

LFC Requester:**Rachel Mercer-Garcia****AGENCY BILL ANALYSIS - 2025 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov*****(Analysis must be uploaded as a PDF)*****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 2/11/2025 *Check all that apply:*
Bill Number: SB 326 Original Correction
 Amendment Substitute

Sponsor: Pete Campos **Agency Name and Code** AOC 218
Short Title: DELINQUENCY ACT CHANGES **Number:** _____
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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	N/A	

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	N/A	

(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	Unknown	Unknown	Unknown	Unknown	N/A	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 163 (conflict); HB 134 (duplicate)
Duplicates/Relates to Appropriation in the General Appropriation Act: None

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 326 amends statutory sections within the Delinquency Act of the Children's Code, Chapter 32, Article 2 NMSA 1978, as follows:

- **Section 32A-2-2 NMSA 1978:**
 - Subsection B: adds the phrase “if deterrents are appropriate”
 - Subsection H: adds the phrase “if alternatives are appropriate”
- **Section 32A-2-3 NMSA 1978:**
 - Subsection A(1)(b): removes the word “death”
 - Subsection A(1)(e): removes “homicide by vehicle” and re-numbers the list
 - Subsection A(2): provides additional language clarifying that it must be the special investigations unit “of the New Mexico state police division...”
 - Subsection H: amends the definition of “serious youthful offender” to add the phrase “is not a delinquent child,” lowers the age to 14, and expands the charges for which a child can be charged as a serious youthful offender. These charges include:
 - First *and* second degree murder
 - Voluntary manslaughter [a third degree felony]
 - Robbery with a deadly weapon [a second degree felony]
 - Shooting at a dwelling or occupied building or at/from a motor vehicle, both which cause great bodily harm to another. [a second degree felony]
 - Subsection J: amends the definition of “youthful offender” by removing the term that begins with “at the time of the offense...” and the charge of second murder, amending the charge of shooting at a dwelling or occupied building or at/from a motor vehicle to include offenses that do not result in great bodily harm to another, and adding to the list of charges for which a child can be charged as a youthful offender to include:
 - Unlawful possession of a handgun [a misdemeanor]
 - Homicide by vehicle [felony]
 - Involuntary manslaughter [a fourth degree felony]
 - Failing to stop a vehicle when a vehicle is involved in an accident that results in injury or death [felony]
- **Section 32A-2-1.4 NMSA 1978:**
 - New Subsection C: requires a serious youthful offender to be transported to the “district court” when the appearance is ordered by the “district court.” The child is to be physically segregated by adult offenders including by sight and sound.
 - Subsection H: adds the phrase “if alternatives are appropriate”
- **Section 32A-2-8 NMSA 1978:** removes the requirement that the children’s court attorney (aka district attorney) consult with probation, before filing a petition to initiate delinquency proceedings.
- **Section 32A-2-11 NMSA 1978:** removes the requirement of the completion of a detention risk assessment instrument by CYFD before placing a child in detention.
- **Section 32A-2-12 NMSA 1978:** Subsection D is amended to require a child who turns 18 while in juvenile detention to be transferred to the county jail.
- **Section 32A-2-13 NMSA 1978**

- Subsection A: removes language allowing a special master or magistrate to determine probable cause for a child who is detained. Adds that the court may hold electronic hearings but removes the court's requirement to weigh the hardship against the prejudice and harm to the child.
- Subsection B: removes the entire paragraph which includes language allowing a special master or magistrate to hear detention hearings. Subsequent paragraphs are re-lettered.
- Removes mention of the special master throughout the rest of the statute.
- **Section 32A-2-14 NMSA 1978:**
 - Subsection M: removes the right to bail and adds "a hearing to consider or address conditions of release."
 - New Subsection N: allows for a child 14 or older who is adjudicated as a youthful offender to waive their rights to an amenability hearing and be sentenced as an adult.
- **Section 32A-2-17 NMSA 1978:** amends the automatic requirement of a predisposition report so that it is only written "if directed by the court."
- **Section 32A-2-18 NMSA 1978:**
 - Subsection A: amends when a juvenile disposition of a child and evidence in a juvenile hearing may be admissible against a child when the child reaches the age of majority by removing the requirement that it must be a conviction and only used in a presentence study and report.
- **Section 32A-2-19 NMSA 1978:**
 - Subsection B: adds that the court may consider a child's "unique circumstances and history" when imposing probation or a commitment. Expands the period for which a child may serve probation or a commitment to the age of 25. Expands the 15 day placement in a detention facility to 30 days.
- **Section 32A-2-20 NMSA 1978:** adds "and serious youthful offender" to the title.
 - Subsection C: when considering amenability, requires the judge to weigh all the factors of Subsection C equally. Also, the language allowing for greater weight to be taken if an offence occurred against a person is removed.
 - Subsection G: removes the term "first degree murder" and changes it to describe serious youthful offender.
 - Subsection H: amended so that when a serious youthful offender is only found to have committed a delinquent act, the cases is transferred to children's court.
- **Section 32A-2-22 NMSA 1978:**
 - Subsection C: adds the caveat that a consent decree cannot be available to a child charged as a youthful offender or serious youthful offender.
- **Section 32A-2-23 NMSA 1978:**
 - Subsection D and Subsection E are completely removed (allowing for extension of short and long-term commitments). The next section (formerly F now D) allows the court to extend a judgment of probation or commitment up to the age of 25.
- **Section 32A-2-23.1 NMSA 1978:**
 - Removes Sections A and C in their entirety, removing the ability of CYFD to have exclusive jurisdiction and authority to release a child serving a commitment and transferring legal custody of a child to CYFD for a commitment.
- **Section 32A-2-24 NMSA 1978:**
 - Section B: changes the standard of proof in probation revocation hearings from "beyond a reasonable doubt" to "preponderance of the evidence."
- **Section 32A-2-26 NMSA 1978:**

- New Section I: allows for juvenile records and hearings to be used to address conditions of release or sentencing in an adult case. The contents of the juvenile record cannot be disclosed in written pleadings but the existence may be.
- **Section 32A-2- 32.1 NMSA 1978:** the entirety of this section is repealed; therefore, juvenile cases and records can be disclosed on a public access website.

