

1 HOUSE BILL 347

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Rick Miera

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10 AN ACT

11 RELATING TO JUVENILES; MODIFYING DETENTION REQUIREMENTS;
12 EXPANDING DETENTION OPTIONS AND HEARING REQUIREMENTS FOR
13 CERTAIN PERSONS WHO ARE EIGHTEEN YEARS OF AGE; PROVIDING NO
14 TIME REDUCTION FOR TIME DETAINED PRIOR TO COMMITMENT; REQUIRING
15 NOTIFICATIONS AND TIME LIMITS FOR DETENTION HEARINGS FOR
16 PERSONS TAKEN INTO CUSTODY ON JUVENILE WARRANTS; ALLOWING
17 WARRANTS DUE TO TECHNICAL PROBATION VIOLATIONS TO BE QUASHED IN
18 CERTAIN CIRCUMSTANCES; REQUIRING QUARTERLY REPORTS FROM ADULT
19 FACILITIES THAT TEMPORARILY HOLD ALLEGED DELINQUENT OFFENDERS;
20 ALLOWING INSPECTIONS.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. Section 32A-2-4.1 NMSA 1978 (being Laws 2009,
24 Chapter 239, Section 12) is amended to read:

25 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY

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1 HOLDING FACILITIES--REPORTS--INSPECTIONS.--

2 A. A child arrested and detained by a law
3 enforcement agency for an alleged delinquent act may be
4 temporarily held in an adult jail, ~~[or]~~ lockup or other
5 custodial setting that places the child in contact with adult
6 offenders for no longer than six hours [~~A child who is detained~~
7 ~~in an adult jail or lockup]~~ and shall be placed in a setting
8 that is physically segregated by sight and sound from adult
9 offenders and shall be kept in continuous sight supervision.
10 After six hours, the child shall be released or may be placed
11 or detained pursuant to the provisions of Section 32A-2-12 NMSA
12 1978.

13 B. An adult jail or lockup used as a temporary
14 holding facility for alleged delinquent offenders shall file
15 [~~an annual~~] a quarterly report regarding its compliance with
16 federal requirements and state requirements, as determined by
17 the department. The report shall be taken from juvenile
18 holding logs and shall include the name, date of birth, gender,
19 arresting charge, booking date and time and release date and
20 time for each alleged delinquent offender held by the law
21 enforcement agency or facility. The report shall be collected
22 by the department and delivered to the juvenile justice
23 advisory committee [~~and the department shall determine the~~
24 ~~format of the annual reports~~].

25 C. All law enforcement agencies, adult and juvenile

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1 detention centers and jails used as temporary holding
2 facilities for alleged delinquent offenders shall allow a
3 compliance monitor designated by the department to visit and
4 inspect for the purpose of monitoring compliance with federal
5 requirements and state requirements, as determined by the
6 department, regarding the management of juveniles."

7 SECTION 2. Section 32A-2-12 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 41, as amended) is amended to read:

9 "32A-2-12. PLACEMENT OR DETENTION.--

10 A. A child alleged to be a delinquent child may be
11 placed or detained, pending a court hearing, in any of the
12 following places:

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

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

17 (3) a shelter-care facility provided for in
18 the Children's Shelter Care Act that is in compliance with all
19 standards, conditions and regulatory requirements and that
20 shall be considered a temporary placement subject to judicial
21 review within thirty days of placement;

22 (4) a detention facility certified by the
23 department for children alleged to be delinquent children;

24 (5) any other suitable place, other than a
25 facility for the long-term care and rehabilitation of

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1 delinquent children to which children adjudicated as delinquent
2 may be confined pursuant to Section 32A-2-19 NMSA 1978,
3 designated by the court ~~[and]~~ that meets the standards for
4 detention facilities pursuant to the Children's Code and
5 federal law; or

6 (6) the child's home or place of residence,
7 under conditions and restrictions approved by the court.

8 B. A child alleged to be a youthful offender may be
9 detained, pending a court hearing, in any of the following
10 places:

11 (1) a detention facility, licensed by the
12 department, for children alleged to be delinquent children; or

13 (2) any other suitable place, other than a
14 facility for the long-term care and rehabilitation of
15 delinquent children to which children adjudicated as delinquent
16 children may be confined pursuant to Section 32A-2-19 NMSA
17 1978, designated by the court ~~[and]~~ that meets the standards
18 for detention facilities pursuant to the Children's Code and
19 federal law.

20 C. A child adjudicated as a youthful offender who
21 is violent toward staff or other residents in a detention
22 facility may be transferred and detained, pending a court
23 hearing, in a county jail. ~~[In the event that a child is~~
24 ~~detained in a jail, the director of the jail shall presume that~~
25 ~~the child is vulnerable to victimization by inmates within the~~

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1 ~~adult population because of the child's age, and shall take~~
2 ~~measures to provide protection to the child. However,~~
3 ~~provision of protective measures shall not result in~~
4 ~~diminishing a child's civil rights to less than those existing~~
5 ~~for an incarcerated adult.]~~

6 D. A child who has previously been incarcerated as
7 an adult or a person eighteen years of age or older shall not
8 be detained in a juvenile detention facility or a facility for
9 the long-term care and rehabilitation of delinquent children,
10 but may be detained in a county jail.

