox, 75 N.M. 257, 403 P.2d 696 (1965)(decided under former law).

Jurisdiction over persons contributing to delinquency of minor. - Insofar as the juvenile law purported to confer "exclusive original jurisdiction" on juvenile (now children's) courts over persons contributing to the delinquency of juveniles it was invalid since the constitution vested sole and exclusive jurisdiction for the trial of all felony cases in the district courts. State v. McKinley, 53 N.M. 106, 202 P.2d 964 (1949)(decided under former law).

Age references are to years of age, not mental age. - The numerous references to age in the Children's Code are references to years of age, not mental age. State v. Doe, 97 N.M. 598, 642 P.2d 201 (Ct. App. 1982).

Apprehension for violation of state law or prohibited habitual conduct. - The Juvenile (now Children's) Code does not authorize the apprehension and holding of juveniles unless a state law is violated or the juvenile is charged with habitual conduct specifically prohibited. 1959-60 Op. Att'y Gen. No. 59-52 (opinion rendered under former law).

Allegation of habitual conduct by officer. - It is a practical impossibility for an apprehending officer to truthfully allege habitual conduct in the case of a runaway, except, of course, where the juvenile's past record is, in fact, known and can be presented. 1959-60 Op. Att'y Gen. No. 59-52 (opinion rendered under former law).

Effect of petition alleging child in need of supervision. - A child in need of supervision means a child in need of care or rehabilitation, and where the petition alleged that the child was in need of supervision, there was no merit to the claim that the petition was jurisdictionally deficient. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Appointment of guardian. - This section allows for the appointment of a general guardian (as defined in 32-1-3G NMSA 1978), but the appointment of a guardian ad litem for purposes of probate is within the jurisdiction of the probate court. 1973 Op. Att'y Gen. No. 73-73.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For comment, "Navajo Grandparents - 'Parent' or 'Stranger' - A Child Custody Determination," see 9 N.M.L. Rev. 187 (1978-79).

For article, "Children's Waiver of Miranda Rights and the Supreme Court's Decisions in Parham, Bellotti, and Fare," see 10 N.M.L. Rev. 379 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 16 to 21.

Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147, 78 A.L.R. 317, 146 A.L.R. 1153.

Vagrancy of minors, 14 A.L.R. 1507.

What constitutes delinquency or incorrigibility, justifying commitment of infant, 45 A.L.R. 1533, 85 A.L.R. 1099.

Continuing jurisdiction over infant delinquent or offender, power of juvenile court to exercise, 76 A.L.R. 657.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent children, 14 A.L.R.2d 336.

Civil or criminal nature of proceedings, 43 A.L.R.2d 1128.

Homicide by juvenile as within jurisdiction of juvenile court, 48 A.L.R.2d 663.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 A.L.R.4th 985.

State court's authority, in marital or child custody proceeding, to allocate federal income tax dependency exemption for child to noncustodial parent under § 152(e) of the Internal Revenue Code (26 USCS § 152(e)), 77 A.L.R.4th 786.

43 C.J.S. Infants § 6.

32-1-10. Additional jurisdiction of the family court division.

A. A family court has the same jurisdiction as the children's court and has, in addition, the exclusive original jurisdiction of the following proceedings under other laws which will be controlled by the provisions of the other laws without regard to provisions of the Children's Code:

(1) for support, alimony, divorce, separation and annulment;

(2) to establish paternity of a child born out of wedlock;

(3) under the Uniform Reciprocal Enforcement of Support Act [40-6-1 to 40-6-41 NMSA 1978];

(4) for the adjudication of incompetency or insanity of an adult and to commit an adult found to be mentally retarded or mentally ill; and

(5) for the appointment of guardians for and the adoption of adults.

B. A family court has, in addition to the jurisdiction stated in Subsection A, exclusive original jurisdiction of, and the power and discretion to transfer to a tribunal having

criminal jurisdiction of the offense charged, the following proceedings under other laws which will be controlled by the provisions of the other laws without regard to provisions of the Children's Code:

(1) prosecution for any offense committed against a child by an adult;

(2) prosecution for desertion, abandonment or failure to provide support for an individual in violation of law; and

(3) prosecution for any offense committed by one spouse against the other.

C. In any proceeding under other laws under Subsection B the family court, with the prior consent of the defendant, may make a preliminary investigation and any adjustment as is practicable without prosecution. The procedure and disposition applicable in the trial of cases under Subsection B in the family court shall be the same as the procedure and disposition applicable to the cases if they were prosecuted and tried in a criminal tribunal. The children's court attorney shall prepare and prosecute cases under Subsection B.

D. If in the family court's discretion it is necessary to protect the welfare of the persons before the court, it may, with the prior consent of the defendant and the parties in interest, conduct hearings in chambers and may exclude persons having no direct interest in the case.

E. Transfer of a proceeding to a tribunal having a criminal jurisdiction under Subsection B shall take place only after a transfer hearing is conducted by the family court. The procedural requirements of the Children's Code relating to a transfer hearing of a case involving an alleged offense by a child shall apply to a transfer hearing conducted under this subsection.

History: 1953 Comp., § 13-14-10, enacted by Laws 1972, ch. 97, § 10.

Cross-references. - For abandonment or abuse of child, see 30-6-1 NMSA 1978.

For abandonment of dependent, see 30-6-2 NMSA 1978.

For contributing to delinquency of minor, see 30-6-3 NMSA 1978.

For sexual offenses, see 30-9-10 to 30-9-16 NMSA 1978.

For controlled substances, distribution to minor, see 30-31-21 NMSA 1978.

For annulment of marriage, see 40-1-9 NMSA 1978.

For divorce and separation, see 40-4-1 NMSA 1978 et seq.

For parentage proceedings, see 40-11-1 NMSA 1978 et seq.

For guardians and wards for insane and incompetent, see 45-5-301 NMSA 1978 et seq.

For adjudication of incompetency, see 45-5-301 NMSA 1978 et seq.

For employment of children, penalties for violations, see 50-6-12 NMSA 1978.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Hearings in chambers permitted. - In areas of additional jurisdiction of the family court, when juveniles and adults may be parties before the court, there is provision for hearings in chambers at the discretion of the court. 1972 Op. Att'y Gen. No. 72-34.

32-1-11. Transfer of jurisdiction over child from other tribunals to court.

If it appears to a tribunal in a criminal matter that the defendant was under the age of eighteen years at the time the offense charged was alleged to have been committed and the offense charged is a delinquent act under the Children's Code, the tribunal shall promptly transfer jurisdiction of the matter and the defendant to the court together with a copy of the accusatory pleading and other papers, documents and transcripts of testimony relating to the case. Upon transfer the court shall have exclusive jurisdiction over the proceedings and the defendant subject to retransfer. The transferring tribunal shall order that the defendant promptly be taken to the court, or taken to a place of detention designated by the court, or released to the custody of a parent, guardian, custodian or other person legally responsible for the defendant to be brought before the court at a time designated by the court. Upon transfer to the court a petition shall be prepared and filed in the court in accordance with the provisions of the Children's Code. If the defendant is not a child at the time of transfer the court retains jurisdiction over the matter only until disposition is made by the court or until retransfer.

History: 1953 Comp., § 13-14-11, enacted by Laws 1972, ch. 97, § 11; 1981, ch. 36, § 8.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Intent of section. - The legislature in enacting this section and 32-1-30 NMSA 1978 intended to create a mechanism which would allow both the children's court and the district court to exercise full subject matter jurisdiction in criminal matters. State v. Garcia, 93 N.M. 51, 596 P.2d 264 (1979).

Section requires district court to send matter to children's court if defendant was not adult when the offense charged allegedly was committed. State v. Doe, 95 N.M. 88, 619 P.2d 192 (Ct. App. 1980).

Traffic offenses not deemed delinquent acts. - Under this section, it appears that municipal and magistrate courts can exercise jurisdiction over children for traffic offenses which are not designated delinquent acts under the Children's Code. 1972 Op. Att'y Gen. No. 72-32.

Extradition of juveniles from another state. - See 1973 Op. Att'y Gen. No. 73-14.

Remand from state district court to children's court. - On habeas corpus petitions by state prisoners, the federal courts are concerned only with basic constitutional questions, and whether a juvenile under New Mexico law is entitled to a remand from the state district court to the juvenile (now children's) court because of defects in the waiver of jurisdiction presents a procedural question ordinarily to be determined by the New Mexico courts. Salazar v. Rodriguez, 371 F.2d 726 (10th Cir. 1967)(decision rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court, 11 A.L.R. 147, 78 A.L.R. 317, 146 A.L.R. 1153.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

32-1-12. Retention of jurisdiction of child by court.

Jurisdiction obtained by the court over a child is retained by the court until terminated by court order, but jurisdiction of the subject matter and the child is automatically terminated when:

A. the child becomes an adult, except that jurisdiction is retained until disposition of a case involving a child who becomes an adult during the pendency of the proceedings pursuant to the Children's Code; or

B. a case involving an offense alleged to have been committed by the child is transferred by the court to a tribunal having criminal jurisdiction; or

C. subject to the Rules of Civil Procedure for the District Courts for other civil actions, when the court enters an order under Section 32-1-34 NMSA 1978 for the transfer of legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children, unless the transfer order is for a short-term commitment not to exceed fifteen days in accordance with the provisions of that section. For the purposes of this subsection, the order of transfer of legal custody is a final judgment.

History: 1953 Comp., § 13-14-12, enacted by Laws 1972, ch. 97, § 12; 1981, ch. 36, § 9.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Filing petition under 32-1-17 NMSA 1978 sufficiently vests jurisdiction in children's court over persons alleged to have committed delinquent acts while under the age of 18, regardless of their ages at the time the charges are filed. State v. Doe, 95 N.M. 88, 619 P.2d 192 (Ct. App. 1980).

Case not terminated where child reaches 18 after filing petition. - Since children's court retains jurisdiction under this section until disposition of case or until transfer to an adult court having criminal jurisdiction, petition alleging delinquency was not automatically terminated by 32-1-38H NMSA 1978 where child in question reached 18 years of age after filing but before disposition of the petition. In re Doe, 87 N.M. 172, 531 P.2d 220 (Ct. App. 1975).

Discharged prisoner can be charged and tried in district court. - The jurisdiction of the juvenile (now children's) court ceased at age 21 and a prisoner, who, on a procedural error, was discharged for an offense committed while under the jurisdiction of the juvenile (children's) court, can be subsequently charged and tried in district court if he was then over 21. Trujillo v. State, 79 N.M. 618, 447 P.2d 279 (1968)(decided under former law).

Effect of lack of counsel. - Where the inquiry is described as one wherein the juvenile (now children's) court decides if it should certify the juvenile to district court to be treated as an adult or should retain the juvenile and proceed to determine its own jurisdiction to punish him as a juvenile, the fact that no counsel was furnished does not result in a deprivation of rights so as to make void all subsequent proceedings in district court, including the judgment and sentence. Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968)(decided under former law).

Court's authority terminates upon transferring mentally ill to boy's school. - Authority of the children's court terminates when it transfers mentally ill, delinquent children to the state boys' school for care and rehabilitation, so that the court has no authority to provide in its judgment that the children not be released without its prior approval. Under these circumstances, the boys' school has exclusive power to parole or release the children. State v. Doe, 90 N.M. 572, 566 P.2d 121 (Ct. App. 1977).

However, future court action not foreclosed by transfer. - Subsection C of this section and 32-1-38 NMSA 1978 apply to the custody order which transferred custody of the child to the boys' school, and after entry of that order, the children's court had no further jurisdiction under the express language of the above two sections; this, however, does not foreclose future court action in connection with the child adjudicated a delinquent. Therefore, the children's court did have jurisdiction to consider the petition of the boys' school to retain legal custody over the child until his twenty-first birthday. In re Doe, 85 N.M. 691, 516 P.2d 201 (Ct. App. 1973).

Court's jurisdiction ends upon transferring child to human services department. - Once the children's court transfers legal custody of a child to the health and social services department (now human services department), the court's jurisdiction ends, and so, having transferred legal custody to the department, the children's court had no authority to order the department to place the physical custody of the child with any particular organization. Health & Social Servs. Dep't v. Doe, 91 N.M. 675, 579 P.2d 801 (Ct. App. 1978).

Time limitation on custody transfer void. - Although the court possesses the power to transfer legal custody of delinquent children to an agency responsible for their care and rehabilitation, any attempt by the court to impose a time limitation on the transfer of custody, even if well within the time limitations already authorized by statute, is void as being in excess of the court's jurisdiction. 1979 Op. Att'y Gen. No. 79-37.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Continuing jurisdiction, power of juvenile court to exercise over infant delinquent or offender, 76 A.L.R. 657.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent, 14 A.L.R.2d 336.

Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506.

Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

32-1-13. Venue and transfer.

A. Proceedings in the court under the provisions of the Children's Code shall be begun in the county where the child resides. If delinquency or need of supervision is alleged, the proceeding may also be begun in the county where the act constituting the alleged delinquent act occurred or need of supervision exists, or in the county in which the child is detained. If neglect or abuse is alleged, the proceeding may also be begun in the county where the child is present when the proceeding is begun.

B. The venue for proceedings under other laws will be determined by the venue provisions of the other laws. If the other laws contain no venue provisions, then the venue and transfer provisions of Subsections A and C of this section apply.

C. If a proceeding is begun in a court for a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition of the proceeding, may transfer the proceeding to the court for the county of the child's residence for such further proceedings as the receiving court deems proper. A like transfer may be made if the residence of the child changes during the proceeding or if the child has been adjudicated a delinquent child or a child in need of supervision and other proceedings involving the child are pending in the county of his

residence. Certified copies of all legal and social records pertaining to the proceeding shall accompany the case on transfer.

History: 1953 Comp., § 13-14-13, enacted by Laws 1972, ch. 97, § 13; 1977, ch. 381, § 2; 1981, ch. 36, § 10.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

32-1-14. Complaints; referral; preliminary inquiry.

A. Complaints alleging delinquency or need of supervision shall be referred to probation services, which shall conduct a preliminary inquiry to determine the best interests of the child and of the public with regard to any action to be taken. Complaints alleging neglect or abuse shall be referred to the human services department which shall conduct an investigation to determine the best interests of the child with regard to any action to be taken.

B. During the preliminary inquiry on a delinquency or need of supervision complaint, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights pursuant to Section 32-1-27 NMSA 1978, and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The preliminary inquiry shall be completed within the time limits set forth in the Rules of Procedure for the Children's Court.

C. After completion of the preliminary inquiry on a delinquency or need of supervision complaint, probation services shall notify the children's court attorney and recommend an appropriate disposition for the case.

D. When a child is in detention or custody, and the children's court attorney does not file a petition within the time limits authorized by the Rules of Procedure for the Children's Court, the child shall be released immediately.

E. Probation services shall notify the children's court attorney of the receipt of any complaint involving an act which constitutes a felony under the applicable criminal law. Probation services shall also recommend a disposition to the children's court attorney.

F. During the investigation of a complaint alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the investigation, the parties shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the complaint was made.

G. After completion of the investigation on a neglect or abuse complaint, the human services department shall either recommend or refuse to recommend the filing of a petition.

H. When a child is in the custody of the human services department and the filing of a neglect or abuse petition is not authorized by the children's court attorney, the child shall be released immediately.

History: 1953 Comp., § 13-14-14, enacted by Laws 1972, ch. 97, § 14; 1975, ch. 320, § 1; 1981, ch. 36, § 11.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

Legislative intent. - The legislature, by enacting this section and 32-1-28 NMSA 1978, intended that there be prompt adjudication of cases under the Children's Code. Doe v. State, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Purpose of preliminary inquiry is not to determine guilt or innocence, but to afford probation services insight into the need for filing a petition. State v. Doe, 91 N.M. 232, 572 P.2d 960 (Ct. App.), cert. denied, 91 N.M. 249, 572 P.2d 1257 (1977).

There can be valid preliminary inquiry without conference, and therefore without an initial conference involving the child, the parents and probation services. State v. Doe, 91 N.M. 232, 572 P.2d 960 (Ct. App.), cert. denied, 91 N.M. 249, 572 P.2d 1257 (1977).

Best interests determination involves exercise of discretion. - A best interest determination, whether by probation services, the children's court attorney, or both, involves the exercise of discretion. State v. Doe, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

And is a social determination, not a legal one. - The best interests determination as to the filing of a delinquency petition is a social determination, not a legal determination. State v. Doe, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

Habeas corpus writ additional means of bringing child before court. - The statutory remedy for bringing dependent and neglected children before the district court was not exclusive and the court could issue a writ of habeas corpus upon application by state department of public welfare (now human services department) to obtain custody of an alleged dependent and neglected child. New Mexico Dep't of Pub. Welfare v. Cromer, 52 N.M. 331, 197 P.2d 902 (1948)(decided under former law).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," See 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 40.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

43 C.J.S. Infants §§ 93, 99.

32-1-15. Duty to report child abuse and neglect; penalty for failure to report.

A. Any licensed physician, resident or intern examining, attending or treating a child, any law enforcement officer, registered nurse, visiting nurse, schoolteacher or social worker acting in his official capacity or any other person knowing or having reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

(1) a local law enforcement agency; or

(2) the county social services office of the human services department in the county where the child resides.

B. Any law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the county social services office of the human services department in the county where the child resides and shall transmit the same information in writing within forty-eight hours. Any county social services office of the human services department receiving a report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and his parents, guardians or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the county social services office of the human services department.

C. The recipient of the report under Subsection A of this section shall take immediate steps to insure prompt investigation of the report. Such investigation shall insure that immediate steps are taken to protect the health or welfare of the abused or neglected

child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

D. Upon a determination by the director of the social services division of the human services department that any child may have suffered or is in imminent danger of suffering abuse or neglect while in the care or control of or in a child care facility or family day-care home, the human services department shall immediately notify the parents of the child and the health services division of the health and environment department [department of health]. No determination shall be made prior to consultation with the facility.

E. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the human services department, the report shall be investigated through the office of the district attorney.

F. A law enforcement agency or officer shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the agencies enumerated in Subsection A of this section.

G. Any person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

H. Any person failing, neglecting or refusing to report as provided in Subsection B of this section is guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100).

History: 1953 Comp., § 13-14-14.1, enacted by Laws 1973, ch. 360, § 2; 1977, ch. 252, § 19; 1977, ch. 260, § 1; 1977, ch. 296, § 1; 1977, ch. 379, § 1; 1979, ch. 357, § 2; 1983, ch. 185, § 3; 1989, ch. 287, § 2.

Bracketed material. - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "having reasonable suspicion" for "suspecting" in the introductory language, substituted present Paragraph (1) for the former paragraph, which read "the criminal prosecution division of the office of the district attorney", and deleted former Paragraph (3), which read "the probation services office of the judicial district in which the child resides"; in Subsection B, substituted the present first two sentences for the former first sentence, which read "An oral report shall be made promptly by the recipient of the report under Paragraph (2) or (3) of Subsection A of this section to the district attorney by telephone or in person, and a written report shall be submitted to the district attorney as soon thereafter

as possible", and added the last sentence; in Subsection E, inserted "human services"; in Subsection F, deleted "upon written authorization by the district attorney within that judicial district delivered to the agency" following "shall have access" and "Paragraphs (1) through (3) of" following "agencies enumerated in"; added present Subsection G; and redesignated former Subsection G as present Subsection H, deleting "A or" following "Subsection" therein.

Dismissals from human services department were in accordance with law and supported by substantial evidence, which included the failure to promptly report the alleged sexual abuse of a child to the proper authorities. Perkins v. Department of Human Servs., 106 N.M. 651, 748 P.2d 24 (Ct. App. 1987).

Requirement of "consultation" in Subsection D is not due process pre-deprivation hearing requirement, and plaintiff day-care center operator's constitutional right to due process was not violated by the human services department's transfer of state subsidized children to other facilities and suspension of federal funds pending completion of an investigation. Rice v. Vigil, 642 F. Supp. 212 (D.N.M. 1986), aff'd sub nom. Rice v. New Mexico, 854 F.2d 1323 (10th Cir. 1988).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Infants § 16.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis, 89 A.L.R.2d 396.

Sexual abuse of child by parent as ground for termination of parent's right to child, 58 A.L.R.3d 1074.

Parent's involuntary confinement, or failure to care for child as result thereof, as evincing neglect, unfitness or the like in dependency or divestiture proceeding, 79 A.L.R.3d 417.

Civil liability of physician for failure to diagnose or report battered child syndrome, 97 A.L.R.3d 338.

Admissibility of expert medical testimony on battered child syndrome, 98 A.L.R.3d 306.

Validity and construction of penal statute prohibiting child abuse, 1 A.L.R.4th 38.

Validity, construction, and application of state statute requiring doctor or other person to report child abuse, 73 A.L.R.4th 782.

Physical examination of child's body for evidence of abuse as violative of Fourth Amendment or as raising Fourth Amendment issue, 93 A.L.R. Fed. 530.

43 C.J.S. Infants § 14.

32-1-16. Admissibility of report in evidence; immunity of reporting person.

A. In any proceeding alleging neglect or abuse under the Children's Code resulting from a report required by Section 32-1-15 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32-1-15 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. Any school personnel or other person who has the duty to report child abuse pursuant to Section 32-1-15 NMSA 1978 shall permit a member of a law enforcement agency or an employee of the human services department to interview the child with respect to a report without the permission of his parent, guardian or custodian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. All law enforcement personnel and all employees of the human services department shall conduct interviews pursuant to Subsection C of this section in a manner which protects the child from unnecessary trauma and embarrassment.

History: 1953 Comp., § 13-14-14.2, enacted by Laws 1973, ch. 360, § 3; 1981, ch. 36, § 12; 1985, ch. 127, § 1; 1985, ch. 135, § 1; 1989, ch. 166, § 1.

Cross-references. - For Rules of Evidence, see Judicial Pamphlet 11.

The 1989 amendment, effective June 16, 1989, substituted the present provisions of Subsection C for "Any school personnel or other person who has the duty to report child abuse pursuant to Section 32-1-15 NMSA 1978 and who permits a member of a law enforcement agency or an employee of the human services department to interview the child with respect to that report without the permission of his parent, guardian or custodian is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose"; and added Subsection D.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity, construction, and application of statute limiting physician-patient privilege in judicial proceedings relating to child abuse or neglect, 44 A.L.R.4th 649.

32-1-17. Petition; authorization to file.

A. A petition alleging delinquency or need of supervision under the Children's Code shall not be filed in delinquency proceedings or need of supervision proceedings unless the children's court attorney after consulting with probation services has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child. The children's court attorney shall furnish legal services in connection with the authorization and preparation of the petition.

B. A petition alleging neglect or abuse shall not be filed unless the children's court attorney has determined and endorsed upon the petition that the filing of the petition is in the best interests of the child. The children's court attorney shall, upon request of a person authorizing the filing of a petition, furnish legal services in connection with the authorization and preparation of the petition and the representation of the petitioner if the petitioner so requests.

History: 1953 Comp., § 13-14-15, enacted by Laws 1972, ch. 97, § 15; 1973, ch. 360, § 4; 1981, ch. 36, § 13.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Filing of petition under this section sufficiently vests jurisdiction in children's court over persons alleged to have committed delinquent acts while under the age of 18, regardless of their ages at the time the charges are filed. State v. Doe, 95 N.M. 88, 619 P.2d 192 (Ct. App. 1980).

Petition complies with section. - A petition, signed by the children's court attorney stating that probation services has determined that the best interest of the child and the public require that a petition, as authorized by 32-1-14 NMSA 1978, be filed, complies with this section and is sufficient to satisfy the requirement of a "finding" in Rule 22(a), N.M.R. Child. Ct. (now Rule 10-203(a)). State v. Doe, 92 N.M. 198, 585 P.2d 342 (Ct. App. 1978).

Noncompliance of petition with section. - The district court erred in applying the provisions of the Probate Code to appellees' application for guardianship and in adjudicating the child to be neglected under procedural provisions outside the provisions of the Children's Code, because the petition alleging neglect, seeking removal of the child from the mother's custody and the appointment of guardians did not

comply with the provisions of 32-1-18 NMSA 1978 and Subsection B of this section. In re Lupe C., 112 N.M. 116, 812 P.2d 365 (Ct. App. 1991).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 40.

43 C.J.S. Infants §§ 93, 99.

32-1-18. Petition; who may sign.

A. A petition initiating proceedings under the Children's Code shall be signed by the children's court attorney.

B. An affidavit for an ex-parte custody order may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true.

History: 1953 Comp., § 13-14-16, enacted by Laws 1972, ch. 97, § 16; 1973, ch. 360, § 5; 1981, ch. 36, § 14.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Petition held insufficient. - The district court erred in applying the provisions of the Probate Code to appellees' application for guardianship and in adjudicating the child to be neglected under procedural provisions outside the provisions of the Children's Code, because the petition alleging neglect, seeking removal of the child from the mother's custody and the appointment of guardians did not comply with the provisions of Subsection B of 32-1-17 NMSA 1978 and this section. In re Lupe C., 112 N.M. 116, 812 P.2d 365 (Ct. App. 1991).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

32-1-19. Petition; form and content.

A petition initiating proceedings under the Children's Code shall be entitled, "In the Matter of ....., a child", and shall set forth with specificity:

A. the facts necessary to invoke the jurisdiction of the court;

B. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;

C. the name, birth date and residence address of the child;

D. the name and residence address of the parents, guardian, custodian or spouse, if any, of the child; and if no parent, guardian, custodian or spouse, if any, resides or can be found within the state, or if his residence address is unknown, the name of any known adult relative residing within the state, or, if there be none, the known adult relative residing nearest to the court;

E. whether the child is in custody, and, if so, the place of detention when alleging delinquency or need of supervision and the place of custody when alleging neglect or abuse and the time he was taken into custody; and

F. if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known.

History: 1953 Comp., § 13-14-17, enacted by Laws 1972, ch. 97, § 17; 1981, ch. 36, § 15.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Neglect proceeding without final judgment does not bar termination proceeding. - Where neglect proceedings do not result in a final judgment on the merits, the department is not barred under the "judgments" rule from later bringing termination proceedings. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982).

Petition held insufficient. - Petition alleging that child had committed a delinquent act but not alleging that the child was in need of care or rehabilitation was insufficient to confer jurisdiction upon the children's court, since delinquency under 32-1-3N NMSA 1978 requires a showing that both elements exist. In re Doe, 87 N.M. 170, 531 P.2d 218 (Ct. App. 1975).

32-1-20. Summons; issuance and content; waiver of service.

A. After a petition has been filed, summonses shall be issued directed to the child if the child is 14 or more years of age, or is alleged in the petition to be delinquent or in need of supervision, whether or not fourteen years of age and to the parent, guardian, custodian and spouse, if any, of the child, and to such other persons as the court considers proper or necessary parties.

B. The summons shall require the persons to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Children's Code and shall have attached to it a copy of the petition.

C. The court may endorse upon the summons an order directing the parent, guardian, custodian or other person having the physical custody or control of the child to bring the child to the hearing.

D. If it appears from any sworn statement presented to the court that the child needs to be placed in detention, the judge may endorse on the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of detention designated by the court, subject, however, to all of the provisions of the Children's Code relating to detention criteria and post-detention proceedings and the rights of the child in regard thereto.

E. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his counsel, with the consent of the parent, guardian or custodian, may waive service of summons in his behalf.

History: 1953 Comp., § 13-14-18, enacted by Laws 1972, ch. 97, § 18; 1981, ch. 36, § 16.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Age reference is to years of age, not mental age. - The numerous references to age in the Children's Code are references to years of age, not mental age. State v. Doe, 97 N.M. 598, 642 P.2d 201 (Ct. App. 1982).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 43.

43 C.J.S. Infants §§ 93, 99.

32-1-21. Summons; service.

A. If a party to be served with a summons can be found within the state, the summons shall be served upon him as provided by Rule 4(e) of the Rules of Civil Procedure [Rule 1-004E SCRA 1986] at least forty-eight hours before the hearing.

B. If a party to be served is within the state and cannot be found, but his address is known, service of the summons may be made by mailing a copy thereof to the party by certified mail at least fifteen days before the hearing.

C. If, after reasonable effort, a party to be served cannot be found, or address ascertained, within or without the state, the court may order service of the summons by publication in accordance with the provisions of Rule 4(g) of the Rules of Civil Procedure in which event the hearing shall not be less than five days after the date of last publication.

