

HOUSE BILL 156

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO DELINQUENCY; PROVIDING THAT CHILDREN UNDER THE AGE OF FIFTEEN IN JUVENILE DETENTION FACILITIES BE SEGREGATED FROM CHILDREN FIFTEEN YEARS OF AGE OR OLDER.

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

SECTION 1. A new section of the Delinquency Act, Section 32A-2-4.2 NMSA 1978, is enacted to read:

"32A-2-4.2. [NEW MATERIAL] JUVENILES UNDER FIFTEEN YEARS OF AGE IN DETENTION FACILITIES.--A child under fifteen years of age who was arrested for an alleged delinquent act and is detained in a juvenile detention facility shall be placed in a setting that is physically segregated by sight and sound from children fifteen years of age and older."

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

.227193.1

underscoring material = new
[bracketed material] = delete

1 "32A-2-12. PLACEMENT OR DETENTION.--

2 A. A child alleged to be a delinquent child may be
3 placed or detained, pending a court hearing, in any of the
4 following places:

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

7 (2) a facility operated by a licensed child
8 welfare services agency;

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

14 (4) a detention facility certified by the
15 department for children alleged to be delinquent children;
16 provided that children under fifteen years of age shall be
17 placed in a setting that is physically segregated by sight and
18 sound from children fifteen years of age and older;

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

.227193.1

underscored material = new
[bracketed material] = delete

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

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

6 (1) a detention facility, licensed by the
7 department, for children alleged to be delinquent children;
8 provided that children under fifteen years of age shall be
9 placed in a setting that is physically segregated by sight and
10 sound from children fifteen years of age and older; or

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

18 C. A child adjudicated as a youthful offender who
19 is violent toward staff or other residents in a detention
20 facility may be transferred and detained, pending a court
21 hearing, in a county jail. In the event that a child is
22 detained in a jail, the director of the jail shall presume that
23 the child is vulnerable to victimization by inmates within the
24 adult population because of the child's age and shall take
25 measures to provide protection to the child. However,

.227193.1

underscored material = new
[bracketed material] = delete

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

4 D. A child who has previously been incarcerated as
5 an adult or a person who is eighteen years of age or older
6 shall not be detained in a juvenile detention facility or a
7 facility for the long-term care and rehabilitation of
8 delinquent children but may be detained in a county jail. A
9 child shall not be transferred to a county jail solely on the
10 basis of attaining the age of eighteen while detained in a
11 juvenile detention facility. In the event that a child is
12 detained in a jail, the director of the jail shall presume that
13 the child is vulnerable to victimization by inmates within the
14 adult population because of the child's age, and shall take
15 measures to provide protection to the child. However,
16 provision of protective measures shall not result in
17 diminishing a child's civil rights to less than those existing
18 for an incarcerated adult.

19 E. A child alleged to be a serious youthful
20 offender may be detained pending a court hearing in any of the
21 following places, prior to arraignment in metropolitan,
22 magistrate or district court:

23 (1) a detention facility, licensed by the
24 department, for children alleged to be delinquent children;
25 provided that children under fifteen years of age shall be

.227193.1

underscoring material = new
~~[bracketed material] = delete~~

1 placed in a setting that is physically segregated by sight and
2 sound from children fifteen years of age and older;

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

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

19 F. When a person who is eighteen years of age or
20 older is taken into custody and transported to an adult
21 facility on a juvenile warrant or an adult warrant or other
22 adult charges and an outstanding juvenile warrant exists,
23 notice shall be given to the children's court attorney and the
24 juvenile probation and parole office in the jurisdiction where
25 the juvenile warrant was issued within one day of the person

.227193.1

underscoring material = new
~~[bracketed material] = delete~~

1 being taken into custody. The juvenile probation and parole
2 office shall give notice that the person has been taken into
3 custody to the children's court judge and the attorney who
4 represented the person in the juvenile proceeding.

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

10 - 6 -
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25