11 E. A child shall not be transferred to a county
12 jail, without a hearing, solely on the basis of attaining the
13 age of eighteen while detained in a juvenile detention
14 facility. [~~In the event that a child is detained in a jail,~~
15 ~~the director of the jail shall presume that the child is~~
16 ~~vulnerable to victimization by inmates within the adult~~
17 ~~population because of the child's age, and shall take measures~~
18 ~~to provide protection to the child. However, provision of~~
19 ~~protective measures shall not result in diminishing a child's~~
20 ~~civil rights to less than those existing for an incarcerated~~
21 ~~adult.] If requested by a children's court attorney and after
22 notice to the child and to the child's attorney has been given,
23 the court shall hold a hearing to consider the transfer and may
24 order the transfer only if it finds that the eighteen-year-old
25 person poses a risk of harm to self or others.~~

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1 ~~[E.]~~ F. A child alleged to be a serious youthful
2 offender may be detained pending a court hearing in any of the
3 following places, prior to arraignment in metropolitan,
4 magistrate or district court:

5 (1) a detention facility, licensed by the
6 department, for children alleged to be delinquent children;

7 (2) any other suitable place, other than a
8 facility for the long-term care and rehabilitation of
9 delinquent children to which children adjudicated as delinquent
10 children may be confined pursuant to Section 32A-2-19 NMSA
11 1978, designated by the court that meets the standards for
12 detention facilities pursuant to the Children's Code and
13 federal law; or

14 (3) a county jail, if a facility in Paragraph
15 (1) or (2) of this subsection is not appropriate. ~~[In the~~
16 ~~event that a child is detained in a jail, the director of the~~
17 ~~jail shall presume that the child is vulnerable to~~
18 ~~victimization by inmates within the adult population because of~~
19 ~~the child's age and shall take measures to provide protection~~
20 ~~to the child. However, provision of protective measures shall~~
21 ~~not result in diminishing a child's civil rights to less than~~
22 ~~those existing for an incarcerated adult.~~

23 ~~F.]~~ G. When a person who is eighteen years of age
24 or older is taken into custody and transported to an adult
25 facility on a juvenile warrant or an adult warrant or other

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1 adult charges and an outstanding juvenile warrant exists,
2 notice shall be immediately given by both the arresting agency
3 and the adult facility to the children's court attorney and the
4 juvenile probation [~~and parole~~] office in the jurisdiction
5 where the juvenile warrant was [~~issued within one day of the~~
6 ~~person being taken into custody~~] served. The juvenile
7 probation [~~and parole~~] office shall immediately give notice
8 that the person has been taken into custody to the children's
9 court judge and to the attorney who represented the person in
10 the juvenile proceeding. If the person is being held solely on
11 a juvenile warrant, a detention hearing shall be held within
12 twenty-four hours from the time the person is brought to the
13 adult facility, excluding Saturdays, Sundays and legal
14 holidays, to determine whether continued detention is required
15 pursuant to the criteria established by the Children's Code.
16 If the person is being held on an adult warrant or any adult
17 charge, the procedures for holding detention hearings for
18 adults shall be followed. If the time frame for holding a
19 detention hearing is not met for any reason, the person may be
20 released if the court determines that all criteria for release
21 from detention are otherwise met.

22 H. A person who is eighteen years of age but less
23 than nineteen years of age, who is subject solely to the
24 jurisdiction of a children's problem-solving or specialty court
25 and who violates the terms of the court agreement may be held

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1 at:

2 (1) a detention facility, licensed by the
3 department, for children alleged to be delinquent children for
4 a period not to exceed forty-eight hours;

5 (2) any other suitable place, other than a
6 facility for the long-term care and rehabilitation of
7 delinquent children to which children adjudicated as delinquent
8 children may be confined pursuant to Section 32A-2-19 NMSA
9 1978, designated by the court that meets the standards for
10 detention facilities pursuant to the Children's Code and
11 federal law; or

12 (3) a county jail, if a facility in Paragraph
13 (1) or (2) of this subsection is not appropriate or if the
14 person is to be held for longer than forty-eight hours.

15 I. As used in Subsection H of this section, a
16 "children's problem-solving or specialty court" is a court with
17 a very limited caseload that deals with a narrowly defined
18 category of juveniles or a narrowly defined category of
19 delinquent acts.

20 J. In the event that a child or a person who is
21 eighteen to twenty-one years of age is detained in a jail, the
22 director of the jail shall presume that the child or person is
23 vulnerable to victimization by inmates within the adult
24 population because of the child's or person's age and shall
25 take measures to provide protection to the child or person.

