SENATE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CHILDREN; LIMITING WHEN A STRIP OR CAVITY SEARCH MAY BE PERFORMED IN A DETENTION FACILITY; PROHIBITING CAMERAS AND FILMING OR RECORDING IN CERTAIN AREAS OF A DETENTION FACILITY.

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

SECTION 1. Section 32A-2-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 33, as amended) is amended to read:

"32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--APPEALS--LIMIT OF A STRIP OR CAVITY SEARCH--PROHIBITING CAMERAS OR FILMING IN CERTAIN AREAS.--

A. The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as

underscored material = new
[~~bracketed material~~] = delete

approved all detention facilities in the state meeting the standards promulgated. The department 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 department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978.

B. The department 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 department. 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 department.

C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department 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

underscored material = new
[bracketed material] = delete

provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act.

D. Any person aggrieved by an administrative decision of the department rendered under the provisions of this section may petition for the review of the administrative decision by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department.

F. A juvenile detention facility certified by the department shall comply with the daily reporting requirement for children in detention, including reports on the length of stay for each child. This information shall be reported as required by the department.

G. A strip or body cavity search may only be performed if:

(1) probable cause exists that there is dangerous contraband that could not otherwise be discovered; and

underscored material = new
[bracketed material] = delete

(2) the detention facility superintendent or the superintendent's designee authorizes the search.

H. A strip or body cavity search related to an articulated and documented safety issue or concern involving a child shall be conducted in the least intrusive manner feasible. An incident report shall be completed following the strip or body cavity search and shall include:

(1) the full name of the child;

(2) documentation of the probable cause;

(3) the steps taken to retrieve the suspected contraband in a noninvasive manner and all other methods used to conduct the strip or body cavity search;

(4) the date, time and location of the search;

(5) the names, current position, gender and signatures of the personnel who conducted the search; and

(6) the results of the search, including disposition of any contraband if recovered.

I. Copies of an incident report documenting the strip or body cavity search shall be submitted to the detention facility superintendent or the superintendent's designee by the next business day following the search.

J. Cameras or visual filming or recording devices shall not be placed in the shower or toilet areas of a detention facility."

underscored material = new
[bracketed material] = delete