D. The court may authorize the payment from court funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

History: 1953 Comp., § 13-14-19, enacted by Laws 1972, ch. 97, § 19.

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Service of process, 90 A.L.R.2d 293.

32-1-22. Taking into custody; penalty.

A. A child may be taken into custody:

(1) pursuant to the order of the court endorsed on the summons because the child needs to be detained or taken into custody;

(2) pursuant to the order of the court issued because a parent, guardian or custodian fails when requested to bring the child before the court after having promised to do so when the child was delivered upon release from custody;

(3) pursuant to the laws of arrest for commission of a delinquent act;

(4) by a law enforcement officer when the officer has reasonable grounds to believe that the child is suffering from illness or injury or has been abandoned or is in danger from the child's surroundings and removal from those surroundings is necessary;

(5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian or custodian; and

(6) by a probation officer proceeding under Section 32-1-8 NMSA 1978.

B. A child alleged or adjudicated to be a child in need of supervision may be taken into custody and detained pursuant to a court order issued after a finding that the child has failed or refused to appear in court in response to a summons served upon him in

accordance with the Rules of Procedure for the Children's Court. A child detained under this provision shall have an adjudication hearing within ten days or the petition shall be dismissed.

C. If a child taken into custody is Indian and is alleged to be neglected or abused, the human services department shall give notice to the agent of the appropriate Indian tribe in accordance with the Indian Child Welfare Act of 1978, 25 U.S.C., Sections 1901 through 1963.

D. Any person who intentionally interferes with protective custody provided by Paragraph (1) of Subsection A of this section is guilty of a petty misdemeanor.

History: 1953 Comp., § 13-14-20, enacted by Laws 1972, ch. 97, § 20; 1981, ch. 36, § 17.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

Taking into custody of juveniles is clearly contemplated by this section. 1959-60 Op. Att'y Gen. No. 60-166 (opinion rendered under former law).

But taking into custody of juvenile is not to be termed an arrest. 1959-60 Op. Att'y Gen. No. 60-166 (opinion rendered under former law).

Filing of petition necessary before detention. - A juvenile may not be picked up or detained without some person first having caused to be filed a petition alleging the facts causing the juvenile to come within the purview of the Juvenile (now Children's) Code, and then only upon order of the court. 1961-62 Op. Att'y Gen. No. 62-32 (opinion rendered under former law).

Section does not expand jurisdiction. - It has been suggested that the language in this section may broaden or extend the jurisdiction of the court. While this language establishes the point in time of the court's jurisdiction, it does not extend nor expand the jurisdiction of the juvenile (now children's) court as is otherwise set out by 32-1-9 NMSA 1978. 1959-60 Op. Att'y Gen. No. 59-52 (opinion rendered under former law).

Police not prevented from taking juvenile while upon school premises. - The statutes governing the duties of teachers, county boards of education, county school superintendents and the state board of education do not impose the obligation or grant the power to prevent the police taking into custody of juveniles while upon school premises. 1959-60 Op. Att'y Gen. No. 60-166 (opinion rendered under former law).

Even if there for purpose of questioning. - Officers of the police, sheriff's department or juvenile (now children's) court have authority to take children into custody while they

are on school grounds for the purpose of questioning. 1959-60 Op. Att'y Gen. No. 60-166 (opinion rendered under former law).

Circumstances where officer cannot detain juvenile. - A law enforcement officer cannot detain or pick up a juvenile while on school grounds or any where else for the purpose, for instance, of questioning concerning an offense in which the juvenile may be implicated in the absence of a warrant or circumstances or surroundings which indicate that the juvenile's welfare is endangered, or in the absence of the juvenile being found violating some statute or ordinance. 1964 Op. Att'y Gen. No. 64-56 (opinion rendered under former law).

Police may not "pick up" juvenile probation violators on orders of probation officers. - Municipal police officers may not pick up delinquent children for suspected probation violations pursuant to "pick up" orders issued by juvenile probation officers since such orders are not warrants, directives of a law enforcement official or valid process of the court. 1983-84 Op. Att'y Gen. No. 84-1.

Detention until bond posted violates provisions. - The action of the police, acting unilaterally in detaining a child in jail for violating a city's curfew ordinance until his parents post bond, is contrary to the Children's Code. 1975 Op. Att'y Gen. No. 75-58.

Extradition of juveniles from another state. - See 1973 Op. Att'y Gen. No. 73-14.

Legal proceedings to prevent withholding of medical treatment. - The State of New Mexico has authority under state law to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. 1985 Op. Att'y Gen. No. 85-5.

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 35.

Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 A.L.R.3d 421.

32-1-23. Release or delivery from custody.

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

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

(2) in the case of the alleged delinquent or child in need of supervision, release the child to the child's parent, guardian or custodian upon their written promise to bring the child before the court when requested by the court, and if the parent, guardian or custodian fail, when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court; or

(3) in the case of the alleged delinquent or child in need of supervision, deliver the child to probation services or to a place of detention designated by the court; and in the case of an alleged neglected or abused child, deliver the child to the human services department or to an appropriate shelter-care facility; or for an alleged delinquent, child in need of supervision or neglected or abused child, to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis.

B. When an alleged delinquent or child in need of supervision is delivered to probation services or to a place of detention designated by the court, a probation officer, prior to the placing of the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under the criteria established by the Children's Code or has been ordered by the court pursuant to those criteria.

C. When an alleged neglected or abused child is delivered to the human services department, a human services department caseworker, prior to the placing of the child in custody, shall review the need for placing the child in custody and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the court pursuant to those criteria. When a child is delivered to an appropriate shelter-care facility, a human services department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the court pursuant to those criteria.

D. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian and to the court together with a statement of the reason for taking the child into custody.

E. In all cases when a child is taken into custody, he shall be released to his parent, guardian or custodian in accordance with the conditions and time limits set forth in the Rules of Procedure for the Children's Court.

History: 1953 Comp., § 13-14-21, enacted by Laws 1972, ch. 97, § 21; 1981, ch. 36, § 18.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

Generally. - While there appears to be no doubt that juveniles may be taken into custody for the purpose of questioning, care must be exercised as to what is done with them after the taking of custody, particularly in view of the provision of the law that a juvenile is not to be unduly detained in a prison or jail. Furthermore, in most cases, the juvenile should be released to the custody of his parent or other responsible adult until his case is to be disposed of. At any rate, no juvenile can be held in detention longer than 48 (now 24) hours except upon order of the court. 1959-60 Op. Att'y Gen. No. 60-166 (opinion rendered under former law).

No detention in absence of court order or probation determination. - In the absence of a court order, detention is not permitted by statute in the absence of the juvenile probation office's determination that it is warranted. Thus the city police, acting on their own, may not detain a child. 1975 Op. Att'y Gen. No. 75-58.

No bail or bond as of right. - Under the Juvenile (now Children's) Code, a juvenile is not entitled to bail nor is he entitled, as a matter of right, to bond on supersedeas after a determination has been made that he is a juvenile delinquent and a sentence of detention has been passed against him. Of course, so far as the question of supersedeas bond is concerned, the matter would be under the rules of the court and discretionary with the court. 1957-58 Op. Att'y Gen. No. 57-215 (opinion rendered under former law).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Bail: right of bail in proceedings in juvenile courts, 53 A.L.R.3d 848.

32-1-24. Criteria for detention of children.

A. Unless ordered by the court pursuant to the provisions of the Children's Code, a child taken into custody shall not be placed in detention prior to the court's disposition unless:

(1) probable cause exists to believe that if not detained the child will commit injury to the persons or property of others or cause injury to himself or be subject to injury by others; or

(2) when probable cause exists to believe that the child has no parent, guardian, custodian or other person able to provide adequate supervision and care for him; or

(3) when probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

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

History: 1953 Comp., § 13-14-22, enacted by Laws 1972, ch. 97, § 22.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile, 5 A.L.R.4th 1211.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

32-1-25. Place of detention.

A. A child alleged to be a delinquent child may be detained pending court hearing in any of the following places:

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

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

(3) a facility provided for in Section 32-2A-5 NMSA 1978 or a detention facility established by the youth authority for children alleged to be delinquent children; or

(4) any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined under Section 32-1-34 NMSA 1978, designated by the court which meets the standards for detention facilities under the Children's Code and federal law.

B. A child who is alleged or adjudicated to be a child in need of supervision may be detained only in:

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

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

(3) a facility provided for in Section 32-2A-5 NMSA 1978; or

(4) any other suitable place, including a detention facility that has been certified for the detention of alleged or adjudicated children in need of supervision; provided that a child who is alleged to be a child in need of supervision shall not be detained in a secure detention facility and a child who is adjudicated to be in need of supervision shall be detained in a secure detention facility only in accordance with the provisions of Paragraph (3) of Subsection F of Section 32-1-34 NMSA 1978.

History: 1953 Comp., § 13-14-23, enacted by Laws 1972, ch. 97, § 23; 1976, ch. 19, § 1; 1977, ch. 257, § 18; 1977, ch. 381, § 3; 1978, ch. 108, § 8; 1981, ch. 36, § 19; 1988, ch. 101, § 21; 1989, ch. 328, § 4.

The 1988 amendment, effective July 1, 1989, substituted "youth authority" for "corrections and criminal rehabilitation department" in Subsection A(3); inserted the language beginning with "provided" at the end of Subsection B(4); and made minor stylistic changes throughout the section.

The 1989 amendment, effective July 1, 1989, in Subsection A, inserted "and federal law" in Paragraph (4).

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Child in need of supervision may not be held in jail. - Under no circumstances may a child in need of supervision be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children. This prohibition includes jail lock-up, drunk tanks or county jails. Consistent with the policy of Subsection E (now Subsection B) of this section, every effort should be made to expedite transfer of physical custody of the child in need of supervision to a suitable shelter-care facility. 1979 Op. Att'y Gen. No. 79-8.

A child alleged to be delinquent or in need of supervision, and the child's parents, cannot sign a waiver which would allow the child to be detained pending final adjudication in a local jail facility with total sight and only partial sound segregation from adult jail detainees. 1990 Op. Att'y Gen. No. 90-16.

Detention of child until bond posted not permitted. - City police acting unilaterally may not detain a child in jail until his parents post bond. In the absence of a court order

or a determination by the juvenile probation office, no detention is permitted. 1975 Op. Att'y Gen. No. 75-58.

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 A.L.R.3d 568.

32-1-25.1. Place of temporary custody.

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but may be detained in the following community-based shelter-care facilities:

A. a licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence; or

B. a facility operated by a licensed child welfare services agency; or

C. a facility provided for in Section 32-2A-5 NMSA 1978; or

D. with a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court; or

E. any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined under Section 32-1-34 NMSA 1978, designated by the court and which meets the standards for detention facilities under the Children's Code.

History: 1978 Comp., § 32-1-25.1, enacted by Laws 1981, ch. 36, § 20.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

32-1-26. Detention hearing required on detained children; court determination; disposition.

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

(1) a petition shall be filed within forty-eight hours, excluding Saturdays, Sundays and legal holidays, and if not filed within the stated time the child shall be released; and

(2) a detention hearing shall be held within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time of filing the petition to determine whether

continued detention is required pursuant to the criteria established by the Children's Code.

B. The judge may appoint one or more persons to serve as referees on a full- or part-time basis for the purpose of holding detention hearings. A probation officer shall not be appointed as a referee. The judge shall approve all contracts with referees and shall fix their hourly compensation subject to the approval of the director of the administrative office of the courts.

C. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the court to the child's parents, guardian or custodian, if they can be found, and to the child if the petition alleges that the child is a delinquent child or a child in need of supervision. Prior to any child being placed in the custody or protective supervision of the human services department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

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

E. If the judge or referee finds that the child's detention is appropriate under the criteria established by the Children's Code, he shall order detention in an appropriate facility in accordance with the Children's Code.

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

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

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

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

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

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

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

History: 1953 Comp., § 13-14-24, enacted by Laws 1972, ch. 97, § 24; 1973, ch. 360, § 6; 1986, ch. 99, § 1.

Cross-references. - As to the administrative office of the courts, see 34-9-1 NMSA 1978.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

32-1-27. Basic rights.

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

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

C. No person subject to the provisions of the Children's Code who is alleged or suspected of being a delinquent child or a child in need of supervision may be interrogated or questioned without first advising the child of his constitutional rights and securing a knowing, intelligent and voluntary waiver.

D. Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a child in need of supervision or a delinquent child, the state must

prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained.

E. In determining whether the child knowingly, intelligently and voluntarily waived his rights, the court shall consider the following factors:

(1) the age and education of the respondent;

(2) whether or not the respondent is in custody;

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

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

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

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

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

(8) whether or not the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of fifteen years prior to an adjudication on the allegations of the petition.

G. In a proceeding on a petition alleging delinquency or need of supervision an extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.

H. In proceedings on a petition alleging delinquency or need of supervision and in those instances specified under other provisions of the Children's Code, the child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

I. A child alleged to be or adjudicated as a child in need of supervision or a child under the age of thirteen alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.

J. In proceedings on a petition alleging neglect or abuse, the parent, guardian or custodian of the child shall be informed that he has the right to be represented by counsel and, upon request, counsel shall be appointed if the person is unable to obtain counsel for financial reasons, or if in the court's discretion appointment of counsel is required in the interest of justice.

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

L. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

M. Persons afforded rights under the Children's Code shall be advised of those rights at their first appearance before the court on a petition under the Children's Code.

History: Laws 1972, ch. 97, § 25; 1953 Comp., § 13-14-25; Laws 1973, ch. 360, § 7; 1981, ch. 36, § 21.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Child's right to counsel is the right to have counsel present at any proceeding where the child is a participant; the right to counsel does not extend to a probation officer's conference with another probation officer, law enforcement officers or the other children involved. State v. Doe, 91 N.M. 232, 572 P.2d 960 (Ct. App.), cert. denied, 91 N.M. 249, 572 P.2d 1257 (1978).

The policy behind Rule 22(d), N.M.R. Child. Ct. (now Rule 10-204), is that every child has the right to be represented by an attorney and that a child is not capable of making a knowing and intelligent waiver of that right. State v. Doe, 95 N.M. 302, 621 P.2d 519 (Ct. App. 1980).

Statements made before advised by counsel inadmissible. - Where the statements of the defendant, a child, show he believed in the truth of statements witnesses made to the police, the defendant's statements were made to the police after the police took him into custody and at a time when he was not advised by counsel, and under this section the statements were inadmissible. State v. Doe, 91 N.M. 92, 570 P.2d 923 (Ct. App. 1977).

This section is not applicable to volunteered statements or statements not requiring Miranda warnings, such as answers to threshold questioning. Doe v. State, 100 N.M. 579, 673 P.2d 1312 (1984).

Fourth amendment applicable to proceedings. - United States Const., amend. IV, rights of persons to be secure against unreasonable searches and seizures, has been expressly applied to juvenile proceedings in this state by Subsection C of this section. Doe v. State, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975); State v. Doe, 93 N.M. 143, 597 P.2d 1183 (Ct. App. 1979).

Children require opportunity to be heard. - Where children's court made a dispositional ruling without giving the attorney for the children an opportunity to be heard, and where the attorney nevertheless sought to speak on behalf of the children, but the children's court interrupted and effectively denied the children the opportunity to be heard, the portions of the judgments committing each of the children to the department of corrections (now corrections department) were vacated to afford the children an opportunity to be heard before a new dispositional judgment is to be entered. State v. Doe, 90 N.M. 404, 564 P.2d 207 (Ct. App. 1977).

A child has the right to address the children's court before disposition; the children's court should offer a child the opportunity to address the court before pronouncing sentence. State v. Ricky G., 110 N.M. 646, 798 P.2d 596 (Ct. App. 1990).

Factors for children's court consideration. - The factors listed in Subsection E are for the children's court to consider, not the court of appeals. That the children's court ultimately made a finding against the child on the issue of waiver does not mean that the children's court did not consider the factors. State v. Christopher P., 111 N.M. 80, 801 P.2d 662 (Ct. App. 1990), rev'd on other grounds, 112 N.M. 416, 816 P.2d 485 (1991).

Court has discretionary power to accept or refuse admission by child, and so it is not an abuse of discretion to refuse to accept the admission when the consequence of such an acceptance would foreclose transfer specifically authorized by 32-1-30 NMSA 1978. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

No reversal where court fails to advise of rights. - Although the court has a statutory obligation to advise children before it of their rights under the Children's Code and other laws at each separate appearance, these sections must be read in light of the legislative purposes expressed in the code, and where the child did not claim any prejudice nor claim that he was not otherwise advised by his attorney of his constitutional or other legal rights, the appellate court would not reverse a commitment order for failure of the trial court to advise the child of his rights. In re Doe, 88 N.M. 481, 542 P.2d 61 (Ct. App. 1975).

Waiver of right must be done intelligently. - Waiver of a right created by the constitution, a statute or a court-promulgated rule must be done intelligently and

knowingly if the right is to be denied the one claiming it. State ex rel. Department of Human Servs. v. Perlman, 96 N.M. 779, 635 P.2d 588 (Ct. App. 1981).

Subsection F does not refer to "mental age"; rather, it is a reference to years of age. State v. Doe, 97 N.M. 598, 642 P.2d 201 (Ct. App. 1982).

Admission of child's statement is reversible error. - Admission of statements made by a child under age 15 against that child at a hearing to adjudicate delinquency is reversible error. State v. Jonathan M., 109 N.M. 789, 791 P.2d 64 (1990).

Right to disqualify judge. - The provisions of 38-3-9 NMSA 1978, relating to the disqualification of a judge, are applicable to juvenile (now children's) court judges and to juvenile (now children's) court actions and proceedings. Frazier v. Stanley, 83 N.M. 719, 497 P.2d 230 (1972)(decided under former law).

The fact that the Juvenile (now Children's) Code created special procedures and special handling for minors accused of criminal offenses, and no provision is made in the Juvenile (Children's) Code for the disqualification of a juvenile (now children's court) judge, does not mean that the provisions of 38-3-9 NMSA 1978 are inapplicable to juvenile (children's) court proceedings. The juvenile (now children's) judge is none other than the district judge serving in another division of the district court and the juvenile is a party to the action or proceeding and entitled to exercise the right of disqualification given her by 38-3-9 NMSA 1978. Frazier v. Stanley, 83 N.M. 719, 497 P.2d 230 (1972)(decided under former law).

The disqualification statute (38-3-9 NMSA 1978) applies to children's court proceedings, and a party to a children's court proceeding is entitled to disqualify the children's court judge. Smith v. Martinez, 96 N.M. 440, 631 P.2d 1308 (1981).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For article, "Children's Waiver of Miranda Rights and the Supreme Court's Decisions in Parham, Bellotti, and Fare," see 10 N.M.L. Rev. 379 (1980).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

For note, "Children's Code - Neglect - State ex rel. Health & Social Services Department v. Natural Father," see 12 N.M.L. Rev. 505 (1982).

For annual survey of New Mexico law relating to civil procedure, see 13 N.M.L. Rev. 251 (1983).

For comment, "The Right to Be Present: Should It Apply to the Involuntary Civil Commitment Hearing," see 17 N.M.L. Rev. 165 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 38, 39, 46, 47, 49 to 54.

Duty to advise accused as to right to assistance of counsel, 3 A.L.R.2d 1003.

Right to and appointment of counsel, 60 A.L.R.2d 691.

Jury trial in juvenile court delinquency proceedings, right to, 100 A.L.R.2d 1241.

Bail: right to bail in proceedings in juvenile courts, 53 A.L.R.3d 848.

Applicability of double jeopardy to juvenile court proceedings, 5 A.L.R.4th 234.

Mental subnormality of accused as affecting voluntariness or admissibility of confession, 8 A.L.R.4th 16.

Right of juvenile court defendant to be represented during court proceedings by parent, 11 A.L.R.4th 719.

Validity and efficacy of minor's waiver of right to counsel - modern cases, 25 A.L.R.4th 1072.

43 C.J.S. Infants § 96.

32-1-28. Time limitations on delinquency adjudicatory hearing.

The adjudicatory hearing in a delinquency proceeding shall be held in accordance with the time limits set forth in the Rules of Procedure for the Children's Court.

History: Laws 1972, ch. 97, § 26; 1953 Comp., § 13-14-26; Laws 1975, ch. 320, § 2; 1981, ch. 36, § 22.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

Granting of continuance within trial court's discretion. - The granting of a motion for continuance is within the sound discretion of the trial court and such action will not be disturbed on review unless there is a showing of abuse of that discretion. Doe v. State, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 46.

32-1-28.1. Time limitations on custody hearings.

When a child alleged to be neglected or abused has been taken into custody by the human services department or the human services department has petitioned the court for temporary custody, a custody hearing shall be held in accordance with the time limits set forth in the Rules of Procedure for the Children's Court.

History: Laws 1981, ch. 36, § 38.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

32-1-28.2. Time limitations on neglect or abuse adjudicatory hearing.

The adjudicatory hearing in a neglect or abuse proceeding shall be held in accordance with the time limits set forth in the Rules of Procedure for the Children's Court.

History: Laws 1981, ch. 36, § 39.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

32-1-29. Transfer to criminal court; hearing.

A. After a petition has been filed alleging a delinquent act, the court may, before hearing the petition on its merits, transfer the matter for prosecution in the district court if:

(1) the child was sixteen years of age or more at the time of the conduct alleged to be a delinquent act and the alleged delinquent act is a felony under the applicable criminal law; and

(2) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging a delinquent act, except that the hearing will be to the court without a jury; and

(3) notice in writing of the time, place and purpose of the hearing is given the child, parent, guardian or custodian at least three days before the hearing; and

(4) the court finds upon the hearing that there are reasonable grounds to believe that:

(a) the child committed the delinquent act alleged; and

(b) the child is not amenable to treatment or rehabilitation as a child through available facilities; and

(c) the child is not committable to an institution for the developmentally disabled or mentally disordered; and

(d) the interests of the community require that the child be placed under legal restraint or discipline.

B. Prior to hearing any evidence relevant to the issues described in Subparagraphs (b), (c) and (d) of Paragraph (4) of Subsection A of this section the court shall hear all evidence relevant to Subparagraph (a) of Paragraph (4) of Subsection A of this section and shall make the specific finding required by that subparagraph.

C. The transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition. No child shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the children's court unless the case has been transferred as provided in this section or Section 32-1-30 NMSA 1978.

D. If the case is not transferred, the judge who conducted the transfer hearing shall not, over objection of a party, preside at the hearing on the petition. If the case is transferred to a district court of which the judge who conducted the transfer hearing is also a judge, that judge is disqualified upon objection of a party from presiding in the district court proceedings on the criminal matter.

E. After transfer, in the event the child is convicted and sentenced to confinement, he shall be remanded to the custody of the corrections and criminal rehabilitation department [corrections department] to be assigned to a facility or institution most appropriate with regard to the age of the child and the execution of the sentence.

History: 1953 Comp., § 13-14-27, enacted by Laws 1972, ch. 97, § 27; 1975, ch. 320, § 3; 1981, ch. 36, § 23.

Jurisdiction over child prosecuted as adult. - If the children's court finds at a transfer hearing that a juvenile should be prosecuted as an adult, then the adult division obtains personal jurisdiction over the child and subject matter jurisdiction over the entire case. State v. Garcia, 93 N.M. 51, 596 P.2d 264 (1979).

Motion to transfer is preadjudicatory motion under Rule 14, N.M.R. Child. Ct. (now Rule 10-114). State v. Doe, 94 N.M. 446, 612 P.2d 238 (Ct. App. 1980).

Denial of transfer motion not "final". - The denial of a transfer motion under either this section or 32-1-30 NMSA 1978 is not "final" - it simply leaves the case in the children's court for further proceedings. State v. Doe, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983).

And court empowered to reconsider denial order. - The children's court has the inherent power to reconsider, by reason of its nonfinal nature, an order denying a motion to transfer. State v. Doe, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983).

Transfer requires both state and federal constitutional safeguards. - When a juvenile is transferred to district court for criminal proceedings, all of the rights and safeguards in such cases required by law and the constitution of the United States and the constitution of New Mexico must be accorded him. Williams v. Sanders, 80 N.M. 619, 459 P.2d 145 (1969)(decided under former law).

Certification provisions meet equal protection and due process standards. - The court found the provisions for certification of a juvenile to district court (as an adult) were not so vague, indefinite and lacking in any recognizable standard or criterion for a determination of certification as to deny him equal protection and due process afforded by N.M. Const., art. II, § 18. State v. Jimenez, 84 N.M. 335, 503 P.2d 315 (1972)(decided under former law).

District court's powers to try minors. - Never since the legislature enacted the first Juvenile Delinquency Act has it attempted to deny district courts their traditional and constitutional power to place on trial one accused of having committed a felony, merely because his age at the time of the offense placed him below the maximum age named in the statute. State v. Doyal, 59 N.M. 454, 286 P.2d 306 (1955)(decided under former law).

Court presumed to know what makes child "committable". - The children's court is presumed to know what evidence is necessary to find a child "committable," in order that he may be able to make the necessary finding under Subsection A(4)(c) that the child is not commitable. State v. Doe, 98 N.M. 567, 650 P.2d 851 (Ct. App. 1982).

And may find child "uncommittable" if he cannot be adequately treated. - Where, no matter how the defendant's problems might be classified, there is no available program or facility that can adequately treat him, the court can find that he is not "committable." State v. Doe, 98 N.M. 567, 650 P.2d 851 (Ct. App. 1982).

Under Subsection A(4)(b) court must find child not amenable to treatment or rehabilitation before transferring to district court, whereas 32-1-30A(4) NMSA 1978 requires only the consideration of the child's amenability. State v. Doe, 100 N.M. 649, 674 P.2d 1109 (1983).

Federal courts bound by state's interpretation of statute. - Where the supreme court of New Mexico, in a habeas corpus action, upheld the juvenile (now children's) court proceedings and jurisdiction of the district court to proceed, federal courts are bound by the state's interpretation of its own statutes. Salazar v. Rodriguez, 371 F.2d 726 (10th Cir. 1967)(decided under former law).

Notice of certification deemed given. - The court found that the title of the act, the former act, gives adequate notice that provisions for certification of a juvenile to the district court could reasonably be found within the act. State v. Jimenez, 84 N.M. 335, 503 P.2d 315 (1972).

Effect of including probation record at hearing. - Where defendant had no objection to the procedure followed, the inclusion of the probation record as a part of the record at the transfer hearing, and defendant did not offer any witnesses nor ask for sworn testimony concerning the contents of the probation record, then in these circumstances, defendant waived any deficiency in the full investigation and in the procedure followed at the hearing resulting in the transfer order. State v. Madrigal, 85 N.M. 496, 513 P.2d 1278 (Ct. App.), cert. denied, 85 N.M. 483, 513 P.2d 1265 (1973) (decided under former law).

Requirement of Subsection A(4) met if record establishes age. - Subsection A(4) of this section does not require a finding of age at the hearing, and if the record establishes the age, the age requirement of Subsection A(1) is met regardless of whether evidence of age was introduced at the transfer hearing where the children's court petition alleged the child's birthdate and the date of the offense, to which dates no issue was taken, the appellate court would not hold that the children's court was without jurisdiction to transfer the child. In re Doe, 89 N.M. 507, 554 P.2d 669 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

"Reasonable grounds" defined. - As used in Subsection A(4), "reasonable grounds" means facts and circumstances which would warrant a prudent and cautious person in believing that the child came within the requirements of Subparagraphs (a), (b), (c) and (d) of that subsection. In re Doe, 89 N.M. 507, 554 P.2d 669 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Different treatment of mental illness distinguished. - Under this section, the court is required to find there are reasonable grounds to believe that the child is not committable to an institution for the mentally ill. Under 32-1-30 NMSA 1978, no findings are required as to the child's mental illness; rather the child may be transferred to district court for a criminal trial without regard to the child's mental illness. The rationale for the different treatment of mental illness is that transfers under 32-1-30 NMSA 1978, are limited to the

serious offenses specified therein. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Lack of counsel at hearing does not void subsequent proceedings. - Where the inquiry is described as one wherein the juvenile (now children's) court decides if it should certify the juvenile to district court to be treated as an adult or should retain the juvenile and proceed to determine its own jurisdiction to punish him as a juvenile, the fact that no counsel was furnished does not result in a deprivation of rights so as to make void all subsequent proceedings in district court, including the judgment and sentence. Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968)(decided under former law).