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1 However, the provision of protective measures shall not result
2 in diminishing the child's or person's civil rights to less
3 than those existing for an incarcerated adult.

4 [G-] K. In addition to the judicial review required
5 by Paragraph (3) of Subsection A of this section, a child
6 detained in an out-of-home placement pursuant to this section
7 may request judicial review of the appropriateness of the
8 placement."

9 SECTION 3. Section 32A-2-19 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 48, as amended) is amended to read:

11 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
12 OFFENDER.--

13 A. At the conclusion of the dispositional hearing,
14 the court may make and include in the dispositional judgment
15 its findings on the following:

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

19 (2) the child's adjustment to the child's
20 home, school and community;

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

25 (4) the wishes of the child as to the child's

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1 custodian;

2 (5) the wishes of the child's parents as to
3 the child's custody;

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

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

9 (8) the ability of the parents to care for the
10 child in the home.

11 B. If a child is found to be delinquent, the court
12 may impose a fine not to exceed the fine that could be imposed
13 if the child were an adult and may enter its judgment making
14 any of the following dispositions for the supervision, care and
15 rehabilitation of the child:

16 (1) transfer legal custody to the department,
17 an agency responsible for the care and rehabilitation of
18 delinquent children, which shall receive the child at a
19 facility designated by the secretary of the department as a
20 juvenile reception facility. The department shall thereafter
21 determine the appropriate placement, supervision and
22 rehabilitation program for the child. The judge may include
23 recommendations for placement of the child. Commitments are
24 subject to limitations and modifications set forth in Section
25 32A-2-23 NMSA 1978. The types of commitments include:

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

10 (b) a long-term commitment for no more
11 than two years in a facility for the care and rehabilitation of
12 adjudicated delinquent children. No more than twenty-one
13 months shall be served at the facility and no less than ninety
14 days shall be served on supervised release, unless: 1)
15 supervised release is revoked pursuant to Section 32A-2-25 NMSA
16 1978; or 2) the commitment is extended pursuant to Section
17 32A-2-23 NMSA 1978;

18 (c) if the child is a delinquent
19 offender who committed one of the criminal offenses set forth
20 in Subsection [F] J of Section 32A-2-3 NMSA 1978, a commitment
21 to age twenty-one, unless sooner discharged; or

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

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

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1 (3) after making a finding on the record that
2 placing the child in a local detention facility is appropriate
3 and will have a rehabilitative effect, place the child in a
4 local detention facility that has been certified in accordance
5 with the provisions of Section 32A-2-4 NMSA 1978 for a period
6 not to exceed fifteen days within a three hundred sixty-five
7 day time period; or if a child is found to be delinquent solely
8 on the basis of Paragraph (3) of Subsection A of Section
9 32A-2-3 NMSA 1978, the court shall only enter a judgment
10 placing the child on probation or ordering restitution or
11 imposing a fine not to exceed the fine that could be imposed if
12 the child were an adult or any combination of these
13 dispositions; or

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

25 C. A child adjudicated as delinquent and

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1 transferred to the legal custody of the department for a
2 commitment is not eligible to receive a time reduction from the
3 term of commitment for time spent in detention awaiting
4 adjudication.

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

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

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

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

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

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

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

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

13 **SECTION 4.** Section 32A-2-24 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 53, as amended) is amended to read:

15 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

16 A. A child on probation incident to an adjudication
17 as a delinquent child who violates a term of the probation may
18 be proceeded against in a probation revocation proceeding. A
19 proceeding to revoke probation shall be begun by filing in the
20 original proceeding a petition styled as a "petition to revoke
21 probation". Petitions to revoke probation shall be screened,
22 reviewed and prepared in the same manner and shall contain the
23 same information as petitions alleging delinquency. Procedures
24 of the Delinquency Act regarding taking into custody and
25 detention shall apply. The petition shall state the terms of

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1 probation alleged to have been violated and the factual basis
2 for these allegations.

3 B. The standard of proof in probation revocation
4 proceedings shall be evidence beyond a reasonable doubt and the
5 hearings shall be before the court without a jury. In all
6 other respects, proceedings to revoke probation shall be
7 governed by the procedures, rights and duties applicable to
8 proceedings on a delinquency petition. If a child is found to
9 have violated a term of the child's probation, the court may
10 extend the period of probation or make any other judgment or
11 disposition that would have been appropriate in the original
12 disposition of the case.

13 C. If a probation violation results in a warrant
14 solely due to a violation of the terms of the probation
15 agreement and not as a result of a new offense, the department
16 shall notify the court and the district attorney. The court
17 may quash the probation violation warrant six months after its
18 issuance if the person is eighteen years of age or older, or
19 six months after the person's eighteenth birthday if the person
20 was under eighteen at the time the warrant was issued."

21 SECTION 5. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2011.