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SENATE BILL 203

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Gerald Ortiz y Pino

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; 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

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

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

23 C. All law enforcement agencies, adult and juvenile  
24 detention centers and jails used as temporary holding  
25 facilities for alleged delinquent offenders shall allow a

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1 compliance monitor designated by the department to visit and  
2 inspect for the purpose of monitoring compliance with federal  
3 requirements and state requirements, as determined by the  
4 department, regarding the management of juveniles."

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

7 "32A-2-12. PLACEMENT OR DETENTION.--

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

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

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

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

20 (4) a detention facility certified by the  
21 department for children alleged to be delinquent children,  
22 except adult county detention centers and municipal jails,  
23 unless certified by the department or approved by the  
24 compliance monitor designated in Subsection C of Section  
25 32A-2-4.1 NMSA 1978;

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

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

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

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

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

22 C. A child adjudicated as a youthful offender who  
23 is violent toward staff or other residents in a detention  
24 facility may be transferred and detained, pending a court  
25 hearing, in a county jail. [~~In the event that a child is~~

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1 ~~detained in a jail, the director of the jail shall presume that~~  
2 ~~the child is vulnerable to victimization by inmates within the~~  
3 ~~adult population because of the child's age, and shall take~~  
4 ~~measures to provide protection to the child. However,~~  
5 ~~provision of protective measures shall not result in~~  
6 ~~diminishing a child's civil rights to less than those existing~~  
7 ~~for an incarcerated adult.]~~

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

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

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1 order the transfer only if it finds that the eighteen-year-old  
2 person poses a risk of harm to self or others.

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

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

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

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

25 ~~F-]~~ G. When a person who is eighteen years of age

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

24 H. A person who is eighteen years of age but less  
25 than nineteen years of age, who is subject solely to the

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1 jurisdiction of a children's problem-solving or specialty court  
2 and who violates the terms of the court agreement may be held  
3 at:

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

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 or if the  
16 person is to be held for longer than forty-eight hours.

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

22 J. In the event that a child is detained in a jail,  
23 the director of the jail shall presume that the child is  
24 vulnerable to victimization by inmates within the adult  
25 population because of the child's age and shall take measures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 32A-2-23 NMSA 1978. The types of commitments include:

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

11 (b) a long-term commitment for no more  
12 than two years in a facility for the care and rehabilitation of  
13 adjudicated delinquent children. No more than twenty-one  
14 months shall be served at the facility and no less than ninety  
15 days shall be served on supervised release, unless: 1)  
16 supervised release is revoked pursuant to Section 32A-2-25 NMSA  
17 1978; or 2) the commitment is extended pursuant to Section  
18 32A-2-23 NMSA 1978;

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

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

25 (2) place the child on probation under those

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1 conditions and limitations as the court may prescribe;

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

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

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

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

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

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

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

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

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1 provided for in the Abuse and Neglect Act. The report may be  
2 made to a local law enforcement agency, the department or a  
3 tribal law enforcement or social service agency for an Indian  
4 child residing in Indian country.

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

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1 appropriate educational, counseling or rehabilitation program.

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

14           **SECTION 4. EFFECTIVE DATE.**--The effective date of the  
15 provisions of this act is July 1, 2013.