

LFC Requester:

Rachel Mercer-Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: January 23, 2025

Check all that apply:

Bill Number: HB 134

Original Correction
Amendment Substitute

Sponsor: Rep. Andrea Reeb

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Delinquency Act Changes

Analysis: Charles J. Gutierrez, ASG

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This bill makes several changes to the Delinquency Act (Act). See NMSA 1978, §§ 32A-2-1 to -33 (1993, as amended through 2024).

Section 1 amends the section delineating the purposes of the Act by making clear that the purposes of deterring acts of juvenile delinquency and providing community-based alternatives to detention are purposes of the Act only where “appropriate.”

Section 2 adds to the definitions of “serious youthful offender” and “youthful offender” contained in Section 32A-2-3. It expands the definition of “serious youthful offender” to include anyone between the ages of 14 and 18 who is charged with first- or second-degree murder, voluntary manslaughter, robbery while armed with a deadly weapon, and shooting at a dwelling or occupied building resulting in great bodily harm, or shooting at or from a motor vehicle resulting in great bodily harm. Under the current scheme, only persons between the ages of 15 and 18 charged with first-degree murder are “serious youthful offenders.”

It also expands the definition of “youthful offender” to include any person between the ages of 14 and 18 charged with unlawful possession of a handgun, homicide by vehicle, involuntary manslaughter, and failing to stop a vehicle involved in an accident that results in injury or death.

Section 3 amends Section 32A-2-4.1, which governs the use of adult jails as temporary holding facilities for juveniles. It adds a section that requires a “serious youthful offender” to be transported to district court where their appearance is required but mandates that the “serious youthful offender” be segregated from adult offenders by sight and sound to the “fullest extent possible.”

Section 4 amends Section 32A-2-8, which governs the initiation of delinquency proceedings. The current scheme requires the children’s court attorney to consult with probation services prior to filing a petition; and the bill deletes that consultation requirement.

Section 5 amends Section 32A-2-11, which governs pretrial detention for juveniles. It removes the requirement that a juvenile cannot be held in detention unless a detention risk assessment is completed by CYFD.

Section 6 amends Section 32A-2-12, which governs the placement of a detained juvenile. It requires that a detained juvenile be transferred to an adult county jail upon reaching the age of 18.

Section 7 amends Section 32A-2-13, which governs pretrial detention hearings. Currently, under this section, a court may hold a detention hearing by electronic communication when certain requirements are met, including that the proceedings be recorded and preserved as part of the record, the juvenile have legal counsel personally present with them, and that no plea is taken during the electronic hearing. The court must also find that the undue hardship of holding an in-person hearing substantially outweighs any prejudice likely to result to the juvenile. This bill deletes these requirements and broadly allows a detention hearing to be conducted by electronic communication at the court's discretion. This bill also requires that a judge, not a special master or magistrate, conduct the pretrial detention hearing.

Section 8 amends Section 32A-2-14, which governs a juvenile's basic rights. The bill amends this section to allow a "youthful offender" to waive an amenability hearing and instead be sentenced as an adult. This legislatively overrules *State v. Jones*, 2010-NMSC-012, 148 N.M. 1, where the New Mexico Supreme Court held that the Delinquency Act does not evince legislative intent to allow for a youthful offender to waive an amenability hearing (such as part of a plea).

Section 9 amends Section 32A-2-17, which mandates that CYFD and adult probation and parole prepare predisposition reports prior to a court sentencing a "serious youthful offender." This bill makes these predisposition reports discretionary, only to be prepared if directed by the court.

Section 10 amends Section 32A-2-18, which generally provides that a juvenile disposition is not deemed a criminal conviction or used as such in other proceedings other than sentencing proceedings. This bill expands the exception to include pretrial detention hearings held pursuant to Article 2, Section 13 of the New Mexico Constitution and accompanying Supreme Court rules.

Section 11 amends Section 32A-2-19, which governs the disposition of an adjudicated delinquent offender. It expands the commitment options available to the district court for a delinquent offender, allowing it to consider the delinquent's unique needs and history and expanding the jurisdiction of the court to impose commitment or probation on the delinquent offender until the delinquent offender reaches the age of 25. It also allows a delinquent offender committed past the age of 18 to be transferred to an adult facility at the age of 18.