Or indicates that district court lacks jurisdiction. - While it is implied that the certification hearing is a "critical stage proceeding" at which a juvenile is entitled to the assistance of counsel, there is no indication that if the certification is made the district court does not have jurisdiction to proceed if no objection is made in that court where the juvenile is adequately represented by counsel. Acuna v. Baker, 418 F.2d 639 (10th Cir. 1969)(decided under former law).

Waiver of representation by counsel. - Representation of juvenile by counsel at or during the preliminary investigation can be waived, if this is done knowingly and intelligently. Further, waiver is accomplished when, upon arraignment with counsel in district court, no objection is made to the failure to be represented by counsel during the juvenile court investigation. Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968)(decided under former law).

Objection to lack of counsel barred. - If at the time of arraignment, complaint had been made that counsel had not been provided in juvenile (now children's) court, it would possibly have been error for the district court to refuse to remand to the juvenile court for a proper hearing. But if no objection is voiced, what reason can be advanced to hold there was no waiver of such defect in juvenile (now children's) court when it is clear that the same shortcoming in the preliminary hearing was effectively waived? The failure to provide counsel if required at the hearing was waived. Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968)(decided under former law).

Possession of copy of transfer order does not confer jurisdiction. - It is not necessary that a copy of the order of transfer actually appear in the files of the district court to confer upon it jurisdiction over the minor. It is not the fact that the district court is in possession of the copy of the order that gives it jurisdiction, but rather the fact that the proper order had been made. Trujillo v. Cox, 75 N.M. 257, 403 P.2d 696 (1965)(decided under former law).

And letter from judge does not affirmatively establish it. - Jurisdiction of the trial court cannot be affirmatively established by a letter from the judge of the juvenile (now children's) court stating that he remembered making such an order, but that neither the order nor any record of it could be found. Trujillo v. Cox, 75 N.M. 257, 403 P.2d 696 (1965)(decided under former law).

Jurisdiction of court depends upon proper order being made. - Jurisdiction by the district court does not depend upon its possession of the order of transfer from the juvenile (now children's) court but rather upon the fact that the proper order was made. State v. Salazar, 79 N.M. 592, 446 P.2d 644 (1968)(decided under former law).

And it must be shown by competent evidence. - When it has been made to appear in a habeas corpus proceeding that the petitioner was a minor within the terms of the statute requiring an order of transfer from the juvenile (now children's) court to confer jurisdiction on the district court, the fact that such order was actually made must appear by competent evidence. Absent such proof, his commitment to the penitentiary was upon a void judgment. Trujillo v. Cox, 75 N.M. 257, 403 P.2d 696 (1965)(decided under former law).

Time limit for transfer hearing. - Transfer hearing must be held within 30 days from the date the motion to transfer is filed if the child is in detention; when the child is not in detention, within 90 days from the date the motion to transfer is filed. State v. Doe, 94 N.M. 446, 612 P.2d 238 (Ct. App. 1980).

Delay beyond time set in Rule 10-226 unreasonable. - Any delay in holding a transfer hearing beyond the amount of time set in Rule 46, N.M.R. Child. Ct. (now Rule 10-226) for the adjudicatory hearing, is unreasonable. State v. Doe, 94 N.M. 446, 612 P.2d 238 (Ct. App. 1980).

Void first transfer allows court to make second transfer. - Since the first transfer was void, defendant had not been properly transferred to the district court for criminal proceedings, and as the first transfer was void, it is as if the first transfer never occurred. Accordingly, it did not deprive the juvenile (now children's) court of jurisdiction to make the second transfer. State v. Sedillo, 81 N.M. 622, 471 P.2d 192 (Ct. App. 1970)(decided under former law).

Voluntary guilty plea waives procedural and constitutional defects. - On habeas corpus petitions by state prisoners, the federal court is concerned only with basic constitutional questions. Whether a juvenile under New Mexico law is entitled to a remand from the state district court to the juvenile (now children's) court because of defects in the waiver of jurisdiction presents a procedural question ordinarily to be determined by the New Mexico courts, and since there was a voluntary plea of guilty which waived prior procedural defects and constitutional infirmities, the federal court did not reach the constitutional right of a juvenile to be represented by an attorney in juvenile proceedings or the admissibility into evidence of admissions or confessions made without constitutional protection. Salazar v. Rodriguez, 371 F.2d 726 (10th Cir. 1967)(decided under former law).

Including prior failure to provide counsel. - Where petitioner received all benefits to which he would have been entitled as an adult, his voluntary plea of guilty after consulting counsel, and no showing of prejudice being made, amounted to a waiver of

prior failure to provide counsel at a preliminary hearing. Neller v. State, 79 N.M. 528, 445 P.2d 949 (1968)(decided under former law).

Transfer order appealable. - Transfer order under this section is an appealable judgment. In re Doe, 86 N.M. 37, 519 P.2d 133 (Ct. App. 1974).

Appeal of court's transfer to district court. - On appeal of the children's court's transfer of child to district court to be tried as an adult the appellate court would not weigh the evidence relative to the finding that the child was not amenable to treatment through available facilities, holding only that it was sufficient, and all that was required was evidence from which the court could find reasonable grounds to believe the interests of the community required that the child be placed under legal restraint or discipline. In re Doe, 89 N.M. 700, 556 P.2d 1176 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Time limit for filing motion to disqualify judge. - Any motion to disqualify, on the basis that the adjudicatory judge was also the transfer hearing judge, should be filed at least 10 days prior to the hearing on adjudication. State v. Doe, 95 N.M. 369, 622 P.2d 274 (Ct. App. 1980).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Childen's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For annual survey of New Mexico criminal procedure, see 16 N.M.L. Rev. 25 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Homicide by juvenile as within jurisdiction of juvenile court, 48 A.L.R.2d 663.

Possibility of rehabilitation as affecting whether juvenile offender should be tried as adult, 22 A.L.R.4th 1162.

32-1-30. Discretionary transfer to criminal court.

A. Notwithstanding the provisions of Section 32-1-29 NMSA 1978, after a petition has been filed alleging a delinquent act, the court may, before hearing the petition on its merits, transfer the matter for prosecution in the district court if:

(1) the child was fifteen years of age or more at the time of the conduct alleged to be a delinquent act, and the alleged delinquent act is murder under Section 30-2-1 NMSA 1978, or when the child was sixteen years of age or more and the alleged act is assault with intent to commit a violent felony under Section 30-3-3 NMSA 1978, or kidnapping under Section 30-4-1 NMSA 1978, or aggravated battery under Section 30-3-5 NMSA 1978, or dangerous use of explosives under Section 30-7-5 NMSA 1978, or a felony

criminal sexual penetration under Section 30-9-11 NMSA 1978, or robbery under Section 30-16-2 NMSA 1978, or aggravated burglary under Section 30-16-4 NMSA 1978, or aggravated arson under Section 30-17-6 NMSA 1978; and

(2) a hearing on whether the transfer shall be made is held in conformity with the rules on a hearing on a petition alleging a delinquent act, except that the hearing shall be to the court without a jury; and

(3) notice in writing of the time, place and purpose of the hearing is given the child, his attorney, parents, guardian or custodian at least five days before the hearing; and

(4) the court has considered whether the child is amenable to treatment or rehabilitation as a child through available facilities; and

(5) the court makes a specific finding upon the hearing that there are reasonable grounds to believe that the child committed the alleged delinquent act.

B. The transfer terminates the jurisdiction of the court over the child with respect to delinquent acts alleged in the petition. No child shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the children's court unless the case has been transferred as provided in this section. In the event the child after such transfer is convicted and sentenced to confinement, he shall be remanded to the custody of the secretary of corrections for confinement at the facility or institution most appropriate with regard to the age of the child and the execution of the sentence; provided, such confinement shall be subject to any conditions the court may impose.

C. If the case is not transferred, the judge who conducted the transfer hearing shall not, over objection of a party, preside at the hearing on the petition. If the case is transferred to a district court of which the judge who conducted the transfer hearing is also a judge, that judge is disqualified upon objection of a party from presiding in the district court proceedings on the criminal matter.

History: 1953 Comp., § 13-14-27.1, enacted by Laws 1975, ch. 320, § 4; 1977, ch. 193, § 1.

Constitutionality of section. - There is no denial of equal protection on the basis of the age classifications of this section. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

The claimed improper classifications of this section on the basis of offenses is frivolous, as the offenses necessary for a transfer are all serious felonies, and this classification does not offend against equal protection of the law. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Use of the words "considered" and "available facilities" in Subsection A(4) of this section is not void for vagueness. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Subsection A(4) is not unconstitutional. State v. Doe, 103 N.M. 233, 704 P.2d 1109 (Ct. App. 1985).

Applicability of privilege against self-incrimination. - The fifth amendment privilege against self-incrimination extends to transfer proceedings initiated pursuant to this section. Christopher P. v. State, 112 N.M. 416, 816 P.2d 485 (1991).

Intent of section. - The legislature, in enacting 32-1-11 NMSA 1978 and this section, intended to create a mechanism which would allow both the children's court and the district court to exercise full subject matter jurisdiction in criminal matters. State v. Garcia, 93 N.M. 51, 596 P.2d 264 (1979).

Meaning of "consider". - Subsection A(4) requires the court to "consider" uncontradicted evidence; that is, to think about the evidence with a degree of care and caution. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

Different treatment of mental illness distinguished. - Under 32-1-29 NMSA 1978, the court is required to find that there are reasonable grounds to believe that the child is not committable to an institution for the mentally ill. Under this section, no findings are required as to the child's mental illness; rather the child may be transferred to district court for a criminal trial without regard to the child's mental illness. The rationale for the different treatment of mental illness is that transfers under this section are limited to the serious offenses specified therein. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Reasonableness is test for timeliness of filing transfer motion. - Rule 14, N.M.R. Child. Ct. (now Rule 10-114), which requires that a preadjudicating motion be filed within 10 days, is not applicable to a motion to transfer a child to the district court to be prosecuted as an adult; therefore, reasonableness is the test when there is an issue concerning the timeliness of the filing of a motion to transfer. State v. Doe, 96 N.M. 515, 632 P.2d 750 (Ct. App. 1981).

Jurisdiction dependent upon proper order. - Jurisdiction by the district court does not depend upon its possession of the order of transfer from the juvenile court but rather upon the fact that the proper order was made. State v. Salazar, 79 N.M. 592, 446 P.2d 644 (1968)(decided under former law).

Jurisdiction over child prosecuted as adult. - If the children's court finds at a transfer hearing that a juvenile should be prosecuted as an adult, then the adult division obtains personal jurisdiction over the child and subject matter jurisdiction over the entire case. State v. Garcia, 93 N.M. 51, 596 P.2d 264 (1979).

Since the children's court found at a hearing that a juvenile should be prosecuted as an adult for murder, the district court obtained personal jurisdiction over the child and subject matter jurisdiction over the entire case; thus, the entire matter was properly transferred, including the offenses of robbery and conspiracy, not merely the offense of

murder, to prevent fragmentation of the criminal proceedings on offenses arising from the same criminal charges. State v. Taylor, 107 N.M. 66, 752 P.2d 781 (1988).

Trial of juvenile as adult unaffected by children's court rules. - The Children's Code and the Rules of Procedure for the Children's Court (now Children's Court Rules and Forms) do not affect proceedings in the district court when an individual who is under the age of 18 is tried in the district court as an adult. State v. Garcia, 93 N.M. 51, 596 P.2d 264 (1979).

Acceptance of child's admission precludes transfer to district court. - Acceptance of an admission by a child involves accepting that the child has committed a delinquent act and accepting that the child is a delinquent child. Once the child is found to have committed a delinquent act, Rule 38(a), N.M.R. Child. Ct. (now Rule 10-306), requires entry of judgment. Thus, a transfer to the district court, pursuant to this section, cannot occur once the admission is accepted. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Only determination to be made in transferring individuals from the children's court to the district court is whether, because of the child's age and the type of delinquent act involved, the case should be tried in the district court. State v. Garcia, 93 N.M. 51, 596 P.2d 264 (1979).

No requirement of specific finding concerning notice. - There is no requirement in Subsection A(3) that the children's court make a specific finding concerning notice to the child's parents, guardian, or custodian, although inclusion of a specific finding concerning notice in the transfer order is the preferable practice. State v. Wilford T., 108 N.M. 781, 779 P.2d 559 (Ct. App. 1989).

Implicit finding is insufficient when statute requires specific finding. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

Petition complies with Subsection A(1). - Where the petition sets forth the child's birthdate and the date of the offense and no issue is raised as to their correctness, the requirement of Subsection A(1) of this section is met regardless of whether evidence of age is introduced at the transfer hearing. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Considerations of court prior to transfer. - In a hearing before a transfer under this section, the court must consider the time limitation on children's court dispositional judgments, need only "consider" the amenability question under Subsection A(4), must examine evidence of the child's potential response to treatment, must somewhat predict the child's future conduct in considering amenability, and must find that appropriate facilities for treatment or rehabilitation are available. State v. Doe, 103 N.M. 233, 704 P.2d 1109 (Ct. App. 1985).

Consideration of whether child committable not required. - Because whether a child is committable is a factor under 32-1-29 NMSA 1978 transfers but not under transfers pursuant to this section, no abuse of discretion occurs when a trial court does not institute commitment proceedings in transfers under this section. State v. Doe, 103 N.M. 233, 704 P.2d 1109 (Ct. App. 1985).

Subsection A(4) requires only consideration of amenability to treatment prior to directing transfer. - Subsection A(4) requires only the consideration of the child's amenability to treatment before making findings directing transfer to district court, whereas 32-1-29A(4)(b) NMSA 1978 requires the finding that the child is not amenable. State v. Doe, 100 N.M. 649, 674 P.2d 1109 (1983).

The amenability question is not determinative of whether the child should be tried as an adult. Amenability enters the analysis only to let the children's court know that it is not required to transfer all children believed to have committed serious felonies. Subsection A(4) requires only that the children's court consider the amenability question, nothing more. State v. Christopher P., 111 N.M. 80, 801 P.2d 662 (Ct. App. 1990), rev'd on other grounds, 112 N.M. 416, 816 P.2d 485 (1991).

"Findings" as to amenability of a child to treatment or rehabilitation are not a statutory requirement, nor are they a requirement under Rule 43, N.M.R. Child. Ct. (now Rule 10-222). If findings are made, the function of the finding is to show that consideration was given. State v. Doe, 97 N.M. 598, 642 P.2d 201 (Ct. App. 1982).

Amenability to treatment as child evidentiary question. - The amenability of a child to treatment or rehabilitation as a child through available facilities is an evidentiary question. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

Careful, cautious consideration of amenability evidence required. - If the court fails to consider the uncontradicted evidence of amenability, the transfer order is an abuse of discretion because of a failure to comply with the statutory requirement that the amenability evidence be considered. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

A court's order of transfer despite acceptance of uncontradicted evidence of amenability is an abuse of discretion because of a failure to think about the evidence with care and caution. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

If the court thinks about uncontradicted evidence of amenability with a degree of care and caution and rejects it, it is nonetheless an abuse of discretion. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

Psychological examination of child authorized. - The court has authority to provide for a psychological examination to assist the children's court judge with the determination "whether the child is amenable to treatment or rehabilitation." State v.

Doe, 97 N.M. 263, 639 P.2d 72 (Ct. App. 1981), cert. denied, 457 U.S. 1136, 102 S. Ct. 2965, 73 L. Ed. 2d 1354 (1982).

Rights of child ordered to consult psychologist. - Child's fifth amendment rights were violated by the court's order compelling him to discuss the alleged offenses with the psychologist without the advice of counsel. Christopher P. v. State, 112 N.M. 416, 816 P.2d 485 (1991).

Decision of amenability must include a prediction regarding the child's future conduct. State v. Doe, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983).

And commission of serious crime while transfer hearing pending relevant to such prediction. - The commission of a serious crime by the child while a transfer hearing is pending is an instance of conduct relevant to a prediction concerning probable future conduct and the likelihood of success of court-ordered rehabilitation treatment. State v. Doe, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983).

Specific finding of probable cause required for transfer. - Where the court does not make a specific finding of "reasonable grounds" or of "probable cause" under Subsection A(5), it makes no findings, and, where no findings are made, a transfer order is invalid because it was not entered in compliance with this section. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

On appeal of children's court's transfer of child to district court to be tried as an adult, the appellate court would not weigh the evidence relative to the finding that the child was not amenable to treatment through available facilities, holding only that it was sufficient, and all that was required was evidence from which the court could find reasonable grounds to believe the interests of the community required that the child be placed under legal restraint or discipline. In re Doe, 89 N.M. 700, 556 P.2d 1176 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Court does not weigh evidence on appeal of a transfer under this section but rather only determines whether there is evidence to make the requisite finding. State v. Doe, 93 N.M. 481, 601 P.2d 451 (Ct. App. 1979).

Refusal to dismiss transfer motion not abuse of discretion. - Where detention order put defendant child's counsel on notice that a motion to transfer child to district court for prosecution as an adult would be forthcoming, and where defense counsel did not claim lack of adequate preparation time, surprise, or prejudice, or request a continuance, the court did not abuse its discretion by refusing to dismiss the transfer motion. State v. Doe, 96 N.M. 515, 632 P.2d 750 (Ct. App. 1981).

Denial of transfer motion not "final". - The denial of a transfer motion under either 32-1-29 NMSA 1978 or this section is not "final" - it simply leaves the case in the children's court for further proceedings. State v. Doe, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983).

And court empowered to reconsider denial order. - The children's court has the inherent power to reconsider, by reason of its nonfinal nature, an order denying a motion to transfer. State v. Doe, 99 N.M. 460, 659 P.2d 912 (Ct. App. 1983).

Stay from prosecution should be granted in appeal from order transferring juvenile to district court to stand trial as an adult. State v. Greg R., 104 N.M. 778, 727 P.2d 86 (Ct. App. 1986).

Transfer order may be summarily affirmed. - Summary affirmance was due on order transferring a juvenile from children's court to be tried as an adult even though juvenile filed a timely memorandum in opposition to affirmance, and though continuing to contest summary disposition, he provided no reasons why the summary disposition should not be made. State v. Greg R., 104 N.M. 778, 727 P.2d 86 (Ct. App. 1986).

Law reviews. - For survey, "Children's Court in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For note, "The Transfer of a Child from Juvenile Court to Adult Court: State v. Doe," see 15 N.M.L. Rev. 379 (1985).

For annual survey of New Mexico Criminal Procedure, see 20 N.M.L. Rev. 285 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Possibility of rehabilitation as affecting whether juvenile offender should be tried as adult, 22 A.L.R.4th 1162.

32-1-31. Conduct of hearings; findings; dismissal; dispositional matters.

A. Hearings on petitions shall be conducted by the court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether the child committed the alleged delinquent acts. If no jury is demanded, the hearing shall be by the court without a jury, and all hearings on petitions other than those alleging delinquency shall be without a jury. Jury trials shall be conducted in accordance with rules promulgated under the provisions of Subsection C of Section 32-1-4 NMSA 1978. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. The court shall advise persons before the court of their basic rights under the Children's Code and other laws at each separate appearance.

B. All hearings to declare a person in contempt of court and all hearings on petitions alleging delinquency of a child shall be open to the general public except where the court in its discretion after a finding of exceptional circumstances deems it appropriate to conduct a closed delinquency hearing. All abuse and neglect and child in need of supervision hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the court may be present at a closed hearing. Those other persons the court finds to have a proper interest in the case or in the work of the court, including members of the bar, may be admitted by the court to closed hearings on the condition that they refrain from divulging any information which would identify the child or family involved in the proceedings. Accredited representatives of the news media shall be allowed to be present at closed hearings subject to the conditions that they refrain from divulging information that would identify any child involved in the proceedings or the parent or guardian of that child and subject to such enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code. If the court finds that it is in the best interest of the child, the child may be temporarily excluded from a neglect or an abuse hearing and during the taking of evidence on the issues of need for treatment and rehabilitation in delinquency and need of supervision hearings. Under the same conditions, a child may be temporarily excluded by the court during a hearing on dispositional issues.

C. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of Subsection B of this section are guilty of a petty misdemeanor.

D. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of neglect, abuse, delinquency or need of supervision shall make and record its findings on whether the child is a neglected child, an abused child or both or whether the delinquent acts subscribed to the child were committed by the child. If the court finds that the allegations of delinquency have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings. If the finding is that the child is an abused child, the procedural safeguards of Section 32-1-38 NMSA 1978 shall apply with respect to the return of the child to the respondents.

E. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt based upon competent, material and relevant evidence that the child committed the acts by reason of which he is alleged to be delinquent or in need of supervision, it may, in the absence of objection, proceed immediately to hear evidence on whether the child is in need of care or rehabilitation and file its finding. When evidence of alcohol or other drug abuse is present, the court may refer the child to a screening program for examination and recommendations regarding substance abuse treatment. If treatment is found to be appropriate to the care and rehabilitation of the child, the court may refer the child to treatment. The court shall

order the parent, guardian or custodian of the child to pay the fee, determined by regulations promulgated by the health and environment department [department of health], for such court-ordered screening and treatment, unless the parent, guardian or custodian is found by the court to be indigent. If the parent, guardian or custodian of the child is found to be indigent, the court may refer the child to any screening or treatment program under contract with the alcoholism bureau or drug abuse bureau of the behavioral health services division of the health and environment department [department of health]. The court may use the findings and recommendations of the screening program in making its determination as to whether the child is in need of care or rehabilitation and in deciding upon the course of care or rehabilitation for the child. In the absence of evidence to the contrary, evidence of the commission of an act which would constitute a felony if committed by an adult or driving under the influence of intoxicating liquor or drugs is sufficient to sustain a finding that the child is in need of care or rehabilitation and to warrant referral to a screening program for assessment of alcohol or other drug abuse and the recommendation of an appropriate course of substance abuse treatment. If the court finds that a child alleged to be delinquent or in need of supervision is not in need of care or rehabilitation, it may dismiss the petition and order the child released from any detention or legal custody imposed in the proceedings. No child shall be placed in the custody of the youth authority after adjudication of his case without a finding of need for care and rehabilitation.

F. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected, abused, a delinquent or in need of supervision, the court may proceed immediately or at a postponed hearing to make disposition of the case.

G. In that part of the hearings held under the Children's Code on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues and the issue of need for care and rehabilitation.

H. On the court's motion or that of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for detention or legal custody.

History: 1953 Comp., § 13-14-28, enacted by Laws 1972, ch. 97, § 28; 1973, ch. 195, § 1; 1981, ch. 36, § 24; 1983, ch. 243, § 1; 1984, ch. 74, § 1; 1985, ch. 97, § 1; 1988, ch. 101, § 22.

Cross-references. - As to sentencing for petty misdemeanors, see 31-19-1 NMSA 1978.

Bracketed material. - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

The 1988 amendment, effective July 1, 1989, substituted "youth authority" for "department of corrections" in the last sentence of Subsection E.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Purpose of proceeding to determine "delinquency" is to decide whether the accused is responsible for prohibited conduct and, when criminal, the consequences may be the same as in the case of an adult. Indeed, it is even possible that ultimately this could result in the juvenile being incarcerated in the penitentiary with adult offenders. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968)(decided under former law).

Acceptance of admission by child involves accepting that the child has committed a delinquent act and accepting that the child is a delinquent child. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

Obligation to advise of rights. - Although the court has a statutory obligation to advise children before it of their rights under the Children's Code and other laws at each separate appearance, these sections must be read in light of the legislative purposes expressed in the code, and where the child did not claim any prejudice nor claim that he was not otherwise advised by his attorney of his constitutional or other legal rights, the appellate court would not reverse a commitment order for failure of the trial court to advise the child of his rights. In re Doe, 88 N.M. 481, 542 P.2d 61 (Ct. App. 1975).

Including opportunity to present case. - Under former juvenile code, father ordered to attend daughter's delinquency hearing as a witness was denied due process when he was ordered at that hearing to pay support, since he had neither been advised that a judgment might be rendered against him nor given opportunity to be heard. In re Downs, 82 N.M. 319, 481 P.2d 107 (1971).

Demand requirement in Subsection A is ineffective to change constitutional right to a jury trial. State v. Doe, 94 N.M. 637, 614 P.2d 1086 (Ct. App. 1980).

Waiver of right must be done knowingly. - Waiver of a right created by the constitution, a statute or a court-promulgated rule must be done intelligently and knowingly if the right is to be denied the one claiming it. State ex rel. Department of Human Servs. v. Perlman, 96 N.M. 779, 635 P.2d 588 (Ct. App. 1981).

Express waiver of right to jury trial required. - Where a child has a right to a trial by jury, such right may be waived, but only by an express waiver. State v. Doe, 94 N.M. 637, 614 P.2d 1086 (Ct. App. 1980).

Phrase "when the offense alleged would be triable by jury if committed by an adult" in Subsection A means a district court offense. A child charged with a petty misdemeanor which would have been triable by jury in the magistrate court if committed by an adult was not entitled to jury trial. State v. Doe, 90 N.M. 776, 568 P.2d 612 (Ct. App.), cert. denied, 91 N.M. 3, 569 P.2d 413 (1977).

Same treatment as adult. - Prior to the adoption of the state's first juvenile law in 1917, a minor charged with having committed a criminal offense was handled no differently than an adult. Under the provisions of N.M. Const., art. II, § 12, which reads in part, "the right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate," he would have been entitled to have his guilt determined by a jury before he could have been imprisoned. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

No imprisonment without jury. - At the time of the adoption of the state constitution, a juvenile could not have been imprisoned without a trial by jury. This being true, no change in terminology or procedure may be invoked whereby incarceration could be accomplished in a manner which involved denial of the right to jury trial. Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968).

Driving under the influence and violating Liquor Control Act. - Child who was charged with driving under the influence and violation of the Liquor Control Act was entitled to a jury trial, since an adult would have been entitled to a jury trial if facing two charges with the same penalties as the offenses on which the child was tried, and since the maximum possible aggregate sentence exceeded six months. State v. Benjamin C., 109 N.M. 67, 781 P.2d 795 (Ct. App. 1989).

Traffic offenses not public hearings. - Hearings for those traffic offenses which are delinquent acts, which come exclusively under the jurisdiction of the children's court, are expressly not public hearings. 1972 Op. Att'y Gen. No. 72-34.

Felony evidence not charged in petition sustains finding. - Evidence of "an act" constituting a felony, in the absence of contrary evidence, sustains a finding that a child is in need of care or rehabilitation, whether or not the felony act was charged in the petition. State v. Doe, 93 N.M. 206, 598 P.2d 1166 (Ct. App. 1979).

Conviction of crime prerequisite to determination of delinquency. - It is a fundamental right of a party to be convicted of a crime, which is a necessary prerequisite to a determination of delinquency, based upon evidence of the elements of the crime, and in a prosecution for a violation of 30-31-23 NMSA 1978, the state must prove that the respondents had knowledge of the presence and character of the item possessed; a degree of furtiveness on the parts of juvenile respondents, in doing their smoking and passing a pipe around between buildings while changing classes, in light

of a school regulation prohibiting the smoking of tobacco, was not conduct sufficient to infer that the smokers knew the character of the substance they were using. Doe v. State, 88 N.M. 347, 540 P.2d 827 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Certified statement on appeal supports conclusion of delinquency. - Where the children's court judge's original findings did not support delinquency under this section, but a certified statement by him on appeal did contain findings that supported the judgment, the findings were sufficient to support the conclusion that the child was a delinquent. State v. Doe, 91 N.M. 92, 570 P.2d 923 (Ct. App. 1977).

Two aspects to determination of delinquency. - There are two aspects to the determination that a child is a delinquent child - the act which he committed and the need for care or rehabilitation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

On a petition alleging delinquency, the adjudicatory proceedings involve two aspects: (1) whether the child committed the delinquent act, and (2) whether the child is in need of care or rehabilitation. State v. Doe, 93 N.M. 206, 598 P.2d 1166 (Ct. App. 1979).

Standard for admissibility of evidence in adjudicatory phases of hearing is clearly different from that in the dispositional phase of the hearing. Doe v. State, 92 N.M. 74, 582 P.2d 1287 (1978).

