



The Legislature  
of the  
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER \_\_\_\_\_

SENATE BILL 203, as amended

**POCKET VETOED**

Introduced by

SENATOR GERALD ORTIZ y PINO  
SENATOR LINDA M. LOPEZ  
SENATOR RICHARD C. MARTINEZ  
SENATOR BILL B. O'NEILL



1 AN ACT

2 RELATING TO JUVENILES; MODIFYING DETENTION REQUIREMENTS;  
3 EXPANDING DETENTION OPTIONS AND HEARING REQUIREMENTS FOR  
4 CERTAIN PERSONS WHO ARE EIGHTEEN YEARS OF AGE; REQUIRING  
5 NOTIFICATIONS AND TIME LIMITS FOR DETENTION HEARINGS FOR  
6 PERSONS TAKEN INTO CUSTODY ON JUVENILE WARRANTS; REQUIRING  
7 QUARTERLY REPORTS FROM ADULT FACILITIES THAT TEMPORARILY HOLD  
8 ALLEGED DELINQUENT OFFENDERS; ALLOWING INSPECTIONS.

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY  
14 HOLDING FACILITIES--REPORTS--INSPECTIONS.--

15 A. A child arrested and detained by a law  
16 enforcement agency for an alleged delinquent act may be  
17 temporarily held in an adult lockup or other custodial  
18 setting that places the child in contact with adult offenders  
19 for no longer than six hours; provided that the child shall  
20 be placed in a setting that is physically segregated by sight  
21 and sound from adult offenders and shall be kept within sight  
22 supervision on at least fifteen minute intervals. After six  
23 hours, the child shall be removed from secure hold and placed  
24 in a non-secure setting.

25 B. An adult lockup used as a temporary holding

1 facility for alleged delinquent offenders shall file a  
2 quarterly report regarding its compliance with federal  
3 requirements and state requirements, as determined by the  
4 department. The report shall be taken from juvenile holding  
5 logs and shall include the name, date of birth, gender,  
6 arresting charge, booking date and time and release date and  
7 time for each alleged delinquent offender held by the law  
8 enforcement agency or facility. The report shall be  
9 collected by the department and delivered to the juvenile  
10 justice advisory committee.

11 C. All law enforcement agencies, adult and  
12 juvenile detention centers and jails used as temporary  
13 holding facilities for alleged delinquent offenders shall  
14 allow a compliance monitor designated by the department to  
15 visit and inspect for the purpose of monitoring compliance  
16 with federal requirements and state requirements, as  
17 determined by the department, regarding the management of  
18 juveniles."

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

21 "32A-2-12. PLACEMENT OR DETENTION.--

22 A. A child alleged to be a delinquent child may be  
23 placed or detained, pending a court hearing, in any of the  
24 following places:

25 (1) a licensed foster home or a home

1 otherwise authorized under the law to provide foster or group  
2 care;

3 (2) a facility operated by a licensed child  
4 welfare services agency;

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

10 (4) a detention facility certified by the  
11 department for children alleged to be delinquent children,  
12 except adult county detention centers and municipal jails,  
13 unless certified by the department or approved by the  
14 compliance monitor designated in Subsection C of Section  
15 32A-2-4.1 NMSA 1978;

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

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

25 B. A child alleged to be a youthful offender may

1 be detained, pending a court hearing, in any of the following  
2 places:

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

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

13 C. A child adjudicated as a youthful offender who  
14 is violent toward staff or other residents in a detention  
15 facility may be transferred and detained, pending a court  
16 hearing, in a county jail.

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

22 E. A child shall not be transferred to a county  
23 jail, without a hearing, solely on the basis of attaining the  
24 age of eighteen while detained in a juvenile detention  
25 facility. If requested by a children's court attorney and

1 after notice to the child and to the child's attorney has  
2 been given, the court shall hold a hearing to consider the  
3 transfer and may order the transfer only if it finds that the  
4 eighteen-year-old person poses a risk of harm to self or  
5 others.

