



## Attorney General of New Mexico

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July 29, 2009

The Honorable Richard D. Flores  
Fourth Judicial District Attorney  
P.O. Box 2025  
Las Vegas, NM 87701

Re: Request for Opinion - Juvenile Transport Responsibilities and Costs

Dear District Attorney Flores:

This office has completed its review of the questions raised in your February 17 and March 3, 2009 opinion requests to Attorney General Gary K. King relating to the transport of juveniles<sup>1</sup> to a juvenile detention facility. More specifically, you have asked: (1) when another law enforcement agency, not the county sheriff's department, arrests or detains a juvenile offender, is it the responsibility of the arresting agency or the county sheriff's department to transport the juvenile to a detention facility, and; (2) if a juvenile is arrested by an agency other than the county sheriff's department, and is later detained by court order, is it still the responsibility of the county sheriff to transport the juvenile and bear the expense of such detention, even though the county sheriff was not the arresting agency?

Based on our examination of the relevant constitutional, statutory and case law authorities, and the information available to us at this time, we conclude that: (1) if the arresting officer determines upon his or her initial contact with the juvenile that the juvenile should be detained and not released to his or her parents or guardians, the arresting officer is responsible for transporting the juvenile to the juvenile detention facility, and; (2) it is the responsibility of the county sheriff to transport a juvenile ordered by a district judge to a juvenile detention facility. Moreover, each of the counties within the Fourth Judicial District bear the responsibility for expenses associated with transporting and detaining a juvenile from their county to another county when detention is ordered by a district judge.<sup>2</sup>

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<sup>1</sup> For the purposes of this analysis, we understand the term "juvenile" to mean a child who is less than eighteen years old and taken into custody and/or detained in accordance with the provisions of the Delinquency Act, NMSA 1978, §§ 32A-2-1 through 32A-2-33 (1993). Here, we use the terms interchangeably.

<sup>2</sup> We understand that none of the counties within the Fourth Judicial District has a juvenile detention facility within its boundaries.

expenses associated with transporting and detaining a juvenile from their county to another county when detention is ordered by a district judge.<sup>2</sup>

As a preliminary matter, the arresting officer's decision to detain a juvenile is based necessarily on the outcome of a detention risk assessment performed by a qualified professional. See NMSA 1978, § 32A-2-11 (2003) (child taken into custody shall not be placed in detention unless detention risk assessment instrument is completed). Guadalupe County Juvenile Probation and Parole Officer David Chávez informs us that the arresting officer initiates the detention risk assessment process by contacting the county's juvenile probation and parole officer ("JPPO") immediately after a juvenile is taken into custody. The JPPO uses information provided by the arresting officer to determine whether the juvenile meets the criteria established by the New Mexico Children Youth and Families Department for detention. See id. Upon completing the detention risk assessment and determining that the juvenile taken into custody meets the criteria for detention, the JPPO communicates this information to the arresting officer.<sup>3</sup> We understand that, at this point, the arresting officer, if not from the county sheriff's department, usually asks the county sheriff to transport the juvenile to the appropriate detention facility. We further understand that the county sheriff's department and other law enforcement agencies disagree on which entity bears the responsibility for transporting a juvenile who meets the criteria for detention to the appropriate juvenile detention facility.

This disagreement may be resolved by reading Section 32A-2-10 of the Delinquency Act. It mandates in pertinent part that "[a] person<sup>4</sup> taking a child into custody *shall ... deliver* the child to a place of detention as provided in Section 32A-2-12 NMSA 1978."<sup>5</sup> See NMSA 1978, § 32A-2-10(A)(3) (2003) (emphasis added). The plain language of this statute is unambiguous. It places the responsibility of transporting a juvenile who is taken into custody and meets the criteria for detention squarely on the shoulders of the arresting officer, the person taking the child/juvenile into custody. The law does not exempt any person taking a juvenile into custody from this responsibility, certainly not on the basis of that person's affiliation or non-affiliation with a particular law enforcement agency. Hence, when a law enforcement agency other than the county sheriff's department arrests or detains a juvenile offender, Section 32A-2-10 makes clear that it is the responsibility of the arresting agency to transport the juvenile to a detention facility.