Use of predisposition report held constitutionally impermissible. - When a predisposition report received by a judge in a juvenile delinquency case is composed primarily of hearsay evidence which would be clearly incompetent within the meaning of this section in either of the adjudicatory phases of the proceedings, and it was not shown to be "competent, material and relevant in nature," then to use such hearsay and untested evidence to determine delinquency is constitutionally impermissible as a denial of the child's constitutional right to confront and cross-examine the witnesses against him. Doe v. State, 92 N.M. 74, 582 P.2d 1287 (1978).

Finding of need of care or rehabilitation required. - This section requires a finding that a child found to have committed delinquent acts was in need of care or rehabilitation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Standard of proof. - Where the basis for seeking the involuntary removal of a child from the custody of a parent is predicated upon allegations of parental neglect, a party seeking an award of guardianship and an award of child custody must establish parental neglect by clear and convincing evidence and show that the appointment is in the child's best interests. In re Lupe C., 112 N.M. 116, 812 P.2d 365 (Ct. App. 1991).

Evidence supporting need for rehabilitation. - Where the evidence showed that a child made an unauthorized entry of the residence of a victim at night with the intent to commit the offense of criminal sexual penetration (which is the third-degree felony of burglary) and that after entering he attempted to commit, at the least, the crime of

criminal sexual penetration in the third degree (a fourth-degree felony), and there was no evidence to the contrary, the evidence of either of the felonies sustains the finding that the child is in need of care and rehabilitation. State v. Doe, 93 N.M. 206, 598 P.2d 1166 (Ct. App. 1979).

Evidence of neglect held insufficient. - Trial court's findings and conclusions that mother had neglected her child were not supported by clear and convincing evidence, where the only evidence of neglect presented was the mother's failure to fully comply with a treatment plan devised by the human services department and there was no court order requiring such compliance. In re Mary L., 108 N.M. 702, 778 P.2d 449 (Ct. App. 1989).

Children's court had statutory authority to order therapy for a child, even though the court found that the child was neither abused nor neglected, where the facts indicated that the case itself caused a need for the child to require counselling. State ex rel. Department of Human Servs. v. Patrick R., 105 N.M. 133, 729 P.2d 1387 (Ct. App. 1986).

No authority to order evaluation although child committed delinquent acts. - Although a child was found to have committed delinquent acts, there was no finding that the child was in need of care or rehabilitation, or a finding that the child was a delinquent child, and thus the children's court lacked authority to order a diagnostic evaluation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Child's right to address court prior to sentencing. - A child has the right to address the children's court before disposition; the children's court should offer a child the opportunity to address the court before pronouncing sentence. State v. Ricky G., 110 N.M. 646, 798 P.2d 596 (Ct. App. 1990).

Adequacy of notice of termination action. - The Human Services Department was required to serve a parent's attorney with notice of the department's action to terminate parental rights, when the attorney was representing him in a separate neglect action before the children's court. Ronald v. State ex rel. Human Servs. Dep't, 110 N.M. 454, 797 P.2d 243 (1990).

Conditions necessary to place child on probation. - The children's court order which placed a child on probation without a finding that the child was in need of care or rehabilitation was unauthorized and void; probation is authorized for a child found to be delinquent, and a child is not delinquent unless in need of care or rehabilitation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

The children's court can place a delinquent child on probation without finding that the child is in need of care and rehabilitation. Further, the court has discretion regarding whether to dismiss a case or place a child on probation when it has specifically found that the child is not in need of care and rehabilitation. State v. Michael R., 107 N.M. 794, 765 P.2d 767 (Ct. App. 1988).

Effect of void probation order. - Section 32-1-43 NMSA 1978 contemplates a valid probation order and cannot be construed as validating a void order of probation; since the order placing the child on probation was void, the situation was as if no probation order had been entered, and thus the order revoking probation was without legal effect (despite the fact that the court attempted therein to supply the requisite finding that the child was in need of rehabilitation, absence of which had rendered the initial probation order void). Subsection E requires a finding that the child was in need of care or rehabilitation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Erroneous findings held not to require reversal. - Where there were findings that supported the judgment and findings that did not support the judgment, the erroneous findings did not require a reversal; they were unnecessary for a decision in this case. State v. Doe, 91 N.M. 92, 570 P.2d 923 (Ct. App. 1977).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For comment, "Poteet v. Roswell Daily Record, Inc.: Balancing First Amendment Free Press Rights Against a Juvenile Victim's Right to Privacy," see 10 N.M.L. Rev. 185 (1979-1980).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

For annual survey of New Mexico law relating to civil procedure, see 13 N.M.L. Rev. 251 (1983).

For comment, "The Right to Be Present: Should It Apply to the Involuntary Civil Commitment Hearing," see 17 N.M.L. Rev. 165 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 44 to 54.

Power of juvenile court to require children to testify, 151 A.L.R. 1229.

Applicability of rules of evidence in juvenile delinquency proceedings, 43 A.L.R.2d 1128.

Jury trial: right to jury trial in juvenile court delinquency proceedings, 100 A.L.R.2d 1241.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

Application of Dorszynski v. United States requiring that sentencing court make express finding of "no benefit" from treatment under Youth Corrections Act (18 USCS §§ 5005 et seq.), 54 A.L.R. Fed. 382.

43 C.J.S. Infants §§ 93, 96.

32-1-32. Predisposition studies, reports and examinations.

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the court may direct that a predisposition study and report to the court be made in writing by probation services or an appropriate agency designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case.

B. Where there are indications that the child may be mentally disordered or developmentally disabled, the court on motion by the children's court attorney or that of counsel for the child may order the child to be examined at a suitable place by a psychiatrist or psychologist prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the court finds that placement in a hospital or other appropriate facility is necessary.

C. The court after hearing may order examination by a physician, psychiatrist or psychologist of a parent or custodian whose ability to care for or supervise a child is an issue before the court.

D. The court may order that a child adjudicated as a delinquent child be transferred to the facility designated by the secretary of the youth authority for a period of not more than ninety days for purposes of diagnosis, rehabilitation and education with direction that the court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered.

E. Once committed, the youth authority shall determine when the child is released. The release shall be any time after committed, but not more than ninety days after commitment.

History: 1953 Comp., § 13-14-29, enacted by Laws 1972, ch. 97, § 29; 1981, ch. 36, § 25; 1986, ch. 42, § 1; 1988, ch. 101, § 23; 1989, ch. 328, § 5.

The 1988 amendment, effective July 1, 1989, substituted "the Facility designated by the secretary of the youth authority" for "an appropriate facility" in Subsection D, and substituted "youth authority" for "corrections department" in Subsection E.

The 1989 amendment, effective July 1, 1989, in Subsection D, deleted "of the corrections department" following "youth authority".

No authority to order evaluation if child not delinquent. - Although a child was found to have committed delinquent acts, there was no finding that the child was in need of care or rehabilitation, or a finding that the child was a delinquent child, and thus the children's court lacked authority to order a diagnostic evaluation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Relevancy of predisposition reports. - The court may properly call for information in deciding whether to accept or reject a consent decree or provide for a more favorable disposition of the child, as predisposition reports are relevant in deciding an appropriate disposition of the case, and calling for information on the child's background is consistent with the legislative purpose in 32-1-2B NMSA 1978 of providing a "program of supervision, care and rehabilitation." State v. Doe, 92 N.M. 354, 588 P.2d 555 (Ct. App. 1978), cert. denied, 92 N.M. 353, 588 P.2d 554 (1979).

Applicability of 1981 amendments. - Any new or increased disposition punishment consequences of the 1981 amendments to the Children's Code can constitutionally be applied only to acts committed on or after June 19, 1981. 1981 Op. Att'y Gen. No. 81-15.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

32-1-32.1. Neglect or abuse predisposition studies, reports and examinations.

A. Prior to holding a dispositional hearing, the court shall direct that a predisposition study and report be made in writing to the court by the human services department.

B. The predisposition study required under Subsection A of this section shall contain the following information:

(1) a statement of the specific harm or harms to the child that intervention is designed to alleviate;

(2) if removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his parents; and

(3) a treatment plan consisting of:

(a) a description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, the reasons why such program is

likely to be useful, the availability of any proposed services and the human services department's overall plan for ensuring that the services will be delivered;

(b) if removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs which have been considered and rejected;

(c) a description of the steps that will be taken to minimize any harm to the child that may result if separation from his parent occurs or continues; and

(d) a description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary.

C. A copy of the predisposition report shall be provided by the human services department to counsel for all parties five days before the dispositional hearing.

D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the court has received and considered the predispositional study at the dispositional hearing.

History: Laws 1981, ch. 36, § 37; 1983, ch. 243, § 2.

32-1-33. Judgment; noncriminal nature; nonadmissibility.

The court shall enter a judgment setting forth the court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child in any civil service application or appointment. The disposition of a child, and any evidence given in a hearing in court, shall not be admissible as evidence against the child in any case or proceeding in any other tribunal whether before or after reaching majority except in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report.

History: 1953 Comp., § 13-14-30, enacted by Laws 1972, ch. 97, § 30.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Applicability of criminal appellate procedure does not make children's court matters criminal proceedings. - The applicability of appellate procedure for criminal cases to appeals from judgments of the children's court, where the child was alleged to be delinquent or in need of supervision, does not change the fact that children's court matters are not criminal proceedings. Health & Social Servs. Dep't v. Doe, 91 N.M. 675, 579 P.2d 801 (Ct. App. 1978).

"Any other tribunal" defined. - In light of the provisions of 32-1-44 and 32-1-3C NMSA 1978, "any other tribunal" as used in this section means a tribunal other than the children's court. In re Doe, 89 N.M. 700, 556 P.2d 1176 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Child not to be charged with crime. - This section provides that a judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of a crime. Since the Children's Code refers to an act which would be a crime if committed by an adult, it is apparent that a child is not to be charged with a crime but rather with a delinquent act. 1973 Op. Att'y Gen. No. 73-14.

Time before transfer and filing of information does not count. - A judgment in any proceedings on a petition under the Children's Code shall not be deemed to be a conviction of a crime. The period of time spent prior to the actual transfer and the filing of the criminal information does not count. State v. Howell, 89 N.M. 10, 546 P.2d 858 (Ct. App. 1976).

Probation officer's testimony allowed at transfer hearing. - At a transfer hearing, this section does not bar the probation officer's testimony about prior dispositions, which proceedings were had in a different judicial circuit. In re Doe, 89 N.M. 700, 556 P.2d 1176 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 55 to 59.

What constitutes delinquency or incorrigibility justifying commitment of infant, 45 A.L.R. 1533, 85 A.L.R. 1099.

Sentence: consideration of accused's juvenile record in sentencing for offense committed as adult, 64 A.L.R.3d 1291.

43 C.J.S. Infants §§ 96 to 102.

32-1-34. Disposition of adjudicated neglected or abused child, delinquent child or a child in need of supervision.

A. At the conclusion of the dispositional hearing, the court shall, for neglected or abused children, and may, for delinquent children and children in need of supervision, make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with his parent, his siblings and any other person who may significantly affect the child's best interest;

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

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

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

(5) the wishes of the child's parent or parents as to the child's custody;

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

(7) the availability of services recommended in the treatment plan prepared as a part of the predisposition study in accordance with the provisions of Subsection B of Section 32-1-32.1 NMSA 1978;

(8) the ability of the parents to care for the child in the home so that no harm will result to the child; and

(9) whether reasonable efforts were utilized by the human services department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were utilized to attempt reunification of the child with the natural parents.

B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(1) permit the child to remain with his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;

(2) place the child under protective supervision of the human services department; or

(3) transfer legal custody of the child to any of the following:

(a) an agency responsible for the care of neglected or abused children;

(b) a child-placing agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child; or

(c) a relative or other individual who, after study by the human services department or another agency designated by the court, is found by the court to be qualified to receive and care for the child.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the human services department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the human services department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any such visitation.

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

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with Subsection I of this section;

(2) transfer legal custody to the youth authority, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the youth authority as the juvenile reception facility. The youth authority shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child;

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

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32-1-6 NMSA 1978 for a period not to exceed fifteen days;

(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection O of Section 32-1-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine which could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection O of Section 32-1-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, order the child transferred to an appropriate facility of the substance abuse bureau of the behavioral health services division of the health and environment department [department of health] for a period not to exceed ninety days without further order of the court; provided that this transfer shall not be made unless the court first determines that the substance abuse bureau is able to provide adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

F. If a child is found to be in need of supervision, the court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with Subsection I of this section;

(2) transfer legal custody to the youth authority; or

(3) place the child on probation under those conditions and limitations the court may prescribe. A child who has been found by the court on two previous occasions to have violated the conditions of his probation may be ordered by the court after a hearing to be held in a secure detention facility that has been certified in accordance with the provisions of Section 32-1-6 NMSA 1978 for a period not to exceed ten days.

G. Unless a child found to be neglected, abused or in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children. No child found to be delinquent or in need of supervision shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

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

I. Prior to any child being placed in the custody or protective supervision of the human services department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

J. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (4) or (5) of Subsection O of Section 32-1-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

History: 1953 Comp., § 13-14-31, enacted by Laws 1972, ch. 97, § 31; 1977, ch. 88, § 1; 1981, ch. 36, § 26; 1984, ch. 69, § 1; 1984, ch. 78, § 1; 1986, ch. 99, § 2; 1988, ch. 101 § 24; 1989, ch. 328, § 6; 1989, ch. 329, § 2.

Cross-references. - As to termination of children's court jurisdiction, see 32-1-12 NMSA 1978.

As to human services department, see 9-8-4 NMSA 1978.

Bracketed material. - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

The 1988 amendment, effective July 1, 1989, in Subsection E(2) twice substituted "youth authority" for "corrections department" and "secretary of the youth authority" for "secretary of corrections"; and, in Subsection F(2), substituted "youth authority" for "human services department or other appropriate agency, but not one to which the custody of delinquent children is entrusted."

The 1989 amendments. - Laws 1989, ch. 328, § 6, effective July 1, 1989, inserting "juvenile" following "local" in Paragraph (4) of Subsection E, was approved April 7, 1989. However, Laws 1989, ch. 329, § 2, effective July 1, 1989, adding Subsection J but not giving effect to the changes made by Laws 1989, ch. 328, § 6, was approved later on April 7, 1989. This section is set out as amended by Laws 1989, ch. 329, § 2. See 12-1-8 NMSA 1978.

No unconstitutional delegation of legislative power. - Since the provisions of 32-1-3 NMSA 1978 relating to the meaning of "neglected child" are to be defined and applied by a court and not the department of human services, there is no unconstitutional, standardless delegation of legislative power to a state agency. State ex rel. Health & Social Servs. Dep't v. Natural Father, 93 N.M. 222, 598 P.2d 1182 (Ct. App. 1979).

Adoption of child requires notice to parents. - It is impossible to declare a child to be dependent and neglected and then place the child for adoption without notice to the parents. 1959-60 Op. Att'y Gen. No. 59-59 (opinion rendered under former law).

Even to mentally ill parent. - A dependent and neglected child of a person who has been declared to be mentally ill by a court of competent jurisdiction may be adopted without the consent of such person, but the notice requirements imposed by certain statutes must be complied with. 1959-60 Op. Att'y Gen. No. 59-59 (opinion rendered under former law).

Finding required for adjudication as delinquent. - A finding that a child is in need of care or rehabilitation is required in order to adjudicate the child to be a delinquent. State v. Doe, 95 N.M. 90, 619 P.2d 194 (Ct. App. 1980).

Court may transfer custody of delinquent child to human services department. - The health and social services department (now human services department) is an agency for the care of a neglected child, as referred to in Subsection B(3) of this section, and so, under Subsection E(1) of this section, the children's court may transfer

legal custody of a delinquent child to that department. Health & Social Servs. Dep't v. Doe, 91 N.M. 675, 579 P.2d 801 (Ct. App. 1978).

District judge has no authority to sign adoption consents after declaring child dependent and neglected. 1959-60 Op. Att'y Gen. No. 59-59 (opinion rendered under former law).

Court can make child its ward before further disposition. - District court could make a child which it found to be dependent and neglected its ward and thereafter make such disposition of the child as in its considered judgment was in the child's best interests. New Mexico Dep't of Pub. Welfare v. Cromer, 52 N.M. 331, 197 P.2d 902 (1948)(decided under former law).

Court not bound by any prearranged disposition by agency. - District court was not bound by any prearranged disposition of child by the department of public welfare (now human services department) since placement in any home was to be with consent of the court, and the welfare of the child was the court's paramount consideration. New Mexico Dep't of Pub. Welfare v. Cromer, 52 N.M. 331, 197 P.2d 902 (1948)(decided under former law).

Adoption proceeding may not be circumvented. - Proceedings to determine if a child is dependent and neglected may not be used to circumvent an adoption proceeding, but where the court has announced its decision denying the petition to adopt, the welfare and best interest of the child are of paramount consideration. Herman v. McIver, 66 N.M. 36, 341 P.2d 457 (1959)(decided under former law).

Subsection E(4) is an alternative disposition available to the court and is not a limitation on the conditions of probation the court may prescribe under Subsection E(3). State v. Henry L., 109 N.M. 792, 791 P.2d 67 (1990).

Time limitation on custody transfer void. - While the court possesses the power to transfer legal custody of delinquent children to an agency responsible for their care and rehabilitation, any attempt by the court to impose a time limitation on the transfer of custody, even if well within the time limitations already authorized by statute, is void as being in excess of the court's jurisdiction. 1979 Op. Att'y Gen. No. 79-37.

Without adjudication of delinquency child may not be transferred to custody of boys' school, because the school is an institution for the care and rehabilitation of delinquent children. State v. Doe, 95 N.M. 90, 619 P.2d 194 (Ct. App. 1980).

Commitment to boys' school of mentally ill and delinquent child. - This section and 32-1-35 NMSA 1978 are not mutually exclusive, as the word "may" in the latter section is permissive or directory. Since the Children's Code does not make 32-1-35 NMSA 1978 the exclusive method of handling a mentally ill child who is also a delinquent child, the children's court did not err in committing mentally ill, delinquent children to state

boys' school and in ordering that psychiatric care be provided them at the school. State v. Doe, 90 N.M. 572, 566 P.2d 121 (Ct. App. 1977).

Placement outside of institution requires court's consent. - Placing boys outside the New Mexico boys' school under the school's supervision without the court's consent amounts to a parole and cannot be done without the express, written consent of the court. 1959-60 Op. Att'y Gen. No. 59-131 (opinion rendered under former law).

Limited detention as condition of probation. - The language of Subsection E(3) is sufficiently expansive to contemplate the imposition of limited detention as a condition of probation. State v. Henry L., 109 N.M. 792, 791 P.2d 67 (1990).

Self-executing provision in a probation order, requiring automatic confinement in the juvenile detention center merely upon a reported absence from school, was invalid because it would circumvent the procedural requirements of 32-1-43 NMSA 1978, but was separable from the remaining portion of the probation order. State v. Don S., 109 N.M. 777, 790 P.2d 1058 (Ct. App. 1990).

Probation order void. - The children's court order which placed a child on probation without a finding that the child was in need of care or rehabilitation was unauthorized and void; probation is authorized for a child found to be delinquent, and a child is not delinquent unless in need of care or rehabilitation. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Revocation of probation to punish for contempt. - The inherent power of the courts to punish for contempt does not validate a children's court order incarcerating a child found in need of supervision for contempt in violating probation, where such order contravenes the purpose of a reasonable children's code provision, Subsection F(3), authorizing incarceration only after three occasions of probation violations have been found by the court. State v. Julia S., 104 N.M. 222, 719 P.2d 449 (Ct. App. 1986).

Child is not entitled to precommitment credit for time served while on probation. State v. Dennis F., 104 N.M. 619, 725 P.2d 595 (Ct. App. 1986).

Parental right to custody can be taken away. - The state's claim that parental rights to custody of a child in need of supervision cannot be taken away absent a showing of incompetence on the part of the parent or parents is an overly narrow reading of this statute, which makes no such requirement. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Court vested with broad discretion in placement of minors. - The court did not violate the spirit and intent of the Children's Code by placing a 16-year-old girl in the custody of a woman who had helped to rear her and had been found to be a positive influence over her where the child felt compelled to run away from her mother's household and would in all likelihood continue to refuse to live with her mother since the

children's court is vested with a broad discretion in hearing and deciding matters under it. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Effect of agency not studying qualifications of individual awarded custody. - Contentions that no agency designated by the court had made a study of the qualifications of the woman awarded custody of a 16-year-old girl in need of supervision were never raised at the probation revocation hearing, and in awarding custody the court impliedly found the woman qualified to have custody of the girl. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Applicability of 1981 amendments. - Any new or increased disposition punishment consequences of the 1981 amendments to the Children's Code can constitutionally be applied only to acts committed on or after June 19, 1981. 1981 Op. Att'y Gen. No. 81-15.

Counsel of record entitled to notice of subsequent termination action. - The human services department was required to serve a parent's attorney with notice of the department's action to terminate parental rights, when the attorney was representing him in a separate neglect action before the children's court. Ronald v. State ex rel. Human Servs. Dep't, 110 N.M. 454, 797 P.2d 243 (1990).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "Treating Children Under the New Mexico Mental Health and Developmental Disabilities Code," see 10 N.M.L. Rev. 279 (1980).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978; A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

For annual survey of domestic relations law in New Mexico, see 18 N.M.L. Rev. 371 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 29 to 33.

Discrimination in punishment for same offense between juveniles and mature offenders, 3 A.L.R. 1614, 8 A.L.R. 854.

Constitutionality of statute committing child to reformatory without parents' consent, 60 A.L.R. 1342.

Notice and hearing to parent before commitment of delinquent children, 76 A.L.R. 247.

Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 A.L.R.3d 421.

Validity of state statute providing for termination of parental rights, 22 A.L.R.4th 774.

Admissibility at criminal prosecution of expert testimony on battering parent syndrome, 43 A.L.R.4th 1203.

Attorneys' fees awards in parent-nonparent child custody case, 45 A.L.R.4th 212.

Foster parent's right to immunity from foster child's negligence claims, 55 A.L.R.4th 778.

Defense of infancy in juvenile delinquency proceedings, 83 A.L.R.4th 1135.

43 C.J.S. Infants §§ 69 to 91.

32-1-35. Disposition of a mentally disordered or developmentally disabled child in a proceeding.

A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence indicates that the child is or may be developmentally disabled or mentally disordered, the court may:

(1) order the child detained if appropriate under the criteria established under the Children's Code; and

(2) initiate proceedings for the commitment of the child as a mentally disordered or developmentally disabled minor pursuant to the provisions of the Mental Health and Developmental Disabilities Code [Chapter 43, Article 1 NMSA 1978].

B. If a child is committed as a developmentally disabled or mentally disordered child under Subsection A of this section, the petition shall be dismissed without prejudice.

C. If in a hearing at any stage of a proceeding on a neglect or abuse petition the evidence indicates that the child is developmentally disabled or mentally disordered, the court shall first proceed to an adjudication of neglect or abuse under the provisions of the Children's Code.

D. If the neglect or abuse petition is not dismissed and there is probable cause to believe the child is mentally disordered or developmentally disabled, the child shall be transferred to the legal custody of any appropriate agency other than an agency

responsible for the care and rehabilitation of delinquent children, which shall petition the court for commitment pursuant to Section 43-1-16.1 NMSA 1978.

E. Upon proper notice to parties pursuant to Sections 43-1-4, 43-1-16 and 43-1-16.1 NMSA 1978, the court may proceed directly to a commitment hearing.

F. If the child is committed for residential treatment or habilitation under the Mental Health and Developmental Disabilities Code, the human services department, the youth authority or the health and environment department [department of health] shall retain legal custody during the period of commitment or until further order of the court.

G. At such time as the child is to be released from residential treatment or habilitation, the court shall hold a dispositional hearing prior to the expiration of the commitment period. The court may make any of the dispositions available under Section 32-1-34 NMSA 1978.

H. Whenever a residential treatment or habilitation facility petitions for extended commitment and the petition for extended commitment is dismissed, the court shall hold a dispositional hearing within ten days. The child may remain in the residential treatment or habilitation facility pending the dispositional hearing.

History: 1953 Comp., § 13-14-32, enacted by Laws 1972, ch. 97, § 32; 1981, ch. 36, § 27; 1989, ch. 328, § 7.

Bracketed material. - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

The 1989 amendment, effective July 1, 1989, in Subsection E, substituted "pursuant to Sections 43-1-4, 43-1-16" for "Section 43-1-4, and Sections 43-1-16.1"; and, in Subsection F, inserted "the youth authority or the health and environment department".

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Section confers legislative grant of jurisdiction to the courts. - Children's court had jurisdiction to transfer child to the custody of state health and social services (now human services) department for further study and a report on the child's condition. In re Doe, 88 N.M. 632, 545 P.2d 491 (Ct. App. 1975).

Provisions not mutually exclusive. - This section and Section 32-1-34 NMSA 1978 are not mutually exclusive, as the word "may" in this section is permissive or directory. Since the Children's Code does not make this section the exclusive method of handling a mentally ill child who is also a delinquent child, the children's court did not err in committing mentally ill, delinquent children to state boys' school and in ordering that

psychiatric care be provided them at the school. State v. Doe, 90 N.M. 572, 566 P.2d 121 (Ct. App. 1977).

Availability of accommodations controlling factor in determining admission. - Juvenile (now children's) courts do not have the power to commit juveniles to state institutions regardless of available accommodations. Availability of accommodations is made the controlling factor in determining admissions, and this question rests solely with the relators and not with the court. Carter v. Montoya, 75 N.M. 730, 410 P.2d 951 (1966)(decided under former law).

Jurisdiction to transfer legal custody limited. - This section limits the court's jurisdiction to a transfer of legal custody for a limited time and purpose. Children's court is not empowered to commit a child to a private psychiatric hospital and then order the state health and social services (now human services) department to pay the cost of such treatment. In re Doe, 88 N.M. 632, 545 P.2d 491 (Ct. App. 1975); 1979 Op. Att'y Gen. No. 79-37.

Court did not abuse its discretion in denying child's motion for transfer to more appropriate agency, where there was evidence that the only additional testing needed was an electroencephalogram and a neurological study which could be performed without the requested transfer. State v. Doe, 91 N.M. 506, 576 P.2d 1137 (Ct. App. 1978).

32-1-36. Continuance under supervision without judgment; consent decree; disposition.

A. At any time after the filing of a delinquency or need of supervision petition and before the entry of a judgment, the court may on motion of the children's court attorney or that of counsel for the child suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The court's order continuing the child under supervision under this section shall be known as a "consent decree".

B. If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object but an objection is made by the children's court attorney after consultation with probation services, the court shall after considering the objections and the reasons given proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

C. A consent decree shall remain in force for six months unless the child is discharged sooner by probation services. Prior to the expiration of the six month period and upon the application of probation services or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

D. If either prior to discharge by probation services or expiration of the consent decree the child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the court may:

(1) extend the period of the consent decree; or

(2) make any other disposition which would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency or need of supervision petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child for damages arising from his conduct.

F. A judge who pursuant to this section elicits or examines information or material about a child that would be inadmissible in a hearing on the allegations of the petition shall not over the objection of the child participate in any subsequent proceedings on the delinquency or need of supervision petition if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or

(2) a consent decree is granted but the delinquency or need of supervision petition is subsequently reinstated.

G. If a consent decree has been entered pursuant to the filing of a delinquency petition based on Paragraph (4) or (5) of Subsection O of Section 32-1-3 NMSA 1978 for a child who is fifteen years of age or older, a condition of the consent decree agreement may be the denial of the child's driving privileges or the revocation of the child's driver's license for a period of ninety days. For the second or subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the entry by the court of a decree consenting to the revocation or denial of the child's driver's license or driving privileges, the court shall send the decree to the motor vehicle division of the taxation and revenue department. Upon receipt of the decree from the court consenting to the denial or revocation of the child's driving privilege or driver's license, the director of the motor vehicle division of the taxation and revenue department shall revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section shall prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

History: 1953 Comp., § 13-14-33, enacted by Laws 1972, ch. 97, § 33; 1981, ch. 36, § 28; 1989, ch. 329, § 3.

The 1989 amendment, effective July 1, 1989, made a minor stylistic change in Subsection C and added Subsection G.