6 F. A child alleged to be a serious youthful  
7 offender may be detained pending a court hearing in any of  
8 the following places, prior to arraignment in metropolitan,  
9 magistrate or district court:

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

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

19 (3) a county jail, if a facility in  
20 Paragraph (1) or (2) of this subsection is not appropriate.

21 G. When a person who is eighteen years of age or  
22 older is taken into custody and transported to an adult  
23 facility on a juvenile warrant or an adult warrant or other  
24 adult charges and an outstanding juvenile warrant exists,  
25 notice shall be immediately given by both the arresting

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

18 H. In the event that a child is detained in a  
19 jail, the director of the jail shall presume that the child  
20 is vulnerable to victimization by inmates within the adult  
21 population because of the child's age and shall take measures  
22 to provide protection to the child. However, the provision  
23 of protective measures shall not result in diminishing the  
24 child's civil rights to less than those existing for an  
25 incarcerated adult.

1           I. In addition to the judicial review required by  
2 Paragraph (3) of Subsection A of this section, a child  
3 detained in an out-of-home placement pursuant to this section  
4 may request judicial review of the appropriateness of the  
5 placement."

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

8           "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT  
9 OFFENDER.--

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

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

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

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

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

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



1 the child's custody;

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

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

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

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

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

25 (a) a short-term commitment of one year

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

10 (b) a long-term commitment for no more  
11 than two years in a facility for the care and rehabilitation  
12 of adjudicated delinquent children. No more than twenty-one  
13 months shall be served at the facility and no less than  
14 ninety days shall be served on supervised release, unless:  
15 1) supervised release is revoked pursuant to Section 32A-2-25  
16 NMSA 1978; or 2) the commitment is extended pursuant to  
17 Section 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 J of Section 32A-2-3 NMSA 1978, a commitment to  
21 age twenty-one, unless sooner discharged; or

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

25 (2) place the child on probation under those

1 conditions and limitations as the court may prescribe;

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

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

1 beneficial.

2 C. When the child is an Indian child, the Indian  
3 child's cultural needs shall be considered in the  
4 dispositional judgment and reasonable access to cultural  
5 practices and traditional treatment shall be provided.

6 D. A child found to be delinquent shall not be  
7 committed or transferred to a penal institution or other  
8 facility used for the execution of sentences of persons  
9 convicted of crimes.

10 E. Whenever the court vests legal custody in an  
11 agency, institution or department, it shall transmit with the  
12 dispositional judgment copies of the clinical reports,  
13 predisposition study and report and other information it has  
14 pertinent to the care and treatment of the child.

15 F. Prior to any child being placed in the custody  
16 of the department, the department shall be provided with  
17 reasonable oral or written notification and an opportunity to  
18 be heard.

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

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

24           I. In addition to any other disposition pursuant  
25 to this section or any other penalty provided by law, when a

1 child is adjudicated delinquent on the basis of Paragraph (6)  
2 of Subsection A of Section 32A-2-3 NMSA 1978, the child shall  
3 perform the mandatory community service set forth in Section  
4 30-15-1.1 NMSA 1978. When a child fails to completely  
5 perform the mandatory community service, the name and address  
6 of the child's parent or legal guardian shall be published in  
7 a newspaper of general circulation, accompanied by a notice  
8 that the parent or legal guardian is the parent or legal  
9 guardian of a child adjudicated delinquent for committing  
10 graffiti."

11 SECTION 4. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2013. \_\_\_\_\_

SB 203  
Page 13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

s/John A. Sanchez  
John A. Sanchez, President  
Senate

s/Lenore M. Naranjo  
Lenore M. Naranjo, Chief Clerk  
Senate

s/W. Ken Martinez  
W. Ken Martinez, Speaker  
House of Representatives

s/Stephen R. Arias  
Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

s/Governor Susana Martinez  
Governor Susana Martinez  
State of New Mexico