SENATE BILL 388

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; RAISING THE AGE LIMIT AT WHICH A CHILD
MAY BE HELD IN CUSTODY TO TWELVE YEARS OF AGE OR OLDER.

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

**SECTION 1.** Section 32A-2-10 NMSA 1978 (being Laws 1993,
Chapter 77, Section 39, as amended) is amended to read:

"32A-2-10. 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 or an adult authorized by the child's
parent, guardian or custodian and issue verbal counsel or
warning as may be appropriate;

(2) release the child to the child's parent,
guardian or custodian or an adult authorized to sign on behalf

of the child's parent, guardian or custodian upon written

promise to bring the child before the court when requested by

the court.  If the parent, guardian or custodian or an adult

authorized to sign on behalf of the child's parent, guardian or

custodian fails, 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;

(3)   deliver the child to a place of detention

as provided in Section 32A-2-12 NMSA 1978;

(4)   deliver the child to a medical facility,

if available, if the child is believed to be suffering from a

serious illness that requires prompt treatment or prompt

diagnosis;

(5)   deliver the child to an evaluation

facility, if available, if the person taking the child into

custody has reasonable grounds to believe the child presents a

likelihood of serious harm to the child's self or others or is

suffering from some other serious mental condition or illness

that requires prompt treatment or prompt diagnosis; or

(6)   deliver the child to a center or

organization that the court or the department recognizes as an

alternative to secure detention.

B.   When an alleged delinquent child is delivered to

a place of detention or a center or organization recognized as

an alternative to secure detention as provided in Section

.224122.1

1       32A-2-12 NMSA 1978, only a department employee or a trained

2       county detention professional designated by the department may

3       place the child in detention or with a center or organization

4       recognized as an alternative to secure detention in accordance

5       with the criteria for detention set forth in Section 32A-2-11

6       NMSA 1978.  If the criteria for detention of an alleged

7       delinquent child are not met, the child shall be released from

8       custody.

9              C.   A child under the age of [eleven] twelve shall

10      not be held in detention.  If a child under the age of [eleven]

11      twelve poses a substantial risk of harm to the child's self or

12      others, a peace officer may detain and transport that child for

13      emergency mental health evaluation and care in accordance with

14      Section 32A-6A-19 NMSA 1978.

15             D.   If a child is taken into custody and is not

16      released to the child's parent, guardian or custodian or an

17      adult authorized by the child's parent, guardian or custodian,

18      the person taking the child into custody shall give written

19      notice thereof as soon as possible, and in no case later than

20      twenty-four hours, to the child's parent, guardian or custodian

21      or an adult authorized by the child's parent, guardian or

22      custodian and to the court, together with a statement of the

23      reason for taking the child into custody.

24             E.   In all cases when a child is taken into custody,

25      the child shall be released to the child's parent, guardian or

.224122.1

1  custodian or an adult authorized by the child's parent,

2  guardian or custodian in accordance with the conditions and

3  time limits set forth in the Children's Court Rules."

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.224122.1