Section 12 amends 32A-2-20, which currently governs the disposition for a "youthful offender." It provides that in order to impose an adult sentence, the court must find that the juvenile is not amenable to treatment as a child in available facilities or eligible for commitment to an institution for children with developmental disabilities or mental disorders. In making that determination, the court is required to consider 8 factors, such as the seriousness of the alleged offense, whether a firearm was used, the maturity of the child, the child's record and previous history, etc. This bill adds the language that the court "may not weigh one factor more heavily than another" in applying the factors when making its determination of whether to impose an adult sentence. This bill eliminates the provision that a court must consider crimes committed against persons as weighing more heavily in favor of an adult sentence than crimes committed against property; under this bill, both crimes against persons and crimes against property would weigh more heavily than other offenses.

Section 13 amends Section 32A-2-22, which governs consent decrees, which are continuances under supervision without judgment. This bill restricts a consent decree from being available for a juvenile charged as a “youthful offender” or “serious youthful offender.”

Section 14 amends Section 32A-2-23, which governs limitations on dispositional judgments. This bill allows a court to extend a disposition for an additional period until the juvenile reaches the age of 25 based on the unique circumstances and history of the juvenile.

Section 15 amends Section 32A-2-23.1, which governs release eligibility. This bill deletes CYFD’s exclusive jurisdiction to release a juvenile adjudicated delinquent. It deletes the provision that allows CYFD to consider a reasonable request for release at any time 60 days after the juvenile has been committed.

Section 16 amends Section 32A-2-24, which governs probation revocation proceedings. This bill changes the standard of proof in probation revocation proceedings from proof beyond a reasonable doubt to a preponderance of the evidence.

Section 17 amends Section 32A-2-26, which governs the sealing of records. The bill provides that a party may “reference” sealed delinquency records in written pleadings; and it may disclose contents of sealed records, with prior notice to the court, at hearings on pretrial detention motions held pursuant to Article 2, Section 13 of the New Mexico Constitution.

Section 18 deletes Section 32A-2-32.1, which prohibits a state agency or subdivision from disclosing juvenile arrests, delinquency proceeds, adjudications, or adult sentences imposed on juveniles on public access websites.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

N/A

SIGNIFICANT ISSUES

The amendment to Section 32A-2-20(C) contained in Section 12 of the bill, adding the language that a court “may not weigh one factor more heavily than another,” could be misconstrued from its apparent purpose. It appears that this proposed language is intended to ensure that a court making an amenability determination consider each of the 8 factors enumerated in Section 32A-2-20(C)(1)-(8), in totality, and without deeming any one or more factors more important than the others as a matter of law. This would be consistent with the Court of Appeals’ holding in *State v. Nehemiah G.*, 2018-NMCA-034, ¶¶ 50-55. *See id.* (holding that the trial court abused its discretion by construing supreme court case law as mandating that it give less weight to the offense-specific factors in Section 32A-2-20(C)(1)-(4) and more weight to the offender-specific factors in Section 32A-2-20(C)(5)-(8) as a matter of law); *see also id.* ¶ 54 (“The Delinquency Act creates no rigid delineation between offense-specific and offender-specific factors.”). However, the proposed language could be construed as necessitating that all factors be given equal weight irrespective of what the individual circumstances of a particular case warrant.

Under this construction, a court may, for example, determine that it must give a juvenile sentence because the majority of factors on balance slightly favor that disposition, even if the factors supporting an adult sentence weigh in favor of that disposition more heavily under the facts of the case. It may be more accurate to replace “but may not weigh one factor more heavily than another” with a phrase such as “in totality.”

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship with HB 39 – Juvenile Record in Firearm Background Checks

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

Section 8 of the bill adds a provision, Section 32A-2-14(N), allowing a “youthful offender” to waive an amenability hearing and agree to be sentenced as an adult. New Mexico appellate courts are unlikely to uphold such a waiver if challenged unless the record clearly reflects that the waiver is knowing, intelligent, and voluntary. “Knowingly, intelligently and voluntarily” could be added before “waive” in proposed Section 32A-2-14(N) to ensure a court clearly establishes a record that would withstand scrutiny as to the waiver. Similar language is contained in other subsections addressing waiver of other rights in Section 32A-2-14.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

See “significant issues” above.