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

32-1-37. Interlocutory order of disposition in cases where service is made on party by publication; effect.

A. If the service of a summons upon any party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition, make findings and enter an interlocutory order of disposition if:

(1) the petition alleges that the child is abused or neglected, in need of supervision or delinquent;

(2) the summons served upon parties other than those served by publication, in addition to other requirements:

(a) states that prior to the final hearing on the petition designated in the summons a provisional hearing on the petition will be held at a specified time and place;

(b) requires the party served to appear and, if appropriate, to answer the allegations of the petition at the provisional and final hearing; and

(c) states that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

(3) the child is personally before the court at the provisional hearing on petitions alleging delinqency and need of supervision. The court may waive the presence of the child in neglect cases.

B. All provisions of the Children's Code applicable to a hearing on a petition, to judgments of disposition and to other proceedings dependent thereon shall apply to this section, but the court's findings and order of disposition shall have only interlocutory effect pending the final hearing on the petition.

C. The interlocutory order shall have the following effect on the rights and duties of the party served by publication:

(1) if the party served by publication fails to appear at the final hearing on the petition, the findings and interlocutory orders made shall become final without further evidence, shall be entered as a judgment and shall be governed as if made at the final hearing; or

(2) if the party served by publication appears at the final hearing, the interlocutory findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition as otherwise provided by the Children's Code without regard to this section.

History: 1953 Comp., § 13-14-34, enacted by Laws 1972, ch. 97, § 34; 1983, ch. 243, § 3.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Law reviews. - For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

32-1-38. Limitations on dispositional judgments; modification, termination or extension of court orders.

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered; provided that if a child has been previously committed under this section to an agency responsible for care and rehabilitation, the court may order that the judgment remain in force for an indeterminate period not exceeding three years from the date entered and except that a judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody in accordance with Section 32-1-12 NMSA 1978, unless the transfer of legal custody is for a short-term commitment not exceeding fifteen days pursuant to the provisions of Section 32-1-34 NMSA 1978, in which case the court retains jurisdiction, and:

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act [32-2-1 to 32-2-9 NMSA 1978] has the exclusive power to parole or release the child;

(2) the supervision of a child after release under Paragraph (1) of this subsection may be conducted by the juvenile parole board in conjunction with the community services division of the youth authority or any other suitable state agency or under any contractual arrangements the juvenile parole board deems appropriate; and

(3) the period of time a child absconds from parole or probation supervision shall toll all time limits for the requirement of filing a petition to revoke probation or parole and shall toll the computation of the period of probation or parole supervision pursuant to the Children's Code.

B. A judgment vesting legal custody of a child in an individual shall remain in force for two years from the date entered unless sooner terminated by court order.

C. A judgment of probation or protective supervision shall remain in force for an indeterminate period not exceeding two years from the date entered.

D. A child shall be released by an agency and probation or supervision shall be terminated by probation services or the agency providing supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority. If the child is an adjudicated abused child, the abused child shall not be returned to the respondent parent, guardian or custodian without a hearing by the court to determine that the conditions in the home leading to abuse have been corrected and it is now safe for the return of the abused child. An adjudicated abused child shall not be returned to the respondent parent, guardian or custodian on the sole basis that custody orders have expired. During the effective period of the custody order, the children's court attorney shall promptly schedule a hearing to determine whether the abused child may be safely returned to his parent, guardian or custodian or whether custody orders shall be extended for the child's protection. The children's court shall inform the parent, guardian or custodian of the adjudicated abused child that he has the right to be represented by counsel and, upon request, counsel shall be appointed if the person is unable to obtain counsel for financial reasons. Such extension of custody shall be for one year from the date of expiration of the preceding custody order, subject to a six-month periodic review.

E. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by:

(1) a child whose legal custody has been transferred to a person and who requests the court for a modification or termination of the judgment alleging that the transfer of legal custody is no longer necessary and that the person has denied application for release of the child or has failed to act upon the application within a reasonable time; or

(2) a person vested with legal custody or responsibility of protective supervision who requests the court for an extension of the judgment on the grounds that the requested action is necessary to safeguard the welfare of the child or the public interest.

F. Prior to the expiration of a judgment transferring legal custody, the court may extend the judgment for additional periods of one year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.

G. Prior to the expiration of a judgment of probation or protective supervision, the court may extend the judgment for an additional period of one year if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

H. When a child reaches eighteen years of age, all neglect and abuse orders affecting the child then in force automatically terminate.

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

History: 1953 Comp., § 13-14-35, enacted by Laws 1972, ch. 97, § 35; 1973, ch. 360, § 8; 1975, ch. 46, § 1; 1977, ch. 278, § 10; 1981, ch. 36, § 29; 1983, ch. 243, § 4; 1989, ch. 328, § 8.

The 1989 amendment, effective July 1, 1989, in Subsection A, substituted "community services division of the youth authority" for "field services division of the corrections department" and deleted "including the juvenile probation office of the district into which the child is paroled" following "suitable state agency" in Paragraph (2).

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Commitment to boys' school for two years was improper under Subsection A. State v. Doe, 93 N.M. 206, 598 P.2d 1166 (Ct. App. 1979).

Imposition of definite probation time of less than two years. - Since the imposition of a definite time of probation of less than two years is not authorized by Subsection C, such a sentence is void. State v. Michael V., 107 N.M. 305, 756 P.2d 585 (Ct. App. 1988).

Child is not entitled to precommitment credit for time served while on probation. State v. Dennis F., 104 N.M. 619, 725 P.2d 595 (Ct. App. 1986).

Court's jurisdiction ends upon transferring child to human services department. - Once the children's court transfers legal custody of a child to the health and social services department (now human services department), the court's jurisdiction ends, and so, having transferred legal custody to the department, the children's court had no authority to order the department to place the physical custody of the child with any particular organization. Health & Social Servs. Dep't v. Doe, 91 N.M. 675, 579 P.2d 801 (Ct. App. 1978).

Future court action not foreclosed. - Section 32-1-12C NMSA 1978 and Subsection A of this section apply to the custody order which transferred custody of the child to the New Mexico boys' school, and after entry of that order, the children's court had no further jurisdiction under the express language of the above two sections; this, however, does not foreclose future court action in connection with the child adjudicated a

delinquent. Therefore, the children's court did have jurisdiction to consider the petition of the boys' school to retain legal custody over the child until his twenty-first birthday. In re Doe, 85 N.M. 691, 516 P.2d 201 (Ct. App. 1973).

Circumstances under which boys' school has power to parole. - Authority of the children's court terminates when it transfers mentally ill, delinquent children to the state boys' school for care and rehabilitation, so that the court has no authority to provide in its judgment that the children not be released without prior approval of the children's court. Under these circumstances, the boys' school has exclusive power to parole or release the children. State v. Doe, 90 N.M. 572, 566 P.2d 121 (Ct. App. 1977).

Time limitation on custody transfer void. - While the court possesses the power to transfer legal custody of delinquent children to an agency responsible for their care and rehabilitation, any attempt by the court to impose a time limitation on the transfer of custody, even if well within the time limitations already authorized by statute, is void as being in excess of the court's jurisdiction. 1979 Op. Att'y Gen. No. 79-37.

Petitions to extend period of legal custody. - This section contemplates a new petition by the legal custodian of the adjudicated delinquent child and authorizes the custodian to seek an extension of the period of legal custody. This section specifically authorizes the children's court to hold a hearing "as hearings on original petitions are conducted" and specifically authorizes the children's court to extend the period of legal custody within specified limits. In re Doe, 85 N.M. 691, 516 P.2d 201 (Ct. App. 1973).

Authority to petition for parole extension. - Probation officer has authority to petition the court for extension of the period of parole supervision of a child where such action is necessary to safeguard the welfare of the child or the public interest. State v. Doe, 92 N.M. 589, 592 P.2d 189 (Ct. App. 1979).

Order extending legal custody not erroneous. - This section requires the court to find that an extension of legal custody of a child by the department of corrections (now corrections department) is necessary, and when such a finding is implicit in the court's order, the order is not erroneous because of the absence of filed findings by the court. State v. Doe, 91 N.M. 644, 578 P.2d 345 (Ct. App. 1978).

Section does not automatically terminate petition alleging delinquency which is filed before the child in question reaches 18 years of age but is not disposed of until afterwards, since, under 32-1-12A NMSA 1978 children's court retains jurisdiction until disposition of case or transfer to an adult court having criminal jurisdiction. In re Doe, 87 N.M. 172, 531 P.2d 220 (Ct. App. 1975).

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Tort liability of public authority for failure to remove parentally abused or neglected children from parents' custody, 60 A.L.R.4th 942.

32-1-38.1. Periodic review of dispositional judgments.

A. Within six months of any original dispositional order and within six months of any subsequent continuation of the order, the human services department shall petition the court for a review of the disposition of an adjudicated neglected or abused child, an adjudicated delinquent child in the physical or legal custody of the human services department and an adjudicated child in need of supervision in the physical or legal custody of the human services department entered pursuant to the Children's Code. Prior to such review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act [32-7-1 to 32-7-6 NMSA 1978]. Prior to any judicial review by the court pursuant to this section, the local substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master or referee as appointed by the court; provided, however, that the court approve any findings made by the special master or referee.

B. The children's court attorney shall give twenty days' written notice to all parties of the time, place and purpose of any judicial review hearing held pursuant to Paragraphs (1) and (2) of Subsection A of this section.

C. At any judicial review hearing held pursuant to Paragraphs (1) and (2) of Subsection A of this section, the human services department and all persons given notice under Subsection B of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the human services department shall not only show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order but shall also present a treatment plan for any period of extension of the dispositional order. The parent, guardian or custodian of the child shall demonstrate to the court that his effort to comply with the treatment plan approved by the court in its dispositional order and his effort to maintain contact with the child was diligent and made in good faith, given his circumstances and abilities.

D. The rules of evidence shall not apply to hearings held pursuant to this section.

E. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

F. Based on its findings, the court shall order one of the following dispositions:

(1) permit the child to remain with his parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the human services department;

(2) transfer or continue legal custody of the child to any of the following:

(a) the human services department subject to the provisions of Paragraph (5) of this subsection; or

(b) a relative or other individual who, after study by the human services department or other agency designated by the court, is found by the court to be qualified to receive and care for the child;

(3) dismiss the action and return the child to his parent without supervision;

(4) continue the child in the legal custody of the human services department with or without any required parental involvement in a treatment plan;

(5) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement of the child; or

(6) if the child has been in substitute care, including residential care, for a period of eighteen months or longer and the child cannot be returned to his parents, initiate termination of parental rights or permanent guardianship proceedings, unless there has been an affirmative showing that because of age or health the possibility of permanent placement is remote.

G. Dispositional orders entered pursuant to this section, except those entered under Paragraph (5) of Subsection F of this section, shall remain in force for a period of six months.

H. The report of the local substitute care review board submitted to the court pursuant to Subsection A of this section shall become a part of the child's permanent court record.

History: Laws 1981, ch. 36, § 40; 1982, ch. 16, § 2; 1983, ch. 74, § 4; 1983, ch. 243, § 5; 1984, ch. 69, § 2; 1985, ch. 101, § 7; 1987, ch. 106, § 3; 1989, ch. 311, § 1.

Cross-references. - For Rules of Evidence, see Judicial Pamphlet 11.

The 1989 amendment, effective June 16, 1989, in Subsection F(2), inserted "or continue" near the beginning and, in Subparagraph (a), inserted "subject to the provisions of Paragraph (5) of this subsection", added present Paragraph (5), and redesignated former Paragraph (5) as present Paragraph (6).

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Court's authority after child in custody of department. - Once legal custody is in the department of human services, the children's court has no authority to prohibit the department from placing physical custody of the child with any particular person. State ex rel. Human Servs. Dep't, 107 N.M. 769, 764 P.2d 1327 (Ct. App. 1988).

The sexual orientation of a proposed custodian, standing alone, is not enough to support a conclusion that the person cannot provide a proper environment. State ex rel. Human Servs. Dep't, 107 N.M. 769, 764 P.2d 1327 (Ct. App. 1988).

32-1-38.2. Limitation on extended substitute care.

A. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit. To achieve this purpose, the human services department shall develop a plan to be implemented by July 1, 1985 for reducing the number of children who have been in substitute care for twenty-four months or more. The department shall exercise good faith efforts in implementing the plan with the goal of reducing the number of children in substitute care each fiscal year by five percent until no more than forty-five percent of the total number of children in substitute care have remained in substitute care for twenty-four months or more.

B. At all dispositional review hearings conducted after October 1, 1983 pursuant to Section 32-1-38.1 NMSA 1978, the human services department shall, in cases in which the child has been in substitute care, including residential care, for a period of eighteen months or longer, recommend either that the child be returned to his parents or that parental rights be terminated or that permanent guardianship be established, or, in the alternative, show cause why continued substitute care is in the best interest of the child.

History: Laws 1982, ch. 16, § 1; 1984, ch. 69, § 3; 1987, ch. 106, § 4.

Contingent repeals. - Laws 1982, ch. 16, § 3, provides that on the date that federal law ceases to require the provisions of 32-1-38.2 NMSA 1978, that section is repealed.

Dismissal of custodians from neglect action proper. - Because the nonparent custodians of a child failed to establish any right to the child, other than their previous status as de facto custodians, the children's court could properly discontinue their involvement in a treatment plan, dismiss them from the neglect action, and direct that the child be freed for adoption by other qualified and suitable persons. While, as a result of their status, they appear to have assumed all the obligations of parents, an in loco

parentis status did not entitle them to parental termination proceedings pursuant to 32-1-55 NMSA 1978. In re Agnes P., 110 N.M. 768, 800 P.2d 202 (Ct. App. 1990).

32-1-39. Appeals.

A. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the children's court. The name of the child shall not appear in the record on appeal.

B. The appeal to the court of appeals does not stay the judgment appealed from, but the court of appeals may order a stay upon application and hearing consistent with the provisions of the Children's Code if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. If the court of appeals does not dismiss the petition and order the child released, it shall affirm the court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the children's court for disposition consistent with the appellate court's decision on the appeal. Any party may appeal to the supreme court in the manner provided by law.

D. A child who has filed notice of appeal shall be furnished a transcript of the proceedings, or as much of it as is requested, without cost upon the filing of an affidavit that the child, or the person that is legally responsible for the care and support of the child, is financially unable to purchase the transcript.

History: 1953 Comp., § 13-14-36, enacted by Laws 1972, ch. 97, § 36.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

State has right to appeal judgments of the children's court. State v. Doe, 92 N.M. 354, 588 P.2d 555 (Ct. App. 1978), cert. denied, 92 N.M. 353, 588 P.2d 554 (1979).

State questioning legal sufficiency of its own pleadings. - The state's appeal of the children's court order continuing a child on probation and granting her equal custody to one not a parent presented the anomalous situation of the state questioning the legal sufficiency of its own pleadings, but it would be entertained since proceedings concerning the custody of minors are not adversary, and the court therein is not merely an arbiter but an advocate seeking to protect the welfare and interests of the minor. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Judgments in special proceedings are appealable if prescribed by statute. - Juvenile Delinquency Act contained in C.L. 1929 established a special proceeding; since judgments in special proceedings were not appealable unless so prescribed by

statute, order of the juvenile (now children's) court revoking suspension of sentence of minor to reform school was not appealable. State v. Florez, 36 N.M. 80, 8 P.2d 786 (1931)(decided under former law).

Clerk of court of appeals deletes child's name. - In conformance with this statute, the clerk of the court of appeals is directed to delete the child's name from all records in this court and substitute the fictitious name of "John Doe." In re Doe, 85 N.M. 691, 516 P.2d 201 (Ct. App. 1973).

Release of child's name. - Despite the prohibition in Subsection A, applicable to courts, a law enforcement agency is not prohibited by this section or any other law from releasing to the public the names of juveniles who have been arrested for criminal acts and the charges for which they were arrested. 1987 Op. Att'y Gen. No. 87-29.

Stay from prosecution should be granted in appeal from order transferring juvenile to district court to stand trial as an adult. State v. Greg R., 104 N.M. 778, 727 P.2d 86 (Ct. App. 1986).

Effect of no application for stay of transfer order. - An order transferring a juvenile from the children's court to the district court is a "judgment" to which Subsection B applies; thus, having failed to request a stay, the defendant waives any impediment to the state's obtaining a grand jury indictment of the defendant pending appeal of the order. State v. Hovey, 106 N.M. 300, 742 P.2d 512 (1987).

Issue of parental rights to be raised by parent. - The state, prosecuting the probation revocation petition of a child in need of supervision, can appropriately challenge the custody arrangements made by the court, but since those custody arrangements and thus their effect on parental rights are of limited duration, the issue of parental rights is one to be raised by the parent and not by the state; a violation of due process can be urged only by those who can show an impairment of their rights in the application of the statute to them. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Court's discretion not to be disturbed absent showing of abuse. - Exercise of the court's discretion should not be disturbed on appeal in the absence of a showing of manifest abuse. In re Doe, 88 N.M. 505, 542 P.2d 1195 (Ct. App. 1975).

Procedural rule concerning stay authorized under section is Rule 18 N.M.R. Child. Ct. State v. Doe, 91 N.M. 92, 570 P.2d 923 (Ct. App. 1977).

Supreme court review on appeal or writ of error. - A proceeding under act relating to dependent and neglected children was not a special proceeding, but was a civil action, and the judgment therein was reviewable in the supreme court on appeal or writ of error. Blanchard v. State ex rel. Wallace, 30 N.M. 459, 238 P. 1004 (1925).

Transfer order may be summarily affirmed. - Summary affirmance was due on order transferring a juvenile from children's court to be tried as an adult even though juvenile

filed a timely memorandum in opposition to affirmance, and though continuing to contest summary disposition, he provided no reasons why the summary disposition should not be made. State v. Greg R., 104 N.M. 778, 727 P.2d 86 (Ct. App. 1986).

Supreme court without jurisdiction to review interlocutory order. - Where in an adoption proceeding based upon written consent of the parents to the adoption of their infant child, the trial court granted the parents' motion to withdraw their previous consent, and at the same time retained jurisdiction to declare the child found to be a dependent and neglected child, a ward of the court, and place it under the control and direction of New Mexico department of public welfare (now human services department), leaving temporary custody of the child with the adoptive parents pending further order of the court, the order was interlocutory in nature and the supreme court was without jurisdiction to review it. In re Helms, 59 N.M. 177, 281 P.2d 140 (1955)(decided under former law).

Review of best interests determination. - The best interests determination of the children's court attorney is subject to judicial review by the children's court and by the New Mexico court of appeals. State v. Doe, 97 N.M. 792, 643 P.2d 1244 (Ct. App. 1982).

Exhibits on appeal. - Where a child sexual abuse victim had difficulty expressing herself about the offense, a stick figure drawing made by the court together with the victim's testimony, was evidence considered by the children's court in formulating its decision and was properly included in the record on appeal. State v. Benny E., 110 N.M. 237, 794 P.2d 380 (Ct. App. 1990).

Law reviews. - For comment, "Poteet v. Roswell Daily Record, Inc.: Balancing First Amendment Free Press Rights Against a Juvenile Victim's Right to Privacy," see 10 N.M.L. Rev. 185 (1979-1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children §§ 60 to 62.

43 C.J.S. Infants § 101.

32-1-40. Procedural matters.

A. When it appears during the course of any proceeding under the Children's Code that some finding or remedy other than or in addition to those indicated by the petition or motion appears from the facts to be appropriate, the court may, either on motion by the children's court attorney or that of counsel for the child, amend the petition or motion, and, provided all necessary parties consent, proceed to hear and determine the additional or other issues, findings or remedies as though originally properly sought.

B. Upon application of a party the court shall issue, and upon its own motion the court may issue, subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

C. Subject to the laws relating to the procedures therefor and the limitations thereon, the court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

D. In any proceeding under the Children's Code, either on motion of a party or on the court's own motion, the court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction if:

(1) a judgment of disposition has been made in a proceeding on a petition;

(2) the court finds that the person's conduct is or may be detrimental or harmful to the child and will tend to defeat the execution of the judgment of disposition made; and

(3) due notice of the motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

History: 1953 Comp., § 13-14-37, enacted by Laws 1972, ch. 97, § 37.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Children's court is empowered to enter injunction conducive to purposes of Children's Code. State v. Echols, 99 N.M. 517, 660 P.2d 607 (Ct. App. 1983).

Children's court had statutory authority to order therapy for a child, even though the court found that the child was neither abused nor neglected, where the facts indicated that the case itself caused a need for the child to require counseling. State ex rel. Department of Human Servs. v. Patrick R., 105 N.M. 133, 729 P.2d 1387 (Ct. App. 1986).

Incarceration of child in need of supervision for contempt. - Subsection C does not grant authority to incarcerate children in need of supervision for a probation violation other than in the instance specified in 32-1-34F(3) NMSA 1978, after a finding of three violations of probation. State v. Julia S., 104 N.M. 222, 719 P.2d 449 (Ct. App. 1986).

Accommodation availability rests with administrators. - Availability of accommodations in state institution is made the controlling factor in determining admissions, and this question rests solely with the administrators and not with the court. That the court may punish for contempt is not open to question; but, in view of what is later said, it is without authority to proceed against the administrators. Carter v. Montoya, 75 N.M. 730, 410 P.2d 951 (1966)(decided under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Court's power to punish for contempt a child within the age group subject to jurisdiction of juvenile court, 77 A.L.R.2d 1004.

Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt, 8 A.L.R.3d 657.

Lack of notice to contemnor at time of contemptuous conduct of possible criminal contempt sanctions as affecting prosecution for contempt in federal court, 76 A.L.R. Fed. 797.

32-1-41. Court costs and expenses.

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

(1) the costs of medical and other examinations and treatment of a child ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Children's Code; and

(4) reasonable compensation of a guardian ad litem appointed by the court.

B. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court finds that they are financially able to pay all or part of the costs and expenses in Subsection A of this section, the court shall order them to pay the costs and expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the court for remittance to those to whom compensation is due, or if costs and expenses have been paid by the court, to the court for remittance to the state.

C. Whenever legal custody of a neglected or abused child or a child in need of supervision is vested in someone other than the child's parents, including an agency, institution or department of this state, if the court, after notice to the parents or other persons legally obligated to support the child, and after a hearing, finds that they are financially able to pay all or part of the costs and expenses of the support and treatment, the court may order the parent or other legally obligated person to pay to the custodian in the manner the court directs a reasonable sum that will cover all or part of the expenses of the support and treatment of the child subsequent to the entry of the order for payment. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the court may proceed with contempt charges and the order for payment may be filed and if filed shall have the effect of a civil judgment.

History: 1953 Comp., § 13-14-38, enacted by Laws 1972, ch. 97, § 38; 1975 (1st S.S.), ch. 7, § 1.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Applicability of section. - In a child abuse and neglect proceeding, this section controls over the general statute, 39-3-30 NMSA 1978, governing costs in civil actions. State ex rel. Human Servs. Dep't v. Judy H., 105 N.M. 678, 735 P.2d 1184 (Ct. App. 1987).

Assessment of deposition costs. - Subsection A (3) does not authorize the children's court to assess deposition costs against the human services department in a child abuse and neglect proceeding. State ex rel. Human Servs. Dep't v. Judy H., 105 N.M. 678, 735 P.2d 1184 (Ct. App. 1987).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Attorneys' fees awards in parent-nonparent child custody case, 45 A.L.R.4th 212.

32-1-42. Purchase of care from private agency by public agency.

When the legal custody of a child is vested in a public agency under the provisions of the Children's Code the public agency may transfer physical custody of the child to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the child is receiving and the child's responses to that care and treatment. These reports shall be made as frequently as the public agency deems necessary but not less often than once each six months for each child. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the child as frequently as the public agency deems necessary.

History: 1953 Comp., § 13-14-39, enacted by Laws 1972, ch. 97, § 39.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

32-1-43. Probation and parole revocation; disposition.

A child on probation incident to an adjudication either as a delinquent child or a child in need of supervision and who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation." Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures of the Children's Code regarding taking into custody and detention shall

apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a child is found to have violated a term of his probation the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

History: 1953 Comp., § 13-14-40, enacted by Laws 1972, ch. 97, § 40; 1975, ch. 33, § 1; 1981, ch. 36, § 30.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Valid probation order contemplated by section. - This section contemplates a valid probation order and cannot be construed as validating a void order of probation; since the order placing the child on probation was void, the situation was as if no probation order had been entered, and thus the order revoking probation was without legal effect (despite the fact that the court attempted therein to supply the requisite finding that the child was in need of rehabilitation, absence of which had rendered the initial probation order void). State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Governed by procedure applicable to delinquency petition. - Generally, proceedings to revoke probation are governed by the procedure applicable to proceedings on a delinquency petition. State v. Doe, 90 N.M. 249, 561 P.2d 948 (Ct. App. 1977).

Child to be informed of violated condition of probation. - Trial court violated child's right to due process by revoking his probation, absent competent evidence that respondent had been informed of the condition of probation which he allegedly violated. State v. Doe, 104 N.M. 107, 717 P.2d 83 (Ct. App. 1986).

Self-executing provision in a probation order, requiring automatic confinement in the juvenile detention center merely upon a reported absence from school, was invalid because it would circumvent the procedural requirements of this section, but was separable from the remaining portion of the probation order. State v. Don S., 109 N.M. 777, 790 P.2d 1058 (Ct. App. 1990).

Determination based on verified facts. - The determination of whether a juvenile violated the conditions of his probation must be based on verified facts. State v. Doe, 104 N.M. 107, 717 P.2d 83 (Ct. App. 1986).

Improper procedures. - Where a special master lacks authority to hear a probation revocation petition, the court is without jurisdiction at the hearing on the petition. State v. Doe, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

When the district judge disposes of the case more than 30 days after the petition is filed, the petition should be dismissed with prejudice. State v. Doe, 93 N.M. 621, 603 P.2d 731 (Ct. App. 1979).

Law reviews. - For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

32-1-43.1. Parole revocation; procedures.

A. A child on parole from an agency who has legal custody who violates a term of parole may be proceeded against in a parole revocation proceeding conducted by the community services division of the youth authority or the supervising agency in accordance with procedures established by the community services division in cooperation with the juvenile parole board. A juvenile parole officer or supervising juvenile probation officer may detain a child on parole status who is alleged to have violated a term or condition of parole until the completion and review of a preliminary parole revocation hearing.

B. If a retake warrant is issued by the director of the community services division upon the completion of the preliminary parole revocation hearing, the juvenile institution to which the warrant is issued shall promptly transport the child to that institution at the expense of the community services division. If a child absconds from parole supervision and is apprehended in another state after the issuance of a retake warrant by the director of the community services division, the juvenile facilities division of the youth authority shall cause the return of the child to this state at the expense of the community services division.

History: 1978 Comp., § 32-1-43.1, enacted by Laws 1981, ch. 36, § 31; 1988, ch. 101, § 25; 1989, ch. 328, § 9.

The 1988 amendment, effective July 1, 1989, substituted "community" for "field" and "youth authority" for "corrections and criminal rehabilitation department" in Subsections A and B; deleted "Field services" preceding "division" near the end of the first sentence in Subsection A; and inserted "juvenile" in the last sentence of Subsection A.

The 1989 amendment, effective July 1, 1989, in the first sentence in Subsection A, inserted "community services"; in Subsection B, substituted "at the expense of the community services division" for "at institution expense" in the first sentence and for "at juvenile facilities division expense" in the second sentence.

32-1-44. Confidentiality; records.

A. Only records concerning a child or any other party to a child in need of supervision, neglect or abuse proceeding, including social records, diagnostic evaluation, psychiatric or psychological reports which are in the possession of the court as the result of a neglect or abuse or child in need of supervision proceeding or which were produced or

obtained in anticipation of or incident to a neglect or abuse or child in need of supervision proceeding, shall be confidential and closed to the public.

B. In any proceeding under the Children's Code, all social records, including diagnostic evaluation, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision histories, obtained by the juvenile probation office, parole officers and parole board or in possession of the youth authority or the human services department are privileged and shall not be disclosed directly or indirectly to the public.