Once a juvenile is taken into custody and detained in accordance with the above-cited provisions, Section 32A-2-13 requires that: (1) a judge, special master, or magistrate make a determination of probable cause within forty-eight hours (including Saturdays, Sundays and legal holidays) of

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<sup>2</sup> We understand that none of the counties within the Fourth Judicial District has a juvenile detention facility within its boundaries.

<sup>3</sup> Mr. Chávez further informs us that typically the communication between the arresting officer and the JPPO occurs telephonically and the detention risk assessment is completed within an hour from the initial contact.

<sup>4</sup> The Children's Code defines "person" as "an individual or any other form of entity recognized by law." NMSA 1978, § 32A-1-4(Q) (1995).

<sup>5</sup> Section 32A-2-12 sets forth the places a child alleged to be delinquent may be placed or detained, pending a court hearing. Among the places a child may be placed or detained is a detention facility certified by CFYD for children alleged to be delinquent. See NMSA 1978, § 32A-2-12(A)(3) (2005).

the juvenile being taken into custody and detained; (2) a petition for a detention hearing be filed within 24 hours (excluding Saturdays, Sundays and legal holidays) from the time the child is taken into custody, and; (3) a detention hearing be held within 24 hours (excluding Saturdays, Sundays and legal holidays) from the time the petition is filed. See NMSA 1978, § 32A-2-13(A) (2003). If the judge or special master finds that detention is appropriate under the criteria established by the Children's Code, the judge or special master must order detention in an appropriate facility. See NMSA 1978, § 32A-2-13(F) (2003).

Because only a judge or special master may order detention, we understand your second question to refer to the transportation of a juvenile to a detention facility as ordered by a judge. The answer to this question also may be found in state statutes. Section 33-6-7 authorizes counties without juvenile detention facilities to transfer juveniles for safekeeping or detention to those counties with juvenile detention facilities. See NMSA 1978, § 33-6-7 (1976). Section 33-6-8 dictates which entity shall pay for the expenses of maintaining a juvenile in another county for detention. It reads in pertinent part:

When it is deemed advisable by the judge of the district court of a county that does not have a juvenile detention home, that juvenile delinquents in his county be transferred for safekeeping or detention to juvenile detention homes located in other counties, then for the purpose of maintaining them in the juvenile detention homes there shall be budgeted by the board of county commissioners of the county in each year, sufficient funds to provide for the keeping of such juvenile delinquents in juvenile detention homes. The amount budgeted shall be determined and fixed by the district court. On or before May 1 of each year the district judge shall make an estimate of the revenue required for the ensuing year for the maintenance of juvenile delinquents in the juvenile detention homes and shall certify the estimate to the board of county commissioners in the county without a juvenile detention home. The budget allowance shall be known as the "juvenile maintenance fund." The county treasurer collecting money for the fund shall make disbursements from the fund to the county treasurer in the county in which the juveniles have been detained, upon certificate of the clerk of the district court in which the juveniles are detained, stating that the amount is due for their maintenance.

The language of this statute makes clear that the county from which the juvenile is being ordered to detention shall be responsible for the costs associated with the juvenile's detention, without regard to which law enforcement agency, local or state, initially may have taken the juvenile into custody. In practical terms, the board of county commissioners of any county not having a juvenile detention facility is obligated to allocate funds in the county's budget for the purpose of maintaining juveniles in juvenile detention facilities. While the statute does not address transportation costs specifically, it stands to reason that in addition to being responsible for the maintenance costs of juveniles housed in juvenile detention facilities, the county also is responsible for the costs of transporting juveniles ordered to detention to and from the facilities. See *Kennecott Copper Corp. v. Employment Security Comm'n*, 78 N.M. 398, 402, 432 P.2d 109, (1967) ("It is a fundamental rule of construction that when a power is conferred by statute

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everything necessary to carry out that power and make it effective and complete will be implied"). The county sheriff, as the county's top law enforcement representative, is therefore likely responsible for transporting the juveniles. See NMSA 1978, § 4-41-2(1953).

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,



SALLY MALAVÉ

Assistant Attorney General

cc: Colin C. Alcott, Guadalupe County Attorney  
John T. Grubesić, Mora County Attorney  
Jesús L. López, San Miguel County Attorney