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SECRETARY OF STATE

Susana Martinez
Governor

April 8, 2011

HOUSE EXECUTIVE MESSAGE NO. 37

The Honorable Ben Luján and
Members of the House of Representatives
State Capitol Building
Santa Fe, NM 87501

Honorable Speaker Luján and Members of the House:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning HOUSE BILL 347, as amended, enacted by the Fiftieth Legislature, First Session, 2011.

This bill amends several sections of the Children's Code addressing detention of youth in adult facilities and the detention of 18-21 year olds.

I oppose any legislation that seeks to weaken instead of strengthen our laws addressing children arrested or adjudicated for criminal activity. Specifically, I am troubled by Section 4 that grants a district court the authority to remove a warrant issued for a violation of probation six months after its issuance when the probationer turns 18. For example, the court could excuse violations that include a probationer's failure to report to his or her juvenile probation officer, failure to complete a court-ordered drug or mental health treatment program or testing positive for the use of illegal drugs. I will not sign legislation that rewards bad behavior and undermines incentive for juveniles to successfully complete the terms and conditions of probation.

Respectfully yours,

Susana Martinez
Governor

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The Honorable Ben Luján

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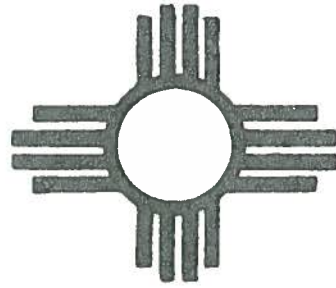
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Time: 8:39 a.m. p.m.
Date: April 8 2011

By Billy Uzo
Secretary of State

Time: _____ a.m. p.m.
Date: _____ 2011

By _____
Chief Clerk of the House



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

HOUSE BILL 347, as amended

Introduced by

REPRESENTATIVE RICK MIERA AND REPRESENTATIVE BILL B. O'NEILL



VETOED

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; PROVIDING NO
5 TIME REDUCTION FOR TIME DETAINED PRIOR TO COMMITMENT;
6 REQUIRING NOTIFICATIONS AND TIME LIMITS FOR DETENTION HEARINGS
7 FOR PERSONS TAKEN INTO CUSTODY ON JUVENILE WARRANTS; ALLOWING
8 WARRANTS DUE TO TECHNICAL PROBATION VIOLATIONS TO BE QUASHED
9 IN CERTAIN CIRCUMSTANCES; REQUIRING QUARTERLY REPORTS FROM
10 ADULT FACILITIES THAT TEMPORARILY HOLD ALLEGED DELINQUENT
11 OFFENDERS; ALLOWING INSPECTIONS.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 SECTION 1. Section 32A-2-4.1 NMSA 1978 (being Laws
15 2009, Chapter 239, Section 12) is amended to read:

16 "32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY
17 HOLDING FACILITIES--REPORTS--INSPECTIONS.--

18 A. A child arrested and detained by a law
19 enforcement agency for an alleged delinquent act may be
20 temporarily held in an adult jail, lockup or other custodial
21 setting that places the child in contact with adult offenders
22 for no longer than six hours and shall be placed in a setting
23 that is physically segregated by sight and sound from adult
24 offenders and if the child is detained in a non-secure
25 setting, the child shall be kept in regular sight supervision. HB 347

1 After six hours, the child shall be released or may be placed
2 or detained pursuant to the provisions of Section 32A-2-12
3 NMSA 1978.

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

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

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

24 "32A-2-12. PLACEMENT OR DETENTION.--

25 A. A child alleged to be a delinquent child may be HB 347
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1 placed or detained, pending a court hearing, in any of the
2 following places:

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

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

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

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

15 (5) 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
18 delinquent may be confined pursuant to Section 32A-2-19 NMSA
19 1978, designated by the court that meets the standards for
20 detention facilities pursuant to the Children's Code and
21 federal law; or

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

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

1 places:

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

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

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

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

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

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

3 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
12 delinquent children may be confined pursuant to Section
13 32A-2-19 NMSA 1978, designated by the court that meets the
14 standards for detention facilities pursuant to the Children's
15 Code and federal law; or

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

18 G. When a person who is eighteen years of age or
19 older is taken into custody and transported to an adult
20 facility on a juvenile warrant or an adult warrant or other
21 adult charges and an outstanding juvenile warrant exists,
22 notice shall be immediately given by both the arresting agency
23 and the adult facility to the children's court attorney and
24 the juvenile probation office in the jurisdiction where the
25 juvenile warrant was served. The juvenile probation office