C. The records described in Subsections A and B of this section shall be open to inspection only by:

(1) court personnel;

(2) human services department personnel;

(3) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(4) corrections department personnel;

(5) law enforcement officials; and

(6) personnel of the youth authority;

(7) any state government social services agency in any state;

(8) those persons or entities of an Indian tribe specifically authorized to inspect such records pursuant to the Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(9) a foster parent, if the records are those of a child currently placed with that foster parent by the human services department or the court and the records concern the social, medical, psychological or educational needs of the child;

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

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

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

History: Laws 1972, ch. 97, § 42; 1953 Comp., § 13-14-42; Laws 1973, ch. 195, § 2; reenacted by 1981, ch. 36, § 32; 1983, ch. 74, §§ 5, 6; 1985, ch. 101, §§ 8, 9; 1988, ch. 101, § 26; 1989, ch. 173, § 1; 1989, ch. 328, § 10; 1989, ch. 330, § 1.

Cross-references. - For right to inspect public records, see 14-2-1 NMSA 1978.

For Arrest Record Information Act, see 29-10-1 NMSA 1978.

The 1988 amendment, effective July 1, 1989, added present Subsection C(6), redesignated former Subsection C(6) as present Subsection C(7), and made a related change.

The 1989 amendments. - Laws 1989, ch. 173, § 1, effective July 1, 1989, inserting "or in possession of the youth authority or the human services department" in Subsection B, adding Paragraphs (7) to (10) in Subsection C, and redesignating former Paragraph (7) of Subsection C as Paragraph (11), was approved April 3, 1989. Laws 1989, ch. 328, § 10, effective July 1, 1989, inserting "special education evaluations" following "diagnostic evaluation" in Subsection A, was approved April 7, 1989. However, Laws 1989, ch. 330, § 1, effective July 1, 1989, making the same changes as the first 1989 amendment but not incorporating the changes made by the second 1989 amendment, was approved later on April 7, 1989. This section is set out as amended by Laws 1989, ch. 330, § 1. See 12-1-8 NMSA 1978.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Indian Child Welfare Act. - The federal Indian Child Welfare Act of 1978, referred to in Subsection C(8), appears as 25 U.S.C. §§ 1901 to 1963.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M.L. Rev. 119 (1973).

For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

For article, "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus," see 10 N.M.L. Rev. 413 (1980).

32-1-44.1. Uniform case numbering.

A. "Uniform case numbering system" means a system of referring to cases of alleged child abuse or neglect, including child sexual abuse, to allow only one numerical designation to be assigned to each case of child abuse or neglect. The uniform case

numbering system shall provide for uniform reference to each case by all state agencies and organizations supported by state funds.

B. In any investigation, intervention or disposition of a case involving child abuse or neglect, including child sexual abuse, a uniform case number shall be assigned to the investigation and shall be maintained and referred to by all persons or agencies having occasion to become involved in any way in the investigation, intervention or disposition of the case.

C. A uniform case numbering system shall be devised, proposed and, after opportunity for public input, adopted by:

(1) the secretary of public safety or his designee;

(2) the secretary of human services or his designee;

(3) the secretary of health and environment [secretary of health] or his designee;

(4) the chief justice of the supreme court or his designee; and

(5) a representative of the elected or appointed district attorneys.

D. The data collected in connection with the uniform case numbering system shall be limited to the names of the alleged offender and alleged victim or victims, the date of the alleged occurrence and a unique case number which encodes the county of the alleged offense, the type of alleged offense and the case disposition, if known. The names of the alleged offender and alleged victim shall be purged as soon as the uniform case number is disseminated to all agencies involved in investigation and rehabilitative service provision in that case, or within six months of the date the uniform case number is assigned, whichever is first.

History: Laws 1989, ch. 60, § 1.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

Effective dates. - Laws 1989, ch. 60 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

32-1-45. Sealing of records.

A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code, or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition, and order the legal and social files and records of the court, probation services and of any other agency in the case sealed, and if requested in the motion the court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the court finds that:

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

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

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

(1) the children's court attorney;

(2) the authority granting the release if the final release was from an agency, parole or probation;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and

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

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

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

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

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

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

F. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records sealed.

History: 1953 Comp., § 13-14-43, enacted by Laws 1972, ch. 97, § 43.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Record sealing discretionary when child commits felony following two "clean" years. - When an individual has been the subject of a petition filed under the Children's Code, has two subsequent "clean" years and then commits a series of felonies, the provisions of Subsection A, relating to the sealing of children's courts records, are not mandatory but are discretionary, pursuant to Subsection E. State v. Doe, 96 N.M. 648, 633 P.2d 1246 (Ct. App. 1981).

Law reviews. - For survey, "Children's Court Practice in Delinquency and Need of Supervision Cases Under the New Rules," see 6 N.M.L. Rev. 331 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 59.

32-1-46. Damages for damage or destruction of property by child; parents liable; costs and attorney's fees; provisions for damages and restitution.

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

B. Recovery of damages under this section is limited to the actual damages proved in the action, not to exceed four thousand dollars ($4,000), taxable court costs and, in the discretion of the court, reasonable attorney's fees to be fixed by the court or tribunal.

C. Nothing contained in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by the child when he has been found to be within the provisions of the Children's Code.

D. Nothing contained in this section shall be construed so as to impute liability to any foster parent.

History: 1953 Comp., § 13-14-44, enacted by Laws 1972, ch. 97, § 44; 1973, ch. 125, § 1; 1977, ch. 76, § 1; 1981, ch. 36, § 33; 1983, ch. 40, § 1.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Section not violative of due process. - As the legislature can properly determine that a parental liability statute is reasonably necessary, this section does not deprive the parents of property without due process of law. Alber v. Nolle, 98 N.M. 100, 645 P.2d 456 (Ct. App. 1982).

Or equal protection. - This section does not deprive parents of equal protection of the laws. Alber v. Nolle, 98 N.M. 100, 645 P.2d 456 (Ct. App. 1982).

Legislative intent. - This statute constitutes a legislative recognition of the moral duty owed by a parent to exercise reasonable care so as to control his minor child and prevent him from maliciously or willfully damaging the property of another. Potomac Ins. Co. v. Torres, 75 N.M. 129, 401 P.2d 308 (1965).

Definition of "willful" and "malicious" conduct. - There is very little, if any, difference between "willful" and "malicious" conduct, and an act done "willfully" or "maliciously" means the intentioned doing of a harmful act without just cause or excuse or an intentional act done in utter disregard for the consequences, and does not necessarily mean actual malice or ill will. Potomac Ins. Co. v. Torres, 75 N.M. 129, 401 P.2d 308 (1965); Ortega v. Montoya, 97 N.M. 159, 637 P.2d 841 (1981).

Young child may be capable of willful and malicious conduct. - As a matter of law, a young child is not incapable of willful and malicious conduct in committing an intentional tort. It is for the trier of fact to determine, based upon the child's age, experience and mental capacity, whether the child acted in a willful and malicious manner. Ortega v. Montoya, 97 N.M. 159, 637 P.2d 841 (1981).

Statutory basis required for parental liability. - In the absence of statutory authority, there is no basis for holding the parents, qua parents, civilly liable for crimes of their minor child. Lamb v. Randall, 95 N.M. 35, 618 P.2d 379 (Ct. App. 1980).

Requisite malice or willfulness may be readily inferred from defendant's act in driving at excessive speeds in a crowded business district, in attempting to evade police pursuit, and in striking a car which was stopped at a red traffic light. Potomac Ins. Co. v. Torres, 75 N.M. 129, 401 P.2d 308 (1965).

Child need not first be found liable. - This section does not require, as a predicate for parental liability, that the child be first found liable. Alber v. Nolle, 98 N.M. 100, 645 P.2d 456 (Ct. App. 1982).

Parents do not have property right in their child's teeth. - The court found no logical reason which would justify holding that either their child's teeth or the investment in orthodontic work on them should properly be considered as property of the parent, and for the damage or destruction of which recovery might be had under the statute. Ross v. Souter, 81 N.M. 181, 464 P.2d 911 (Ct. App. 1970).

Seizure of money of inmate of boys' school. - The only legal way that the money of any boy in New Mexico boys' school can be taken or seized for damages to property caused by him is to institute a civil action, obtain a judgment and then levy execution on any money held by the institution. 1959-60 Op. Att'y Gen. No. 60-121.

Pain and suffering is an actual damage recoverable under the parental liability statute. Alber v. Nolle, 98 N.M. 100, 645 P.2d 456 (Ct. App. 1982).

Award of attorney fees on appeal requires statutory authority. Alber v. Nolle, 98 N.M. 100, 645 P.2d 456 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Criminal responsibility of parent for act of child, 12 A.L.R.4th 673.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense, 66 A.L.R.4th 985.

32-1-47. Parental responsibility.

A. In any complaint alleging delinquency or need of supervision, a parent of the child alleged to be delinquent or in need of supervision may be made a party in the petition. If a parent is made a party and if a child is adjudicated a delinquent or in need of supervision, the court may order the parent or parents to submit to counseling, participate in any probation or other treatment program ordered by the court and, if the child is committed for institutionalization, participate in any institutional treatment or counseling program including attendance at the site of the institution. In all cases other than transfer pursuant to Subsection D of Section 32-1-32 NMSA 1978, the court shall order the parent to support the child committed for institutionalization by paying the reasonable costs of support, maintenance and treatment of the child that the parent is financially able to pay.

B. If a fine is imposed against a child by a court of this state, the parent of the child is not liable to pay the fine.

C. The court shall order the parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if a child is adjudicated to be neglected, abused or in need of supervision and the court orders the child placed with an agency or individual other than the parent.

D. Costs ordered to be paid pursuant to this section shall be determined in accordance with guidelines set forth in the Rules of Procedure for the Children's Court.

E. The court may enforce any of its orders issued pursuant to this section by use of its contempt power.

History: 1953 Comp., § 13-14-44.1, enacted by Laws 1977, ch. 192, § 1; 1981, ch. 36, § 34; 1986, ch. 95, § 1.

Rules of Procedure for the Children's Court. - The Rules of Procedure for the Children's Court are now known as the Children's Court Rules and Forms, and may be found in Judicial Pamphlet 10.

Law reviews. - For article, "The New Mexico Children's Code: Some Remaining Problems," see 10 N.M.L. Rev. 341 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Right of juvenile court defendant to be represented during court proceedings by parent, 11 A.L.R.4th 719.

Criminal responsibility of parent for act of child, 12 A.L.R.4th 673.

32-1-48. Motor Vehicle Code violations.

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

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

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

D. No tribunal may incarcerate any child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations without first securing the approval of the children's court.

History: Laws 1972, ch. 97, § 45; 1953 Comp., § 13-14-45; reenacted by Laws 1973, ch. 360, § 9; 1981, ch. 36, § 35.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

Failure of child-defendant to appear. - When a court has jurisdiction over violations of the Motor Vehicle Code by a child under Subsection A, that court also has authority to issue an arrest warrant pursuant to court rule when the child-defendant fails to appear as ordered. 1989 Op. Att'y Gen. No. 89-14.

Law reviews. - For comment, "The Freedom of the Press vs. The Confidentiality Provisions in the New Mexico Children's Code," see 4 N.M. L. Rev. 119 (1973).

32-1-49. Voluntary placement of child outside home; documentation required.

A. Upon written application by a parent, guardian or custodian, and if good cause is shown, the human services department may accept custody of a minor child for temporary voluntary placement outside the home.

B. Prior to accepting any child for voluntary placement, the human services department shall document the following:

(1) the efforts made by the human services department to provide or arrange for services by other public or private agencies which would be affordable by the family and which would alleviate the conditions leading to the placement request;

(2) any determination that such services are not available;

(3) any refusal by the parent, guardian or custodian to accept such services; and

(4) the fact that conditions leading to the placement request cannot be alleviated by services aimed at keeping the child in the home.

History: Laws 1981, ch. 36, § 41.

32-1-50. Time limitations of voluntary placement.

No child shall remain in voluntary placement for longer than ninety consecutive days nor for more than ninety days in any calendar year; provided that:

A. a child may remain in voluntary placement for an additional ninety consecutive days upon written notice by the human services department to the children's court with a redocumentation of the findings required by Subsection B of Section 32-1-49 NMSA 1978;

B. a child may remain in voluntary placement up to an additional one hundred eighty consecutive days subsequent to extended placement pursuant to Subsection A of this section upon order of the children's court after a hearing and a finding that additional voluntary placement is in the best interests of the child, supported by a redocumentation of the findings required by Subsection B of Section 32-1-49 NMSA 1978; and

C. notwithstanding the provisions of Subsections A and B of this section, in no event shall a child remain in voluntary placement for a period in excess of three hundred sixty consecutive days or for more than three hundred sixty days in any two consecutive calendar years and such placement shall not be considered abandonment by a parent or other family member.

History: Laws 1981, ch. 36, § 42; 1983, ch. 144, § 1.

32-1-51. Duty to file neglect petition.

If any child has remained in voluntary placement for longer than three hundred sixty consecutive days or for more than three hundred sixty days in any two consecutive calendar years and the parent, guardian or custodian refuses to accept the child back into his custody, the human services department shall immediately request the children's court attorney to file a petition alleging that the child is a neglected child.

History: Laws 1981, ch. 36, § 43; 1983, ch. 144, § 2.

32-1-52. Right to regain custody.

A parent, guardian or custodian may at any time demand and obtain the return of his child voluntarily placed outside the home. The child shall be returned within seventy-two hours of the demand; however, the human services department may prevent the immediate return by requesting the children's court attorney to file a petition alleging neglect or abuse and by obtaining temporary custody of the child before the expiration of seventy-two hours.

History: Laws 1981, ch. 36, § 44.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Right of parent to regain custody of child after temporary conditional relinquishment of custody, 35 A.L.R.4th 61.

32-1-53. Rights while child in voluntary placement.

Any parent, guardian or custodian whose child is in voluntary placement shall have the following rights with respect to the child:

A. the right of reasonable visitation with the child;

B. the right to be informed of changes in the child's school or foster home; and

C. the right of decision as to all nonemergency and nonroutine medical care provided for the child.

History: Laws 1981, ch. 36, § 45.

Severability clauses. - Laws 1981, ch. 36, § 46, provides for the severability of the act if any part or application thereof is held invalid.

32-1-54. Termination of parental rights.

A. The rights of a parent, including an adjudicated, acknowledged, biological, presumed or adoptive parent, may be terminated with reference to a child by the court as provided in this section. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child.

B. The court shall terminate parental rights with respect to a minor child when:

(1) the minor has been abandoned by the parents;

(2) the minor has been left under such circumstances that the identification of the parents is unknown and cannot be ascertained, despite a diligent search by the department and the parents have not come forward to claim the minor for three months;

(3) the child has been a neglected or abused child as defined in Section 32-1-3 NMSA 1978 and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions which render the parent unable to properly care for the child; or

(4) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child prefers no longer to live with the natural parent; and

(e) the substitute family desires to adopt the child.

C. A finding by the court that all of the conditions set forth in Paragraph (4) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving a child subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., shall comply with the requirements of that act.

E. The definitions contained in Section 2 of the Adoption Act [40-7-30 NMSA 1978] shall apply to the termination of parental rights under this section and Section 32-1-55 NMSA 1978.

History: 1978 Comp., § 32-1-54, enacted by Laws 1985, ch. 194, § 36.

Cross-references. - As to the Adoption Act, see 40-7-29 to 40-7-61 NMSA 1978.

Constitutionality. - This section is not constitutionally defective by failing to provide for a defense of mental illness. State ex rel. Human Servs. Dep't v. Cynthia Y., 106 N.M. 406, 744 P.2d 181 (Ct. App. 1987).

This section is not vague or ambiguous. In re Samantha D., 106 N.M. 184, 740 P.2d 1168 (Ct. App. 1987).

Effect of Child Custody Jurisdiction Act. - The New Mexico Child Custody Jurisdiction Act (40-10-1 et seq. NMSA 1978) does not supersede or invalidate a proceeding to terminate parental rights brought under this section. Laurie R. v. New Mexico Human Servs. Dep't, 107 N.M. 529, 760 P.2d 1295 (Ct. App. 1988).

Welfare of child is of the highest importance for court to consider. In re Doe, 99 N.M. 278, 657 P.2d 134 (Ct. App. 1982).

Right of custodians to termination proceedings. - That the nonparent custodians of a child were "acting as parents" pursuant to 40-10-3H NMSA 1978 because they had physical custody of the child and claimed a right to custody did not have applicability in a neglect or abuse case so as to entitle the custodians to the protections afforded in a termination of parent rights case. In re Agnes P., 110 N.M. 768, 800 P.2d 202 (Ct. App. 1990).

Statute does not require proof that parent is "unfit". - The statutory scheme for termination of parental rights does not require proof that a parent is "unfit", although the term might be an apt appellation for a parent whose rights with respect to a child are terminated pursuant to Subsection B(3). Helen F. v. State ex rel. Human Servs. Dep't, 109 N.M. 472, 786 P.2d 699 (Ct. App. 1990).

Parent's right to raise child to be considered. - While this section requires the court to give primary consideration to the physical, mental and emotional welfare and needs of the child, this cannot be done to the utter exclusion of consideration of the rights of a parent to raise her children. State ex rel. Department of Human Servs. v. Natural Mother, 96 N.M. 677, 634 P.2d 699 (Ct. App. 1981).

Relative merits of parental environments not considered. - The process of making a determination of termination of parental rights under this section does not include a comparison of the relative merits of the environments provided by the foster parents and by the natural parents. The only consideration is whether the environment provided for

the children by the parents is and will be adequate. State ex rel. Department of Human Servs. v. Natural Mother, 96 N.M. 677, 634 P.2d 699 (Ct. App. 1981).

The fact that a child might be better off in a different environment is not a basis for termination of parental rights. State ex rel. Department of Human Servs. v. Williams, 108 N.M. 332, 772 P.2d 366 (Ct. App. 1989).

Mere comparative analysis of prospective homes is improper in proceedings seeking to terminate parental rights. In re Doe, 98 N.M. 340, 648 P.2d 798 (Ct. App. 1982).

Futile efforts to preserve family not required. - When it becomes clear that preserving the family is not compatible with protecting the child, further efforts at preservation are not required. Further efforts to assist the parents are not required when there is a clear showing that they would be futile. Helen F. v. State ex rel. Human Servs. Dep't, 109 N.M. 472, 786 P.2d 699 (Ct. App. 1990).

Abandonment by father does not mandate termination. - When a child has been abandoned by a father, i.e., when the parental relationship between father and child is nonexistent, it is not mandatory that the court terminate parental rights. The decision rests within the judicial discretion of the court. Wasson v. Wasson, 92 N.M. 162, 584 P.2d 713 (Ct. App. 1978)(decided under former law).

Abandonment during incarceration. - Whether "abandonment" has occurred during incarceration is a question of fact to be determined on a case by case basis. Not every act of a parent which results in incarceration, nor every criminal act perpetrated between parents, can be deemed to be abandonment as a matter of law. In re Doe, 99 N.M. 278, 657 P.2d 134 (Ct. App. 1982).

Abandonment rests upon incarceration coupled with other factors such as parental neglect, lack of affection shown toward the child, failure to contact the child, financially support the child if able to do so, as well as disregard for the general welfare of the child. In re Doe, 99 N.M. 278, 657 P.2d 134 (Ct. App. 1982).

The act of selling children constitutes abandonment of them as a matter of law. Barwin v. Reidy, 62 N.M. 183, 307 P.2d 175 (1957)(decided under former law).

When a father, in child's presence, murders child's mother, the district court may terminate the father's parental rights. In re Doe, 99 N.M. 278, 657 P.2d 134 (Ct. App. 1982).

Adequacy of notice when parent represented by counsel. - The human services department was required to serve a parent's attorney with notice of the department's action to terminate parental rights, when the attorney was representing him in a separate neglect action before the children's court. Ronald v. State ex rel. Human Servs. Dep't, 110 N.M. 454, 797 P.2d 243 (1990).

Department not required to assist parent where abandonment's effects are unremediable. - Where abandonment by a father is proven, and the results of the father's past conduct are not remediable, the department is not required to show that it has made efforts to assist the father in remedying the problem. State ex rel. Department of Human Servs. v. Peterson, 103 N.M. App. 617, 711 P.2d 894 (1985).

Termination of parental rights under Subsection B(3) does not require a prior adjudication of neglect. State ex rel. Department of Human Servs. v. Ousley, 102 N.M. 656, 699 P.2d 129 (Ct. App. 1985).

Disintegration of parent-child relationship. - Substantial evidence beyond reasonable doubt supported court's termination of parental rights due to disintegration of parent-child relationship. Laurie R. v. New Mexico Human Servs. Dep't, 107 N.M. 529, 760 P.2d 1295 (Ct. App. 1988).

Department may not use psychologists' testimony where it sought examination. - If the human services department induces a person to be examined and counseled by psychologists, something she would not do but for such inducement, the department is estopped by such conduct to use the psychologists' testimony. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982).

No psychologist-patient privilege where mental condition relied on to oppose termination. - Where communications to psychologists are relevant to a person's mental condition, but, in a later proceeding, that person relies on her mental condition in opposing the termination of her parental rights, there is no privilege as to those communications under Rule 504(d)(3), N.M.R. Evid. (now Rule 11-504). State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982).

State must prove one of specific statutory grounds. - In order to terminate a parent's rights, the state must plead and prove one of the specific grounds for termination set out in the statute. State ex rel. Department of Human Servs. v. Williams, 108 N.M. 332, 772 P.2d 366 (Ct. App. 1989).

Grounds for termination to be shown by clear and convincing evidence. - In proceedings seeking the termination of parental rights, the grounds for any attempted termination must be proven by clear and convincing evidence. The clear and convincing evidence standard requires proof stronger than a mere "preponderance" and yet something less than "beyond a reasonable doubt." In re Doe, 98 N.M. 340, 648 P.2d 798 (Ct. App. 1982).

Quantum of proof required concerning evidence as to parents' unfitness must be such as to clearly and convincingly show parents' unfitness. A mere preponderance of the evidence is insufficient. Huey v. Lente, 85 N.M. 597, 514 P.2d 1093 (1973).

Because of the fundamental rights involved in a termination proceeding, the burden of proof of clear and convincing evidence is something stronger than a mere

preponderance and yet something less than beyond a reasonable doubt. State ex rel. Department of Human Servs. v. Natural Mother, 96 N.M. 677, 634 P.2d 699 (Ct. App. 1981).

The findings to support termination under this section must be supported by clear and convincing evidence. State ex rel. Department of Human Servs. v. Natural Mother, 96 N.M. 677, 634 P.2d 699 (Ct. App. 1981).

A trial court's decision in termination of parental rights cases will be upheld if its findings are supported by clear and convincing evidence and if it applied the proper rule of law. State ex rel. Department of Human Servs. v. Minjares, 98 N.M. 198, 647 P.2d 400 (1982).

Clear and convincing evidence necessary to support abandonment. - In proceedings seeking to terminate parental rights on grounds of abandonment, the court must be satisfied, by clear and convincing evidence, that the best interests of the child will be served by severing the parent-child relationship. In re Samantha D., 106 N.M. 184, 740 P.2d 1168 (Ct. App. 1987).

Authority of court after mother's consent declared invalid. - Where the mother's consent to adoption has been declared invalid in keeping with the best interests of the child, the trial court retains the power to determine custody in the absence of a legally valid consent, and it is within the authority of the trial court to continue the child in the custody of the couple seeking to adopt her. Although they lacked standing to petition the court for adoption, they were not left without remedy, since they did have standing to seek relief. In re Samantha D., 106 N.M. 184, 740 P.2d 1168 (Ct. App. 1987).

Evidence of conditions and causes of neglect and abuse. - Evidence sufficient to support finding that conditions and causes of neglect and abuse were unlikely to change. State ex rel. Human Servs. Dep't v. Wayne R.N., 107 N.M. 341, 757 P.2d 1333 (Ct. App. 1988).

Evidence held sufficient to terminate parental rights. - Trial court's findings for termination of the mother's parental rights were supported by clear and convincing evidence, where the human services department made reasonable efforts to assist her in improving her ability to care for her children, which efforts proved ultimately futile. State ex rel. Human Serv. Dep't v. Dennis S., 108 N.M. 486, 775 P.2d 252 (Ct. App. 1989).

Injury to child not condition precedent. - While a court may not speculate as to the future care of a child, the primary consideration is the best interests and welfare of the child, and the court should not be forced to refrain from taking action until each child suffers an injury. It is not necessary to wait until a child has been injured, since knowingly, intentionally, or negligently placing a child in danger constitutes abuse and is a ground for terminating parental rights. State ex rel. Department of Human Servs. v. Tommy A.M., 105 N.M. 664, 735 P.2d 1170 (Ct. App. 1987).

Components of "unfit" mother not required findings by trial court. - Where the ultimate fact is that a mother is unfit, the trial court is not required to make findings as to the components of "unfit" because those components are not ultimate facts. State Health & Social Servs. Dep't v. Smith, 93 N.M. 348, 600 P.2d 294 (Ct. App.), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979) (decided under former law).

Appellate issue to determine substantial evidence of components of "unfit". - Having found the ultimate fact that the mother is unfit, the appellate issue does not involve the sufficiency of findings as to the components of "unfit"; rather, the appellate issue is whether there was substantial evidence of each of the components so that the finding of the ultimate fact was supported by the evidence. State Health & Social Servs. Dep't v. Smith, 93 N.M. 348, 600 P.2d 294 (Ct. App.), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979) (decided under former law).

Effect of abuse of sibling. - While abuse of a sibling may be insufficient to justify terminating parental rights, it is evidence that should be considered in determining whether a child has been placed in danger. State ex rel. Department of Human Servs. v. Tommy A.M., 105 N.M. 664, 735 P.2d 1170 (Ct. App. 1987).

Trial court was justified in terminating parental rights to a four-year old child who had been adjudicated as a neglected child after being diagnosed as having nonorganic failure to thrive, where there was clear and convincing evidence to support the court's finding that the conditions and causes of the neglect were unlikely to change in the foreseeable future. State ex rel. Department of Human Servs. v. Williams, 108 N.M. 332, 772 P.2d 366 (Ct. App. 1989).

Law reviews. - For note, "Family Law - A Limitation on Grandparental Rights in New Mexico: Christian Placement Service v. Gordon," see 17 N.M.L. Rev. 207 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Admissibility at criminal prosecution of expert testimony on battering parent syndrome, 43 A.L.R.4th 1203.

Parent's transsexuality as factor in award of custody of children, visitation rights, or termination of parental rights, 54 A.L.R.4th 1170.

Validity and construction of surrogate parenting agreement, 77 A.L.R.4th 70.

32-1-55. Termination procedure.

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

(1) the department;

(2) a licensed child placement agency; or

(3) any other person having a legitimate interest in the matter, including a petitioner for adoption, a foster parent or a relative of the child.

B. Any application for termination of parental rights shall be signed and verified by the applicant, be filed with the court and set forth:

(1) the date, place of birth and marital status of the minor, if known;

(2) the ground for termination and the facts and circumstances supporting the ground for termination;

(3) the names and addresses of the persons or authorized agency or officer thereof to whom custody might be transferred;

(4) the basis for the court's jurisdiction;

(5) whether the application is in contemplation of adoption;

(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the petitioner to notify the parents' tribe and the results of such contacts, including the names, address, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences of the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the application, accompanied by a copy of the application, shall be served by the applicant on the parents of the minor, the custodian of the minor, the department, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the rules of civil procedure for the service of process in a civil action in this state. The notice shall state specifically that the person served must file a written response to the application within twenty days if he intends to contest the termination. In any case involving a child subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., notice shall also be served upon the tribes of the minor's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).

D. If the identity or whereabouts of a parent are unknown, the applicant shall file a motion for an order granting service by publication supported by the affidavit of the applicant, his agent or attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with Rule 4(e) or 4(k) of the rules of civil procedure [Rule 1-004E or 1-004K SRCA 1968], the court shall order service by publication pursuant to the rules of civil procedure.

E. The court shall, upon request, appoint counsel for any parent who is unable to obtain counsel for financial reasons, or, if in the court's discretion, appointment of counsel is required in the interest of justice.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination.

G. Within thirty days after the filing of an application to terminate parental rights, the applicant shall request a hearing on the application. The hearing date shall be at least thirty days after service is effected upon the parents of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence; provided, however, the grounds for any attempted termination must be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq.

