

HOUSE BILL 347

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

INTRODUCED BY

Rick Miera

AN ACT

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

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

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

"32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY  
HOLDING FACILITIES--REPORTS--INSPECTIONS."

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

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

C. All law enforcement agencies, adult and juvenile detention centers and jails used as temporary holding facilities for alleged delinquent offenders shall allow a compliance monitor designated by the department to visit and inspect for

the purpose of monitoring compliance with federal requirements and state requirements, as determined by the department, regarding the management of juveniles."

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

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

A. A child alleged to be a delinquent child may be placed or detained, pending a 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 shelter-care facility provided for in the Children's Shelter Care Act that is in compliance with all standards, conditions and regulatory requirements and that shall be considered a temporary placement subject to judicial review within thirty days of placement;

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

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

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

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

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

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

C. A child adjudicated as a youthful offender who is violent toward staff or other residents in a detention facility may be transferred and detained, pending a court hearing, in a county jail. ~~[In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of the child's age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.]~~

D. A child who has previously been incarcerated as an adult or a person eighteen years of age or older shall not be detained in a juvenile detention facility

or a facility for the long-term care and rehabilitation of delinquent children, but may be detained in a county jail.

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

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

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

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

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

~~F.]~~ G. When a person who is eighteen years of age or older is taken into custody and transported to an adult facility on a juvenile warrant or an adult warrant or other adult charges and an outstanding juvenile warrant exists, notice shall be immediately given by both the arresting agency and the adult facility to the children's court attorney and the juvenile probation [and parole] office in the jurisdiction where the juvenile warrant was [issued within one day of the person being taken into custody] served. The juvenile probation ~~[and parole]~~ office shall immediately give notice that the person has been taken into custody to the children's court judge and to the attorney who represented the person in the juvenile proceeding. If the person is being held solely on a juvenile warrant, a detention hearing shall be held within twenty-four hours from the time the person is brought to the adult facility, excluding Saturdays, Sundays and legal holidays, to determine whether continued detention is required pursuant to the criteria established by the Children's Code. If the person is being held on an adult warrant or any adult charge, the procedures for holding detention hearings for adults shall be followed. If the time frame for holding a detention hearing is not met for any

reason, the person may be released if the court determines that all criteria for release from detention are otherwise met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that 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) transfer legal custody to the department, 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 department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year in a facility for the care and rehabilitation of adjudicated delinquent children. No more than nine months shall be served at the facility and no less than ninety days shall be served on supervised release, unless: 1) a petition to extend the commitment has been filed prior to the

commencement of supervised release; 2) the commitment has been extended pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised release is revoked pursuant to Section 32A-2-25 NMSA 1978;

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

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

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

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

(3) after making a finding on the record that placing the child in a local detention facility is appropriate and will have a rehabilitative effect, place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a

period not to exceed fifteen days within a three hundred sixty-five day time period; or if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 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 that could be imposed if the child were an adult or any combination of these dispositions; or

(4) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 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, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. A child adjudicated as delinquent and transferred to the legal custody of the department for a commitment is not eligible to receive a time reduction from the term of commitment for time spent in detention awaiting adjudication.

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

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

~~[E.]~~ F. 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.

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

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

~~[H.]~~ I. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child who is fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 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 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

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

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

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

A. A child on probation incident to an adjudication as a delinquent child 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 Delinquency Act 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.

B. 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 the child's 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.

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

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