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

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

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

24 (2) any other suitable place, other than a
25 facility for the long-term care and rehabilitation of

1 delinquent children to which children adjudicated as
2 delinquent children may be confined pursuant to Section
3 32A-2-19 NMSA 1978, designated by the court that meets the
4 standards for detention facilities pursuant to the Children's
5 Code and federal law; or

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

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

14 J. In the event that a child or a person who is
15 eighteen to twenty-one years of age is detained in a jail, the
16 director of the jail shall presume that the child or person is
17 vulnerable to victimization by inmates within the adult
18 population because of the child's or person's age and shall
19 take measures to provide protection to the child or person.
20 However, the provision of protective measures shall not result
21 in diminishing the child's or person's civil rights to less
22 than those existing for an incarcerated adult.

23 K. In addition to the judicial review required by
24 Paragraph (3) of Subsection A of this section, a child
25 detained in an out-of-home placement pursuant to this section

1 may request judicial review of the appropriateness of the
2 placement."

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

5 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
6 OFFENDER.--

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

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

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

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

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

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

24 (6) whether there exists a relative of the
25 child or other individual who, after study by the department,

1 is found to be qualified to receive and care for the child;

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

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

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

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

22 (a) a short-term commitment of one year
23 in a facility for the care and rehabilitation of adjudicated
24 delinquent children. No more than nine months shall be served
25 at the facility and no less than ninety days shall be served

1 on supervised release, unless: 1) a petition to extend the
2 commitment has been filed prior to the commencement of
3 supervised release; 2) the commitment has been extended
4 pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised
5 release is revoked pursuant to Section 32A-2-25 NMSA 1978;

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

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

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

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

23 (3) after making a finding on the record
24 that placing the child in a local detention facility is
25 appropriate and will have a rehabilitative effect, place the

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

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

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

1 adjudication.

2 D. 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 E. 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 F. 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 G. 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 H. 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 I. 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 driving
6 privileges may be denied or the child's driver's license may
7 be revoked for a period of ninety days. For a second or a
8 subsequent adjudication, the child's driving privileges may be
9 denied or the child's driver's license revoked for a period of
10 one year. Within twenty-four hours of the dispositional
11 judgment, the court may send to the motor vehicle division of
12 the taxation and revenue department the order adjudicating
13 delinquency. Upon receipt of an order from the court
14 adjudicating delinquency, the director of the motor vehicle
15 division of the taxation and revenue department may revoke or
16 deny the delinquent's driver's license or driving privileges.
17 Nothing in this section may prohibit the delinquent from
18 applying for a limited driving privilege pursuant to Section
19 66-5-35 NMSA 1978 or an ignition interlock license pursuant to
20 the Ignition Interlock Licensing Act, and nothing in this
21 section precludes the delinquent's participation in an
22 appropriate educational, counseling or rehabilitation program.

23 J. In addition to any other disposition pursuant
24 to this section or any other penalty provided by law, when a
25 child is adjudicated delinquent on the basis of Paragraph (6)

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

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

11 "32A-2-24. PROBATION REVOCATION--DISPOSITION.--

12 A. A child on probation incident to an
13 adjudication as a delinquent child who violates a term of the
14 probation may be proceeded against in a probation revocation
15 proceeding. A proceeding to revoke probation shall be begun
16 by filing in the original proceeding a petition styled as a
17 "petition to revoke probation". Petitions to revoke probation
18 shall be screened, reviewed and prepared in the same manner
19 and shall contain the same information as petitions alleging
20 delinquency. Procedures of the Delinquency Act regarding
21 taking into custody and detention shall apply. The petition
22 shall state the terms of probation alleged to have been
23 violated and the factual basis for these allegations.

24 B. The standard of proof in probation revocation
25 proceedings shall be evidence beyond a reasonable doubt and

1 the hearings shall be before the court without a jury. In all
2 other respects, proceedings to revoke probation shall be
3 governed by the procedures, rights and duties applicable to
4 proceedings on a delinquency petition. If a child is found to
5 have violated a term of the child's probation, the court may
6 extend the period of probation or make any other judgment or
7 disposition that would have been appropriate in the original
8 disposition of the case.

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

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

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S/ BEN LUJAN
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES

S/ STEPHEN R. ARIAS
STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

S/ JOHN A. SANCHEZ
JOHN A. SANCHEZ, PRESIDENT
SENATE

S/ LENORE M. NARANJO
LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this _____ day of _____, 2011

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

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