I. If the court terminates parental rights, it shall appoint a custodian for the minor child and fix responsibility for the minor's support. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department or a licensed child placement agency willing to accept custody for the purpose of placing the child for adoption. In any termination proceeding involving a child subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., the court shall in any termination order make specific findings that the requirements of that act have been met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges, and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A child's inheritance rights from and through its biological parents are terminated only by a subsequent adoption.

History: 1978 Comp., § 32-1-55, enacted by Laws 1985, ch. 194, § 37.

Cross-references. - As to the Adoption Act, see 40-7-29 to 40-7-61 NMSA 1978.

Waiver of objection to venue. - Mother, who appealed district court's judgment terminating her parental rights, waived her claim of improper venue, where she failed to raise her venue-statute objection at a time when any error could have been cured promptly. Helen F. v. State ex rel. Human Servs. Dep't, 109 N.M. 472, 786 P.2d 699 (Ct. App. 1990).

Lack of notice of issue of continuation of parental rights violates mother's due process rights. - Where the issue of termination of parental rights was not raised in the pleadings, nor properly tried and was mentioned for the first time after closing arguments, when counsel for the father made an oral motion that the parental rights of the mother be terminated, the procedural due process rights of the mother were violated as she was never given notice that the continuation of her parental rights was at issue, she did not have a full opportunity to prepare her case and, consequently, she was not given a full and fair hearing. Thatcher v. Arnall, 94 N.M. 306, 610 P.2d 193 (1980).

Sufficiency of notice. - Although the summons served upon a father in a termination of parental rights action did not meet the requirements of Subsection C, there was no showing that the father was prejudiced by the various errors in the notice. Ronald A. v. State ex rel. Human Servs. Dep't, 110 N.M. 454, 794 P.2d 371 (Ct. App. 1990).

Prior proceeding concerned with the fact of neglect is not a jurisdictional bar to a later, separate termination proceeding. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982).

Where neglect proceedings do not result in final judgment on merits, the department is not barred under the "judgments" rule from later bringing termination proceedings. State ex rel. Human Servs. Dep't v. Levario, 98 N.M. 442, 649 P.2d 510 (Ct. App. 1982).

Verification of pleadings. - Although the human services department failed to obtain the court's permission prior to filing its amended petitions to terminate parental rights, the court granted permission to file the final amended petition and verification prior to the commencement of trial. Allowance of this amendment rectified any insufficiency in the earlier pleadings not being verified. The court, therefore, was not deprived of subject matter jurisdiction. Laurie R. v. New Mexico Human Servs. Dep't, 107 N.M. 529, 760 P.2d 1295 (Ct. App. 1988).

Authority of court after mother's consent declared invalid. - Where the mother's consent to adoption has been declared invalid in keeping with the best interests of the child, the trial court retains the power to determine custody in the absence of a legally valid consent, and it is within the authority of the trial court to continue the child in the custody of the couple seeking to adopt her. Although they lacked standing to petition the court for adoption, they were not left without remedy, since they did have standing to seek relief. In re Samantha D., 106 N.M. 184, 740 P.2d 1168 (Ct. App. 1987).

Law reviews. - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Admissibility at criminal prosecution of expert testimony on battering parent syndrome, 43 A.L.R.4th 1203.

32-1-56. Indigency standard; fee schedule; reimbursement.

A. The court shall use a standard adopted by the public defender department to determine indigency of children in proceedings on petitions alleging delinquency or need of supervision.

B. The court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent children in proceedings on petitions alleging delinquency or need of supervision.

C. The court shall order reimbursement from the parents, guardians or custodians of a child who has received or desires to receive legal representation or another benefit under the Public Defender Act [31-15-1 to 31-15-12 NMSA 1978] after a determination is made that the child was not indigent according to the standard for indigency of children adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund.

History: 1978 Comp., § 32-1-56, enacted by Laws 1987, ch. 20, § 2.

Cross-references. - Defense of indigents, see 31-16-1 to 31-16-10 NMSA 1978.

32-1-57. Child adjudicated delinquent; victim restitution; compensation; deductions.

A. As used in this section:

(1) "court" means the children's court or family court division of the district court;

(2) "delinquent child" means a child adjudicated delinquent by the court and transferred to the legal custody of the division;

(3) "department" means the corrections department; and

(4) "division" means the juvenile facilities division of the department.

B. A delinquent child may be ordered by the court to pay restitution to the victim of his delinquent act.

C. The department may provide compensation to a delinquent child engaged in a rehabilitative work program and shall promulgate necessary rules and regulations to provide deductions from that compensation for:

(1) victim restitution ordered by the court and for transmitting those deductions to the clerk of that court;

(2) the crime victims reparation fund and for transmitting those deductions to the state treasurer for credit to that fund; and

(3) the reasonable costs incident to the confinement of the delinquent child.

D. The deductions provided by Subsection C of this section shall not exceed fifty percent of the compensation earned by the child and shall not be less than five percent of that compensation.

History: Laws 1987, ch. 105, § 1.

32-1-58. Permanent guardianship of a child.

A. Permanent guardianship vests in the guardian all rights and responsibilities of a parent, subject to the rights and responsibilities of the natural or adoptive parent, if any, as set forth in the decree of permanent guardianship. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child.

B. Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that the human services department grants consent to the guardianship if the child is in the department's custody. An agency or institution may not be a permanent guardian.

C. The court may establish a permanent guardianship between a child and the guardian when the prospective guardianship is in the child's best interest and when:

(1) the child has been abandoned by his parents; or

(2) the child has been a neglected or abused child as defined in Section 32-1-3 NMSA 1978 and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions which render the parent unable to properly care for the child; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of the potential guardian for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child; and

(d) if the court deems the child of sufficient capacity to express a preference, the child prefers no longer to live with the natural parent; and

(4) the likelihood of the child being adopted is remote or it is established that termination of parental rights is not in the child's best interest.

D. A finding by the court that all of the conditions set forth in Paragraph (3) of Subsection C of this section exist shall create a rebuttable presumption of abandonment.

History: Laws 1987, ch. 106, § 1.

32-1-59. Permanent guardianship; procedure.

A. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

(1) the department;

(2) the prospective guardian; or

(3) the child, through his guardian ad litem.

B. Any application for permanent guardianship shall be signed and verified by the petitioner, filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the facts and circumstances supporting the ground for permanent guardianship;

(3) the name and address of the prospective guardian and a statement that such person agrees to accept the duties and responsibilities of guardianship;

(4) the basis for the court's jurisdiction;

(5) the relationship of the child to the petitioner and the prospective guardian; and

(6) whether the child is subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the petitioner to notify the parents' tribe and the results of such contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences of the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., or the placement preferences of the appropriate Indian tribes.

C. If the petition is not filed by the prospective guardian, the petition shall be verified by the prospective guardian.

D. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the custodian of the child, the department, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state. The notice shall state specifically that the person served must file a written response to the application within twenty days if he intends to contest the guardianship. In any case involving a child subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq., notice shall be served upon the tribes of the minor's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).

E. If the identity or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication supported by the affidavit of the petitioner, his agent or attorney detailing the efforts made to locate the parent. Upon a finding that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with Rule 4(e) or 4(k) [Rule 1-004 E or K] of the Rules of Civil Procedure for the District Courts, the court shall order service by publication pursuant to the Rules of Civil Procedure for the District Courts.

F. The court shall, upon request, appoint counsel for any parent who is unable to obtain counsel for financial reasons or if, in the court's discretion, appointment of counsel is required in the interest of justice.

G. The court shall appoint a guardian ad litem for the child in all contested proceedings for permanent guardianship.

H. The grounds for permanent guardianship shall be proved by clear and convincing evidence; provided, however, the grounds for permanent guardianship must be proved

beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq.

I. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of all legal rights and privileges with regard to the child except those specifically reserved to the biological or adoptive parent in the final judgment. A child's inheritance rights from and through his biological or adoptive parents are not affected by this proceeding.

J. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well being.

K. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

L. Any person vested with the rights and responsibilities of a permanent guardian with respect to a child cannot be divested of such rights except by an action pursuant to Sections 32-1-54 and 32-1-55 NMSA 1978. A permanent guardian may relinquish rights to a child pursuant to Section 40-7-38 NMSA 1978.

History: Laws 1987, ch. 106, § 2.

ARTICLE 2
JUVENILE PAROLE BOARD

32-2-1. Short title.

Sections 1 through 9 [32-2-1 to 32-2-9 NMSA 1978] of this act may be cited as the "Juvenile Parole Board Act".

History: 1953 Comp., § 13-14B-1, enacted by Laws 1977, ch. 278, § 1.

32-2-2. Juvenile parole board; creation; terms; director.

A. There is created the "juvenile parole board" consisting of three members appointed by the governor. The juvenile parole board is administratively attached to the youth authority. The terms of members of the board shall be six years, except that the members of the initial board shall be appointed for staggered terms of one, two and three years.

B. The juvenile parole board shall appoint a director who is the administrative officer of the board. The director shall employ such other staff as is necessary to carry out the

duties of the board. The director and employees shall be subject to the provisions of the Personnel Act.

History: 1953 Comp., § 13-14B-2, enacted by Laws 1977, ch. 278, § 2; 1988, ch. 101, § 27; 1989, ch. 188, § 1.

The 1988 amendment, effective July 1, 1989, substituted "youth authority which shall provide staff support to the board" for "criminal justice department in the event such a department is statutorily created by the legislature, and will be provided staff support by the adult parole board, whether acting as an independent agency or whether administratively attached to the criminal justice department" in the second sentence.

The 1989 amendment, effective July 1, 1989, substituted the present catchline for "Creation; terms"; designated the formerly undesignated provisions as Subsection A; in Subsection A deleted "which shall provide staff support to the board" at the end of the second sentence and deleted "respectively" at the end of the third sentence; and added Subsection B.

Temporary provisions. - Laws 1988, ch. 101, § 46 provides that on July 1, 1989, all personnel, appropriations, money, records, property, equipment and supplies of the juvenile facilities division, juvenile facilities, juvenile community corrections programs and all other juvenile functions, programs and services of the corrections department and of the juvenile parole board shall be transferred to the youth authority, that all existing contracts and agreements in effect for the aforementioned groups shall be binding and effective on the youth authority, and that any transfer of federal funds, grants or contracts are contingent upon federal law and regulation.

Laws 1989, ch. 188, § 3, effective July 1, 1989, provides that on July 1, 1989, four full-time equivalent permanent juvenile parole positions and all appropriations, money, records, property, equipment and supplies for or related to those positions shall be transferred from the parole board to the juvenile parole board.

Personnel Act. - See 10-9-1 NMSA 1978 and notes thereto.

32-2-3. Appointment and removal.

Members of the board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by the governor for the remainder of the unexpired term.

History: 1953 Comp., § 13-14B-3, enacted by Laws 1977, ch. 278, § 3.

32-2-4. Qualifications of board.

Members of the board shall be persons qualified by education or professional training in such fields as criminology, education, psychology, psychiatry, law, social work or

sociology. No member of the board shall be an official or employee of any federal, state or local governmental entity.

History: 1953 Comp., § 13-14B-4, enacted by Laws 1977, ch. 278, § 4.

32-2-5. Chairperson.

The governor shall designate one member of the board to serve as chairperson.

History: 1953 Comp., § 13-14B-5, enacted by Laws 1977, ch. 278, § 5.

32-2-6. Powers and duties of the board.

A. The juvenile parole board shall have the following powers and duties to:

(1) grant, deny or revoke parole for children;

(2) conduct or cause to be conducted such investigations, examinations, interviews, hearings and other proceedings as may be necessary for the effectual discharge of the duties of the board;

(3) summon witnesses, books, papers, reports, documents or tangible things and administer oaths as may be necessary for the effectual discharge of the duties of the board;

(4) maintain records of its acts, decisions and orders and notify each agency affected by its decisions;

(5) adopt an official seal of which the courts shall take judicial notice;

(6) adopt a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a child from parole;

(7) adopt such rules and regulations as may be necessary for the effectual discharge of the duties of the board; and

(8) contract or otherwise provide for services, supplies, equipment, office space and such other provisions as are necessary to effectively discharge the duties of the board.

B. At least thirty days before ordering any parole, the juvenile parole board shall notify the children's court judge of the judicial district from which legal custody of the child was transferred. The judge may express his views on the child's prospective parole, either in writing or personally, to the board, but the final parole decision shall be that of the board, a copy of which shall be filed with the court of original jurisdiction. In the event venue has been transferred pursuant to Section 32-1-13 NMSA 1978, a copy of the

board's decision shall also be filed with the children's court to which venue has been transferred.

C. Before ordering the parole of any child, the juvenile parole board shall personally interview the child. The board shall furnish to each child paroled a written statement of the conditions of parole, which conditions shall be acknowledged by the child and his parents, custodian or guardian.

D. The juvenile parole board shall provide the child and his parents, custodian or guardian with a written statement of the reason for denying parole within forty-eight hours after the hearing.

History: 1953 Comp., § 13-14B-6, enacted by Laws 1977, ch. 278, § 6; 1981, ch. 36, § 36; 1989, ch. 188, § 2.

The 1989 amendment, effective July 1, 1989, added Subsection A(8), and made minor stylistic changes throughout the section.

32-2-7. Compensation.

The members of the board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 13-14B-7, enacted by Laws 1977, ch. 278, § 7.

32-2-8. Parole eligibility.

A. A child is eligible to appear before the board forty days after the entry of a judgment transferring legal custody to an agency for the care and rehabilitation of delinquent children unless recommended for an earlier appearance by the agency responsible for such care and rehabilitation.

B. In the event parole is denied, the child shall be eligible for review sixty days thereafter.

C. The board may review the case of any child upon its own motion at any time after parole is denied.

D. The provisions of the Juvenile Parole Board Act [32-2-1 to 32-2-9 NMSA 1978] apply to all children who, on the effective date of that act, are on parole or eligible to be placed on parole with the same effect as if that act had been in effect at the time they were placed on parole or became eligible to be placed on parole.

History: 1953 Comp., § 13-14B-8, enacted by Laws 1977, ch. 278, § 8.

32-2-9. Access.

The board shall have access at all reasonable times to any child over whom the board has jurisdiction under the Juvenile Parole Board Act [32-2-1 to 32-2-9 NMSA 1978] and any records pertaining to the child. The agency to which legal custody was transferred shall also provide the board with facilities for communicating with and interviewing children.

History: 1953 Comp., § 13-14B-9, enacted by Laws 1977, ch. 278, § 9.

ARTICLE 2A
CHILDREN'S SHELTER CARE

32-2A-1. Short title.

Sections 1 through 7 [32-2A-1 to 32-2A-7 NMSA 1978] of this act may be cited as the "Children's Shelter Care Act".

History: 1978 Comp., § 32-2A-1, enacted by Laws 1978, ch. 108, § 1.

32-2A-2. Legislative findings and purpose.

A. The legislature finds and declares that appropriate and distinct programs of supervision and care for children are required to fulfill the purposes of the Children's Code; that many children are needlessly detained in secured facilities on charges for acts that would not be criminal if they were committed by an adult; that these children would benefit from either immediate return to the family or placement in shelter-care homes or nonsecured shelter-care facilities; and that certain alleged delinquents will benefit from nonsecured placements and do not require secure detention.

B. The purpose of the Children's Shelter Care Act [32-2A-1 to 32-2A-7 NMSA 1978] is:

(1) to provide funding for the establishment of shelter-care facilities or programs; and

(2) to divert children out of the juvenile justice system and provide for their supervision and care in community-based shelter-care homes and facilities when the immediate return to the child's family is not feasible or when intervention programs alone are not sufficient for the care and treatment of the child.

History: 1978 Comp., § 32-2A-2, enacted by Laws 1978, ch. 108, § 2.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

32-2A-3. Definitions.

As used in the Children's Shelter Care Act [32-2A-1 to 32-2A-7 NMSA 1978]:

A. "children" or "child" means an individual who is less than eighteen years old;

B. "alleged child in need of supervision" means a child who is charged with an offense applicable only to children or not classified as criminal;

C. "child in need of supervision" means a child found by the children's court or family court division of the district court to:

(1) have committed an offense applicable only to children or not classified as criminal; and

(2) be in need of care or rehabilitation;

D. "alleged delinquent child" means a child charged with an act which would be designated as a crime under the Criminal Code if committed by an adult;

E. "community-based shelter-care facility" means a physically nonrestrictive home or living facility to be used as a temporary living place for a child eligible under Section 32-2A-6 NMSA 1978, pending the return of such child to his family or his placement in a residential facility designed for long-term placement;

F. "programs of supervision and care" includes programs, placements and services designed to serve as alternatives to the physical detention of alleged children in need of supervision, alleged delinquents and children in need of supervision; and

G. "department" means the human services department.

History: 1978 Comp., § 32-2A-3, enacted by Laws 1978, ch. 108, § 3; 1983, ch. 180, § 1.

Validating clauses. - Laws 1983, ch. 180, § 2 declares that any rules, regulations, standards or procedures adopted by the criminal justice department to carry out the purpose of the Children's Shelter Care Act are to be continued in full force and effect.

Criminal Code. - See 30-1-1 NMSA 1978 and notes thereto.

32-2A-4. Rules and regulations; promulgation.

The department shall promulgate necessary rules, regulations, standards and procedures to carry out the purposes of the Children's Shelter Care Act [32-2A-1 to 32-2A-7 NMSA 1978].

History: 1978 Comp., § 32-2A-4, enacted by Laws 1978, ch. 108, § 4.

32-2A-5. Community-based shelter-care facilities.

The department shall establish and support community-based shelter-care facilities and programs of supervision and care, and shall support existing community-based shelter-care facilities and other programs of supervision and care.

History: 1978 Comp., § 32-2A-5, enacted by Laws 1978, ch. 108, § 5.

32-2A-6. Eligibility of child for placement.

A child is eligible to be placed in a community-based shelter-care facility provided for under Section 5 [32-2A-5 NMSA 1978] of the Children's Shelter Care Act if:

A. the child is an alleged child in need of supervision; a child in need of supervision; or

B. the child is an alleged delinquent child and there is no probable cause to believe that the child will injure others or himself, run away or be taken away so as to be unavailable for proceedings of the court or its officers.

History: 1978 Comp., § 32-2A-6, enacted by Laws 1978, ch. 108, § 6.

32-2A-7. Report to the governor and the legislature.

The department shall provide an annual report to the governor and the legislature concerning the projects and programs funded under the Children's Shelter Care Act [32-2A-1 to 32-2A-7 NMSA 1978]. The report shall include:

A. a description of the community-based shelter-care facilities and programs of care and supervision funded pursuant to the Children's Shelter Care Act;

B. an accounting of expenditures;

C. an analysis of the effectiveness of the community-based shelter-care facilities and programs of care and supervision funded pursuant to that act; and

D. a description of procedures employed by the department in awarding grants, and auditing, monitoring and evaluating facilities and programs.

History: 1978 Comp., § 32-2A-7, enacted by Laws 1978, ch. 108, § 7.

ARTICLE 2B
DETENTION FACILITY GRANT FUND

32-2B-1. Detention facility grant fund; established.

There is created in the state treasury a special fund to be known as the "detention facility grant fund". All money appropriated to this fund or accruing to it as a result of gift, deposit or from other sources except interest earned on the fund which shall be credited to the general fund shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in Chapter 32, Article 2B NMSA 1978. The detention facility grant fund shall be for the purpose of assisting counties or municipalities to modify or construct facilities for the detention of juveniles alleged or adjudicated to be delinquent or in need of supervision. Any facility so modified or constructed with assistance from the detention facility grant fund shall conform to the standards for detention facilities under the Children's Code.

History: 1978 Comp., § 32-2B-1, enacted by Laws 1978, ch. 141, § 1; 1981 (1st S.S.), ch. 10, § 1; 1989, ch. 324, § 25.

The 1989 amendment, effective April 7, 1989, in the second sentence, deleted "investments" following "deposit", inserted "except interest earned on the fund which shall be credited to the general fund", and substituted "in Chapter 32, Article 2B NMSA 1978" for "in this act", and, in the last sentence, substituted "shall conform" for "must conform".

Children's Code. - See 32-2-1 NMSA 1978 and notes thereto.

32-2B-2. Detention facility grant fund; administration.

The department of finance and administration shall administer the detention facility grant fund and make grants to counties or municipalities pursuant to the provisions of this act [32-2B-1 to 32-2B-5 NMSA 1978]. The department of finance and administration in conjunction with the criminal justice department shall stipulate the format and absolute deadlines for applications and the manner in which expenditures shall be reported. The criminal justice department shall review and approve all applications submitted pursuant to the provisions of this act. After proper notice and public hearings, the criminal justice department shall adopt regulations which shall provide standards for qualifications for grants. Disbursements from the detention facility grant fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of criminal justice.

History: 1978 Comp., § 32-2B-2, enacted by Laws 1978, ch. 141, § 2.

32-2B-3. Criteria for applications.

Counties or municipalities may apply for grants from the detention facility grant fund, provided that:

A. the application is for a project scheduled for completion by July 1, 1985;

B. the applicant certifies that it is willing and able to operate the facility according to the standards for detention facilities under the Children's Code;

C. only juveniles alleged or adjudicated to be delinquent or in need of supervision will be detained in the facility;

D. the amount requested is for not more than seventy-five percent of total project costs; and

E. alternatives to detention have been considered and are incorporated in the application.

History: 1978 Comp., § 32-2B-3, enacted by Laws 1978, ch. 141, § 3; 1980, ch. 74, § 1; 1981 (1st S.S.), ch. 10, § 2; 1983, ch. 42, § 1.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

32-2B-4. Criteria for approval of applications.

A. Upon receipt of an application, the criminal justice department shall certify that the recommended improvements meet the standards for detention facilities pursuant to the Children's Code.

B. Priority will be given to those applicants who meet one or both of the following characteristics:

(1) existence in a judicial district without a presently conforming facility; or

(2) existence in a county without a presently conforming facility.

History: 1978 Comp., § 32-2B-4, enacted by Laws 1978, ch. 141, § 4.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

32-2B-5. Expenditure limitation.

Funds granted pursuant to this act [32-2B-1 to 32-2B-5 NMSA 1978] may not be expended until the criminal justice department has certified that the final plans and specifications for the project conform to the standards for detention facilities pursuant to the provisions of the Children's Code and the criteria of Section 4 [32-2B-4 NMSA 1978] of this act.

History: 1978 Comp., § 32-2B-5, enacted by Laws 1978, ch. 141, § 5.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

ARTICLE 3
INTERSTATE COMPACT ON JUVENILES

32-3-1. Interstate Compact on Juveniles.

The Interstate Compact on Juveniles is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

Article 1 - Findings and Purposes

A. Juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(1) cooperative supervision of delinquent juveniles on probation or parole;

(2) the return from one state to another of delinquent juveniles who have escaped or absconded;

(3) the return from one state to another of nondelinquent juveniles who have run away from home; and

(4) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

B. In carrying out the provisions of this compact, the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article 2 - Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to, and not in substitution for, other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

Article 3 - Definitions

For the purposes of this compact:

A. "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of the court;

B. "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party to this compact;

C. "court" means any court having jurisdiction over delinquent, neglected or dependent children;

D. "state" means any state, territory or possession of the United States, the District of Columbia and the commonwealth of Puerto Rico; and

E. "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article 4 - Return of Runaways

A. The parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of the parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made and other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship or custody decrees. Further affidavits and other documents as deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether, for the purposes of this compact, the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has, in fact, run away without consent, whether or not he is an emancipated minor and whether or not it is in the best interest of the juvenile to compel his return to the state.

B. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody and that it is in the best

interest and for the protection of the juvenile that he be returned. If a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court.

C. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him has appointed to receive him unless he is first taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court finds that the requisition is in order, he shall deliver the juvenile over to the officer whom the court demanding him has appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

D. Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, the juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for a time not exceeding ninety days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state.

E. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense of an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency.

F. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through all states party to this compact without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to further proceedings as may be appropriate under the laws of that state.

G. The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of the return.

H. As used in this article, "juvenile" means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of the minor.

Article 5 - Return of Escapees and Absconders

A. The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision and the location of the delinquent juvenile, if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the judgment, formal adjudication or order of commitment which subjects the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Further affidavits and other documents deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court.

B. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain the delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him has appointed to receive him unless he is first taken forthwith before a judge, of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court finds that the requisition is in order, he shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding him has appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

C. Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or authority vested with his legal custody or supervision in any state party to this compact, the person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the

appropriate court who may appoint counsel or guardian ad litem for the person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a time not exceeding ninety days as will enable his detention under a detention order issued on a requisition pursuant to this article.

D. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency.

E. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through all states party to this compact without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to further proceedings as may be appropriate under the laws of that state.

F. The state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of the return.

Article 6 - Voluntary Return Procedure

A. Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact who is taken into custody without a requisition in another state party to this compact under the provisions of Article 4B or Article 5C, may consent to his immediate return to the state from which he absconded, escaped or ran away. The consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before the consent is executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact.

B. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may,

however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

Article 7 - Cooperative Supervision of Probationers and Parolees

A. The duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state," may permit any delinquent juvenile within the state placed on probation or parole to reside in any other state party to this compact, herein called "receiving state," while on probation or parole, and the receiving state shall accept the delinquent juvenile if the parent, guardian or person entitled to the legal custody of the delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make investigations it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

B. Each receiving state will assume the duties of visitation and supervision over any such delinquent juvenile and, in the exercise of those duties, will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

C. After consultation between the appropriate authorities of the sending state and the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon, and not reviewable within, the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through all states party to this compact without interference.

D. The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article 8 - Responsibility for Costs

A. The provisions of Articles 4G, 5F and 7D of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

B. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which the party state or subdivision thereof may be responsible pursuant to Articles 4G, 5F or 7D of this compact.

Article 9 - Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

Article 10 - Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. The care, treatment and rehabilitation may be provided in an institution located within any state entering into the supplementary agreement. Supplementary agreements shall:

A. provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

B. provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

C. provide that the state receiving the delinquent juvenile in one of its institutions shall act solely as agent for the state sending the delinquent juvenile;

D. provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

E. provide for reasonable inspection of such institutions by the sending state;

F. provide that the consent of the parent, guardian, person or agency entitled to the legal custody of the delinquent juvenile shall be secured prior to his being sent to another state; and

G. make provision for other matters and details as necessary to protect the rights and equities of the delinquent juveniles and of the cooperating states.

Article 11 - Acceptance of Federal and Other Aid

Any state party to this compact may accept any donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof, and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize them subject to the terms, conditions and regulations governing the donations, gifts and grants.

Article 12 - Compact Administrators

Each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article 13 - Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within the state, the form or execution to be in accordance with the laws of the executing state.

Article 14 - Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article 7 hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article 10 hereof shall be subject to renunciation as provided by the supplementary agreements, and shall not be subject to the six months' renunciation notice of the present article.

Article 15 - Severability

The provisions of this compact are severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this

compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1953 Comp., § 13-16-1, enacted by Laws 1973, ch. 238, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 47 Am. Jur. 2d Juvenile Courts and Delinquent and Dependent Children § 8.5.

Extradition of juveniles, 73 A.L.R.3d 700.

32-3-2. Interstate rendition amendment.

The interstate rendition amendment to the Interstate Compact on Juveniles [32-3-1 NMSA 1978] is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

AMENDMENT TO INTERSTATE COMPACT ON JUVENILES CONCERNING INTERSTATE RENDITION OF JUVENILES ALLEGED TO BE DELINQUENT

A. This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

B. All provisions and procedures of Articles 5 and 6 of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of a criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article 5 of the compact shall be forwarded by the judge of the court in which the petition has been filed.

History: 1953 Comp., § 13-16-2, enacted by Laws 1973, ch. 238, § 2.

32-3-3. Out-of-state confinement amendment.

The out-of-state confinement amendment to the Interstate Compact on Juveniles [32-3-1 NMSA 1978] is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

AMENDMENT TO INTERSTATE COMPACT ON JUVENILES CONCERNING OUT-OF-STATE CONFINEMENT

A. Whenever the duly constituted judicial or administrative authorities in a sending state determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, the officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, the receiving state to act in that regard solely as agent for the sending state.

B. Escapees and absconders who would otherwise be returned pursuant to Article 5 of the compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case, the information and allegations required to be made and furnished in a requisition pursuant to Article 5 shall be made and furnished, but in place of the demand pursuant to Article 5, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article 5 may be employed pursuant to this subarticle preliminary to disposition of the escapee or absconder.

C. The confinement or reconfinement of a parolee, probationer, escapee or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

D. As used in this amendment:

(1) "sending state" means sending state as that term is used in Article 7 of the compact, or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article 5 of the compact; and

(2) "receiving state" means any state, other than the sending state, in which a parolee, probationer, escapee or absconder may be found, provided that said state is a party to this amendment.

E. Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "compact institution" and shall confine persons therein as provided in Subarticle A hereof unless the sending and receiving states in question make specific contractual arrangements to the contrary. All states party to this amendment shall have access to compact institutions at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting the state's delinquents confined in the institution.

F. Persons confined in compact institutions pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from the compact institution for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge or for any purpose permitted by the laws of the sending state.

G. All persons confined in a compact institution pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so

confined or reconfined of any rights which the person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state except that the hearing or hearings, if any, to which a parolee, probationer, escapee or absconder may be entitled, prior to confinement or reconfinement, by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

H. Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs among themselves.

I. This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

History: 1953 Comp., § 13-16-3, enacted by Laws 1973, ch. 238, § 3.

32-3-4. Compact administrator.

The secretary of the youth authority is the compact administrator of the Interstate Compact on Juveniles [32-3-1 NMSA 1978] and, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator may cooperate with all departments and agencies of this state and its political subdivisions in facilitating the proper administration of the compact and any amendments or supplementary agreements thereunder entered into by this state.

History: 1953 Comp., § 13-16-4, enacted by Laws 1973, ch. 238, § 4; 1988, ch. 101, § 28.

The 1988 amendment, effective July 1, 1989, substituted "secretary of the youth authority" for "administrator of interstate compacts relating to adults on probation and parole."

32-3-5. Supplementary agreements.

The compact administrator of the Interstate Compact on Juveniles [32-3-1 NMSA 1978] may enter into supplementary agreements with appropriate officials of other states

pursuant to the compact. If any supplementary agreement requires or contemplates the use of any institution or facility of this state or requires or contemplates the provision of any service by this state, it shall not become effective until approved by the head of the agency under whose jurisdiction the institution or facility is operated or whose agency will be charged with rendering the service.

History: 1953 Comp., § 13-16-5, enacted by Laws 1973, ch. 238, § 5.

32-3-6. Financial arrangements.

Subject to legislative appropriations, the compact administrator of the Interstate Compact on Juveniles [32-3-1 NMSA 1978] shall arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or any supplementary agreement entered into thereunder. The youth authority shall supervise out-of-state probationers and parolees residing in New Mexico under the provisions of Article 7 of the compact.

History: 1953 Comp., § 13-16-6, enacted by Laws 1973, ch. 238, § 6; 1988, ch. 101, § 29.

The 1988 amendment, effective July 1, 1989, substituted "youth authority" for "board of probation and parole" in the last sentence.

32-3-7. Other departments and agencies.

The departments and agencies of this state and its political subdivisions shall enforce the Interstate Compact on Juveniles [32-3-1 NMSA 1978] and do all things appropriate to the effectuation of its purposes and intent within their respective jurisdictions. The New Mexico boys' school at Springer and the girls' welfare home at Albuquerque are designated as "compact institutions" under the provisions of the out-of-state confinement amendment to the compact. In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a delinquent juvenile, they may confine or order the confinement of a delinquent juvenile in a compact institution within another party state pursuant to the out-of-state confinement amendment to the compact.

History: 1953 Comp., § 13-16-7, enacted by Laws 1973, ch. 238, § 7.

32-3-8. Additional procedures.

In addition to any procedure provided in Articles 4 and 6 of the Interstate Compact on Juveniles [32-3-1 NMSA 1978] for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure authorized under the laws of this state and other respective party states for the return of any runaway juvenile.

History: 1953 Comp., § 13-16-8, enacted by Laws 1973, ch. 238, § 8.

ARTICLE 4
INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

32-4-1. Interstate compact.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

Article 1 - Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

A. each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

B. the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with requirements for the protection of the child;

C. the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made; and

D. appropriate jurisdictional arrangements for the care of children will be promoted.

Article 2 - Definitions

As used in this compact:

A. "child" means a person who by reason of minority is legally subject to parental, guardianship or similar control;

B. "sending agency" means a party state, officer or employee thereof; a political subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state;

C. "receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons; and

D. "placement" means the arrangement for the care of the child in a family, free or boarding home or in a child-placement agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, or any hospital or other medical facility.

Article 3 - Conditions for Placement

A. No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

B. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring or place the child in the receiving state. The notice shall contain:

(1) the name, date and place of birth of the child;

(2) the identity and address or addresses of the parents or legal guardian;

(3) the name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child; and

(4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

C. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to Paragraph B of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

D. The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article 4 - Penalty for Illegal Placement

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article 5 - Retention of Jurisdiction

A. The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

B. When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agency for the sending agency.

C. Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging, on behalf of the sending agency, the financial responsibility for the support and maintenance of a child who has been placed, without relieving the responsibility set forth in Paragraph A of Article 5 hereof.

Article 6 - Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing after notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care, and the court finds that:

A. equivalent facilities for the child are not available in the sending agency's jurisdiction; and

B. institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article 7 - Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of the compact.

Article 8 - Limitations

This compact shall not apply to:

A. the sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state; or

B. any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article 9 - Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has entered the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article 10 - Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or

circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1953 Comp., § 13-16A-1, enacted by Laws 1977, ch. 151, § 1.

32-4-2. Financial responsibility; default in compact.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children [32-4-1 NMSA 1978] shall be determined in accordance with the provisions of Article 5 thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of the New Mexico law fixing responsibility for the support of children also may be invoked.

History: 1953 Comp., § 13-16A-2, enacted by Laws 1977, ch. 151, § 2.

32-4-3. Notices; health and social services department [human services department].

The "appropriate public authorities" as used in Article 3 of the Interstate Compact on the Placement of Children [32-4-1 NMSA 1978] shall, with reference to New Mexico, mean the health and social services department [human services department], and said department shall receive and act with reference to notices required by said Article 3.

History: 1953 Comp., § 13-16A-3, enacted by Laws 1977, ch. 151, § 3.

Health and social services department abolished. - The health and social services department has been abolished, and its functions have been transferred, in part, to the human services department, pursuant to Laws 1977, ch. 252, §§ 3, 5. See 9-8-3 NMSA 1978.

32-4-4. "Appropriate authority"; health and social services department [human services department].

As used in Paragraph A of Article 5 of the Interstate Compact on the Placement of Children [32-4-1 NMSA 1978], the phrase, "appropriate authority in the receiving state," with reference to New Mexico shall mean the health and social services department [human services department].

History: 1953 Comp., § 13-16A-4, enacted by Laws 1977, ch. 151, § 4.

Health and social services department abolished. - See same catchline in notes to 32-4-3 NMSA 1978.

32-4-5. Financial commitment; approval.

The officers and agencies of the state and of its political subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Paragraph B of Article 5 of the Interstate Compact on the Placement of Children [32-4-1 NMSA 1978]. Any such agreement which contains a financial commitment or imposes a financial obligation on the state or political subdivision or agency thereof shall not be binding unless it has the approval in writing of the secretary of finance and administration and of the chief local fiscal officer in the case of a political subdivision of the state.

History: 1953 Comp., § 13-16A-5, enacted by Laws 1977, ch. 151, § 5; 1983, ch. 301, § 73.

32-4-6. Court jurisdiction in placement of delinquent children.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article 6 of the Interstate Compact on the Placement of Children [32-4-1 NMSA 1978] and shall retain jurisdiction as provided in Article 5 thereof.

History: 1953 Comp., § 13-16A-6, enacted by Laws 1977, ch. 151, § 6.

32-4-7. Governor.

As used in Article 7 of the Interstate Compact on the Placement of Children [32-4-1 NMSA 1978], the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article 7.

History: 1953 Comp., § 13-16A-7, enacted by Laws 1977, ch. 151, § 7.

ARTICLE 5
RESIDENTIAL TREATMENT PROGRAM

32-5-1. Residential treatment program established.

A. There is established within the behavioral health services division of the health and environment department [department of health] a residential treatment program for youths. The program shall be for the purpose of providing residential treatment or therapeutic group home care to youths. Residential treatment services shall be provided to youths who are determined to be in need of such services pursuant to Section 43-1-16 or Section 43-1-16.1 NMSA 1978.

B. Services shall be provided through a grant or contract with local community providers who have demonstrated the capability of providing such services. All program facilities used for provision of residential treatment or therapeutic group home care shall meet all applicable licensing requirements.

C. Contracts may be let to out-of-state providers only upon a finding by the secretary of health and environment [secretary of health] that appropriate in-state providers are not available.

D. The secretary of human services and the secretary of health and environment [secretary of health] shall execute an agreement specifying the manner in which clients and funds in the custody of the human services department shall be transferred to the health and environment department for treatment and the ongoing responsibilities of each agency toward the clients served.

History: Laws 1979, ch. 227, § 1; 1983, ch. 93, § 1.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

32-5-2. Residential treatment programs; regulations.

The secretary of health and environment [secretary of health] shall adopt regulations to provide for:

A. minimum standards which must be met by a residential treatment program;

B. procedures and forms for applying for a departmental grant or contract;

C. procedures and criteria for review and approval or denial of such applications;

D. procedures for approval of facilities and programs in or through which services are to be performed;

E. procedures and specifications of programmatic and financial information to be reported by residential treatment programs to the department for purposes of evaluating the effectiveness of programs funded by the department; and

F. procedures for review of potential clients for residential treatment or therapeutic group home care.

History: Laws 1979, ch. 227, § 2.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

ARTICLE 6
JUVENILE ASSISTANCE PROGRAMS

32-6-1. Purpose.

The legislature finds that juvenile crime is steadily increasing and that a reliable process of disposition of juvenile offenders and the availability of treatment alternatives is likely to decrease repeated criminal activity. The legislature further finds that there is a need for a community-based system for juveniles which would provide reintegration assistance, diagnostic evaluations and referral to community-based treatment programs for courts, district attorneys and other service agencies. Two programs related to such a system and associated with the judicial and criminal justice systems have been tested for the past three years. They have been found to be successful in providing evaluation and treatment and have shown significant reduction of repeated criminal activity. These programs are the forensic evaluation program and the wilderness experience program.

History: Laws 1979, ch. 300, § 1.

32-6-2. Juvenile forensic evaluation program.

A. There is created within the health and environment department [department of health] the "juvenile forensic evaluation program". The program shall be staffed by juvenile forensic evaluation teams and shall provide evaluation of children alleged or found to be in need of supervision and alleged delinquents upon request of the court, law enforcement agencies and juvenile probation officers.

B. The juvenile forensic evaluation teams shall recommend referral of children alleged or found to be in need of supervision or alleged delinquents to the youth authority, health and environment department [department of health] or human services department or recommend any other appropriate legal disposition based on the diagnostic evaluation. Juvenile forensic evaluation teams shall follow the juvenile in each stage of treatment utilizing a data management system established by the health and environment department and shall provide information upon request to state agencies, pursuant to applicable confidentiality provisions pertaining to children.

History: Laws 1979, ch. 300, § 2; 1989, ch. 328, § 11.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

The 1989 amendment, effective July 1, 1989, made a minor stylistic change in Subsection A and, in Subsection B, substituted "the youth authority" for "the corrections division of the criminal justice department" in the first sentence.

32-6-3. Wilderness experience program.

A wilderness experience program shall be provided by the youth authority as needed for the treatment of children alleged or found to be delinquent or in need of supervision. This program shall work in conjunction with the other forensic programs and criminal justice agencies throughout the state by providing a wilderness-based evaluation and treatment experience for juveniles. It shall be the responsibility of this program to provide, in conjunction with the juvenile forensic evaluation program, programming for juveniles referred from criminal justice agencies and diagnosed as in need of such treatment. The wilderness experience program staff shall make comprehensive reports based on the evaluation of individuals during the treatment experience and shall make recommendations for further treatment and referral to other service programs as necessary.

History: Laws 1979, ch. 300, § 3; 1988, ch. 101, § 30.

The 1988 amendment, effective July 1, 1989, inserted "by the youth authority" in the first sentence.

Temporary provisions. - Laws 1988, ch. 101, § 49 provides that on July 1, 1989, all appropriations, records and contractual obligations attributable to the first offenders program and the wilderness experience program shall be transferred from the health and environment department to the youth authority.

ARTICLE 7
CITIZEN SUBSTITUTE CARE REVIEW

32-7-1. Short title.

Sections 32-7-1 through 32-7-6 NMSA 1978 may be cited as the "Citizen Substitute Care Review Act".

History: 1978 Comp., § 32-7-1, enacted by Laws 1985, ch. 101, § 1.

32-7-2. Purpose of act.

The purpose of the Citizen Substitute Care Review Act [32-7-1 to 32-7-6 NMSA 1978] is to provide a permanent system for independent and objective monitoring of children placed in the custody of the human services department for six months or longer.

History: 1978 Comp., § 32-7-2, enacted by Laws 1985, ch. 101, § 2.

32-7-3. Implementation of act.

The youth authority shall maintain and fund a contract with a nonprofit organization having a demonstrated knowledge of the problems of children in substitute care and the issues in permanency planning to operate a statewide system of local substitute care review boards.

History: 1978 Comp., § 32-7-3, enacted by Laws 1985, ch. 101, § 3; 1989, ch. 171, § 1.

The 1989 amendment, effective July 1, 1989, substituted "youth authority" for "human services department".

32-7-4. State advisory committee; members; compensation; responsibilities.

A. A state advisory committee shall be composed of three persons with expertise in the area of substitute care, appointed by the secretary of the youth authority, and also one representative of each local substitute care review board. Each local board shall select its representative to the state advisory committee in accordance with procedures established by that committee. No person employed by the human services department, the youth authority or a district court may serve on the state advisory committee.

B. Terms of office of local substitute care review board members of the state advisory committee shall be coterminous with their terms as members of the local boards. Terms of office of members who are appointed by the secretary of the youth authority shall be for three years; provided, however, that appointment of the first state advisory committee members shall be staggered terms so that one member shall serve for a term of three years, one member shall serve for a term of two years and one member shall serve for a term of one year. The term of each member shall expire on June 30 of the appropriate year. In the event that a vacancy occurs among the members of the state advisory committee appointed by the secretary, the secretary shall appoint another person to serve the unexpired portion of the term.

C. The state advisory committee shall select a chairperson, a vice chairperson, an executive committee and such other officers as it deems necessary.

D. The state advisory committee shall meet no less than twice annually and more frequently upon the call of the chairperson or as the executive committee may determine. The state advisory committee is authorized to adopt reasonable rules relating to the functions and procedures of the local substitute care review boards and the state advisory committee in accordance with the duties of the boards as provided in the Citizen Substitute Care Review Act [32-7-1 to 32-7-6 NMSA 1978]. These rules shall include guidelines for the determination of the appropriate type of review for all cases to be monitored by the local substitute care review boards. The state advisory committee shall review and coordinate the activities of the local boards and make recommendations to the youth authority, the courts and the legislature, on or before January 1 of each year, regarding statutes, policies and procedures relating to substitute care.

E. State advisory committee members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1978 Comp., § 32-7-4, enacted by Laws 1985, ch. 101, § 4; 1989, ch. 171, § 2.

The 1989 amendment, effective July 1, 1989, substituted "secretary of the youth authority" for "secretary of human services" in the first sentence of Subsection A and in the second sentence of Subsection B; inserted "the youth authority" in the last sentence of Subsection A; in Subsection B deleted "beginning on the effective date of this act" following "staggered terms" in the second sentence; in Subsection D added the third sentence, and substituted "youth authority, the" for "human services department," in the last sentence; and substituted "shall" for "may" near the beginning of Subsection E.

32-7-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.

A. The contractor shall establish and maintain local substitute care review boards to review, as provided in the Citizen Substitute Care Review Act [32-7-1 to 32-7-6 NMSA 1978], the dispositions of children in the custody of the human services department for six months or longer. Each board shall, to the maximum extent feasible, represent the various socioeconomic, racial and ethnic groups of the community which they serve.

B. Criteria for membership and tenure on local substitute care review boards shall be determined by the state advisory committee, after consultation with the youth authority and the contractor. No person employed by the human services department, the youth authority or a district court may serve on a local board.

C. Each local substitute care review board shall elect a chairperson, a vice chairperson and other officers as it deems necessary.

D. Local board members may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1978 Comp., § 32-7-5, enacted by Laws 1985, ch. 101, § 5; 1989, ch. 171, § 3.

The 1989 amendment, effective July 1, 1989, in Subsection B substituted "youth authority" for "human services department" in the first sentence and "human services department, the youth authority" for "department of human services" in the second sentence.

32-7-6. Citizen review board reviews of dispositional judgments.

A. Prior to any judicial review by the court pursuant to Subsection A of Section 32-1-38.1 NMSA 1978, the local substitute care review board shall review the dispositional order or the continuation of the order and the human services department's progress report on the child. The parties in the children's court proceedings shall be given prior notice of the review board meeting and be afforded the opportunity to participate fully in it.

B. The report of the local substitute care review board submitted to the court pursuant to this subsection shall become a part of the child's permanent court record.

History: 1978 Comp., § 32-7-6, enacted by Laws 1985, ch. 101, § 6; 1989, ch. 171, § 4.

The 1989 amendment, effective July 1, 1989, inserted "human services" in the first sentence of Subsection A.

ARTICLE 8
MISSING CHILD REPORTING

32-8-1. Short title.

Sections 1 through 4 [32-8-1 to 32-8-4 NMSA 1978] of this act may be cited as the "Missing Child Reporting Act".

History: Laws 1987, ch. 25, § 1.

32-8-2. Definitions.

As used in the Missing Child Reporting Act [32-8-1 to 32-8-4 NMSA 1978]:

A. "law enforcement agency" means any law enforcement agency of the state or any political subdivision of the state, including the New Mexico state police and any municipal or county police or sheriff department;

B. "missing child" means an individual who is less than eighteen years old who is reported to any law enforcement agency as abducted, lost or a runaway; and

C. "state registrar" means the employee so designated by the health services division of the health and environment department [department of health] pursuant to the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978].

History: Laws 1987, ch. 25, § 2.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

32-8-3. Missing child reports; law enforcement agencies; duties.

A. Upon receiving a report of a child believed to be missing, a law enforcement agency shall:

(1) immediately enter identifying and descriptive information about the child into the national crime information center computer. Law enforcement agencies having direct access to the national crime information center computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the system; and

(2) within thirty days notify the state registrar in writing of the missing child. The law enforcement agency shall make the written notification in a manner and form prescribed by the state registrar. The notification shall include the missing child's name, date of birth, county and state of birth, the mother's maiden name, the name of a contact person at the law enforcement agency reporting and any other information required by the state registrar.

B. Immediately after a missing child is located, the law enforcement agency which located or returned the missing child shall notify the law enforcement agency having jurisdiction over the investigation, and the originating agency shall clear the entry from the national crime information center computer and shall notify the state registrar in writing that the missing child has been located.

History: Laws 1987, ch. 25, § 3.

32-8-4. Birth records of missing children; state registrar's duties.

A. Upon notification by a law enforcement agency that a child born in the state is missing, the state registrar shall flag the child's birth certificate record in such a manner that whenever a copy of the birth certificate or information concerning the birth record is requested, the state registrar shall be alerted to the fact that the certificate is that of a missing child.

B. Upon notification by a law enforcement agency that a child born outside the state is missing, the state registrar shall notify the corresponding officer in the state where the child was born that the child has been reported missing.

C. In response to any inquiry, the state registrar or any local registrar appointed by him or any employee of the vital statistics bureau shall not provide a copy of a birth certificate or information concerning the birth record of any missing child whose birth record is flagged pursuant to this section, except following notification of the law enforcement agency having jurisdiction over the investigation of the missing child. Such inquiries shall be handled in the following manner:

(1) when a copy of the birth certificate of a missing child whose record has been flagged is requested in person, the local registrar or employee accepting the request shall immediately notify his supervisor or the state registrar. If possible, the person making the request shall complete a form supplying his name, address, telephone number and relationship to the missing child and the name, address and birth date of the missing child. The driver's license of the person making the request, if available, shall be photocopied and returned to him. He shall be informed that a copy of the birth certificate shall be mailed to him. The local registrar or employee shall note the physical description of the person making the request, and, upon that person's departure from the vital statistics bureau office, the supervisor or state registrar shall immediately notify the law enforcement agency having jurisdiction of the request and the information obtained pursuant to this paragraph. The state registrar shall retain the form completed by the person making the request; and

(2) when a copy of the birth certificate of a missing child whose birth record has been flagged is requested in writing, the state registrar shall immediately notify the law enforcement agency having jurisdiction of the request and shall provide a copy of the written request. The state registrar shall retain the original written request.

D. Upon notification by a law enforcement agency that a missing child has been recovered, the state registrar shall remove the flag from the child's birth record.

History: Laws 1987, ch. 25, § 4.

ARTICLE 9
CHILDREN'S AND JUVENILE FACILITY CRIMINAL RECORDS SCREENING

32-9-1. Short title.

This act [32-9-1 to 32-9-4 NMSA 1978] may be cited as the "New Mexico Children's and Juvenile Facility Criminal Records Screening Act".

History: Laws 1985, ch. 103, § 1; 1985, ch. 140, § 1; 1978 Comp., § 24-18-1, recompiled as 1978 Comp., § 32-9-1.

Compiler's note. - Laws 1985, ch. 103, § 1, enacting a section similar to that set out above, was approved April 2, 1985. However, Laws 1985, ch. 140, § 1, enacting the identical section, was approved at a later time on April 2, 1985. The section is set out as enacted by Laws 1985, ch. 140, § 1. See 12-1-8 NMSA 1978.

32-9-2. Purpose.

The purpose of the New Mexico Children's and Juvenile Facility Criminal Records Screening Act [32-9-1 to 32-9-4 NMSA 1978] is to comply with the provisions of Public Law 98-473.

History: Laws 1985, ch. 103, § 2; 1985, ch. 140, § 2; 1978 Comp., § 24-18-2, recompiled as 1978 Comp., § 32-9-2.

Compiler's note. - Laws 1985, ch. 103, § 2, enacting a section similar to that set out above, was approved April 2, 1985. However, Laws 1985, ch. 140, § 2, enacting the identical section, was approved at a later time on April 2, 1985. The section is set out as enacted by Laws 1985, ch. 140, § 2. See 12-1-8 NMSA 1978.

Public Law 98-473. - Public Law 98-473 appears as 98 Stat. 1837 and refers to the Continuing Appropriations, 1985 - Comprehensive Crime Control Act of 1984.

32-9-3. Criminal records check.

Nationwide criminal record checks shall be conducted of all operators, staff and employees, and prospective operators, staff and employees of child care facilities, including every facility or program having primary custody of children for twenty hours or more per week, juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or program.

History: Laws 1985, ch. 103, § 3; 1985, ch. 140, § 3; 1978 Comp., § 24-18-3, recompiled as 1978 Comp., § 32-9-3.

Compiler's note. - Laws 1985, ch. 103, § 3, enacting a section similar to that set out above, was approved April 2, 1985. However, Laws 1985, ch. 140, § 3, enacting the identical section, was approved at a later time on April 2, 1985. The section is set out as enacted by Laws 1985, ch. 140, § 3. See 12-1-8 NMSA 1978.

32-9-4. Procedures.

By September 9, 1985, procedures shall be established by regulation to provide for employment history and background checks for all present and prospective personnel identified in Section 3 [32-9-3 NMSA 1978] of the New Mexico Children's and Juvenile Facility Criminal Records Screening Act:

A. by the secretary of human services for child care facilities;

B. by the secretary of health and environment [secretary of health] for health and treatment facilities; and

C. by the secretary of corrections for juvenile detention and correction facilities.

History: Laws 1985, ch. 103, § 4; 1985, ch. 140, § 4; 1978 Comp., § 24-18-4, recompiled as 1978 Comp., § 32-9-4.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

Compiler's note. - Laws 1985, ch. 103, § 4, enacting a section similar to that set out above, was approved April 2, 1985. However, Laws 1985, ch. 140, § 4, enacting the identical section, was approved at a later time on April 2, 1985. The section is set out as enacted by Laws 1985, ch. 140, § 4. See 12-1-8 NMSA 1978.

ARTICLE 10
CHILD DEVELOPMENT

32-10-1. Office created; director appointed.

The "office of child development" is created within the state department of public education. The executive and administrative head of the office of child development is the "director of child development". The director shall be appointed by the superintendent of public instruction based upon the recommendations of the child development board.

History: Laws 1989, ch. 290, § 1.

Cross-references. - As to creation of youth authority, see 9-20-4 NMSA 1978.

Effective dates. - Laws 1989, ch. 290, § 5 makes the act effective on July 1, 1990.

32-10-2. Director; duties.

The director of child development shall:

A. employ and discharge personnel necessary for the operation of the office of child development;

B. carry out the policies of the child development board;

C. prepare financial reports and budget requests for presentation to the state department of public education;

D. administrate the licensure procedures and program criteria developed by the child development board;

E. assure and work to foster coordination between all state agencies dealing with childcare; and

F. identify all sources of child development licensure preparation and training, disseminate information and coordinate resources to meet child development licensure and training needs.

History: Laws 1989, ch. 290, § 2; 1991, ch. 167, § 1.

The 1991 amendment, effective June 14, 1991, added "of child development" at the end of Subsection A; inserted "child development" preceding "board" in Subsections B and D; inserted "and program criteria" in Subsection D; inserted "and work to foster" in Subsection E; and inserted "child development licensure preparation and" and "child development licensure and" in Subsection F.

Effective dates. - Laws 1989, ch. 290, § 5 makes the act effective on July 1, 1990.

32-10-3. Child development board created; composition.

A. There is created the "child development board". The board shall consist of seven members appointed by the governor no more than four of which shall be affiliated with the same political party. Members shall have knowledge and experience in early childhood development and education.

B. The terms of the members of the board shall be for four years; provided, as determined by lot at the first meeting of the board, two members shall serve an initial term of two years; three members an initial term of three years and two members an initial term of four years, thereafter, all members shall be appointed for terms of five years.

C. Members of the board shall receive no compensation other than per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. Vacancies on the board shall be filled by the appointing authority for the remainder of the unexpired term.

History: Laws 1989, ch. 290, § 3.

Effective dates. - Laws 1989, ch. 290, § 5 makes the act effective on July 1, 1990.

32-10-4. Powers and duties of the board.

The child development board shall:

A. recommend to the superintendent of public instruction the hiring of a director of child development;

B. consider and adopt licensure requirements, policies and procedures for individuals working in licensed or registered health facilities with children from birth to age five, provided that such licensure requirements shall not apply to individuals working in group homes pursuant to Section 9-8-13 NMSA 1978;

C. consider and make recommendations to the state board of education regarding additional licensure requirements for public school personnel working with public school children up to age eight;

D. work with other state agencies to promote a uniform and comprehensive method of licensing childcare personnel;

E. develop and adopt policies and procedures for the office of child development;

F. develop levels of licensure for nonpublic school personnel depending upon the age of children served, the training facility used and the program in which the individual is employed;

G. work with the health and environment department [department of health] to develop levels of licensure for nonpublic school personnel serving children who are developmentally delayed or at risk for developmental delay, birth through two years;

H. develop and adopt program criteria for state-funded preschool programs serving children from birth to age five, provided that criteria shall not apply to programs serving children who are developmentally delayed or at risk for developmental delay, birth through two years, and programs serving children who are developmentally disabled, three through five years; and

I. work with other state agencies to monitor the implementation of state-funded preschool program criteria.

History: Laws 1989, ch. 290, § 4; 1991, ch. 167, § 2.

Bracketed material. - The bracketed material in this section was inserted by the compiler as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment. The bracketed material was not enacted by the legislature and is not part of the law.

The 1991 amendment, effective June 14, 1991, substituted "a director of child development" for "an office of child development director" in Subsection A; substituted the language beginning "who are developmentally" for "with developmental disabilities ages birth to three years" at the end of Subsection G; and added Subsections H and I.

Effective dates. - Laws 1989, ch. 290, § 5 makes the act effective on July 1, 1990.