There is no appropriation listed in this bill.

There is no effective date of this bill. It is assumed that the effective date is June 20, 2025, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

In Section 32A-2-13 NMSA 1978, SB 326 seeks to eliminate the role of the special master or magistrate in judicial determinations of probable cause and detention hearings. In some judicial districts such as the Second Judicial District, special masters are on call to assess probable cause *within* the required forty-eight hours of arrest, and they primarily preside over detention hearings. Eliminating the role of the special master at the court would increase the workload on district court judges, decreasing docket time for delinquency hearings and trials, as well as child welfare (a.k.a. child abuse or neglect) proceedings, and likely require new judgeships at a greater cost to the state.

New Mexico is currently part of the vast majority of states where juvenile court jurisdiction ends at age 21 (*see* the report entitled, *Extended Age of Court Jurisdiction* found at https://ojjdp.ojp.gov/statistical-briefing-book/structure_process/faqs/qa04106 .) SB 326 proposes to extend the children’s court jurisdiction by four years, expanding the age for which a child may be placed on probation or committed from up to twenty-one years of age to twenty-five years of age (See amendments to Sections 32A-2-19(B)(1) and 32A-2-23(D)). This expanded jurisdiction may increase the children’s court caseloads based on the longer tail for possible probation violations and need for extensions of commitment.

SIGNIFICANT ISSUES

As the U.S. Supreme Court explained in *Kent*, in the juvenile justice system, “non-criminal treatment is to be the rule—and the adult criminal treatment, the exception which must be governed by the particular factors of individual cases.” *Kent*, 383 U.S. at 560-61. The United States’ Office of Juvenile Justice and Delinquency Prevention (OJJDP), under the Department of Justice, has three key priorities that include, “treating children as children; serving children at home, with their families, in their communities; and opening up opportunities for system-involved youth.” *See* OJJDP 2023 Annual Report at <https://ojjdp.ojp.gov/publications/ojjdp-fy-2023-annual-report.pdf>.

A. Section 32A-2-3 – Definitions

1. This bill expands the definition of a “youthful offender” (Subsection J of Section 32A-2-3 NMSA 1978), to include four additional enumerated charges. One of these newly-proposed charges, unlawful possession of a handgun by a person under the age of nineteen, found at

Section 30-7-2.2 NMSA 1978, is a misdemeanor violation for an adult (age eighteen) and is punishable by a fine of not more than one thousand dollars and/or imprisonment in the county jail for a term of less than one year. NMSA 1978, § 31-19-1(A) (1984).

2. For the definition of “serious youthful offenders”(Subsection H), SB 326 lowers the minimum age from fifteen to fourteen years for when a child may be charged. The bill also removes the requirement that child must be indicted or bound over for trial on the alleged offenses before gaining the designation of a serious youthful offender. In practice, this means that a child as young as 14 who is solely charged with any of the offenses listed in Section 32A-2-3(H) would not be afforded the heightened protections for children under the Children’s Code and the Children’s Court Rules of Procedure. *See generally* NMSA 1978, §§ 32A-2-14 (Basic rights), -26 (Sealing of records), -32 (Confidentiality; records), -32.1 (Information not to be disclosed on a public access web site); Rules 10-101 to -262 NMRA.

B. Section 32A-2-4.1 – Adult Jails and Lockups Used as Temporary Holding Facilities—Reports.

1. SB 326’s new Subsection C of 32A-2-4.1 NMSA 1978 requires a serious youthful offender to be transported to the “district court” when the appearance is ordered by the “district court.” Children’s court is a division of district court (see Section 32A-1-15 NMSA 1978). Furthermore, all parties before a court in any type of case—must appear before the district court when the district court so orders. *See* N.M. Const. art. VI, § 13.

In New Mexico, most children’s court divisions are located in the same district courthouse with the exception of the Second Judicial District in Albuquerque where it is located at the Bernalillo County Juvenile Justice Center. Should the amendment to Subsection C be read to require transportation of serious youthful offenders to the Second Judicial District courthouse in downtown Albuquerque, this requirement would create a significant interference with federal law governing the secure detention of juveniles.

- a. Under Section 223(a)(11)(B) of the federal Juvenile Justice and Delinquency Prevention Act (JJDP), a juvenile charged as an adult (in New Mexico terms, a serious youthful offender) cannot be detained in an adult jail or lockup or have sight or sound contact with adult inmates in a secure adult facility. Most district courthouses in New Mexico are classified as “adult lockups.” Despite the bill’s proposal that “the serious youthful offender shall be physically segregated from adult offenders and segregated by sight and sound from adult offenders to the fullest extent possible,” requiring the serious youthful offender to be transported to a courthouse that is an adult lockup risks a likely violation of federal law. To legally achieve such transport, the courthouse could, (1) remove adult inmates from the secured areas of the courthouse at the time of any hearing involving an in-custody serious youthful offender, or (2) not hold the serious youthful offender in a secure area of the courthouse (i.e. the serious youthful offender was escorted through public areas of the courthouse and into the courtroom). Both of these options present significant difficulties to court administration around docket management and public safety.
- b. All secure lockups in the state are required to participate in compliance monitoring under the JJDP, 34 U.S.C. § 11133(a)(1)(33). This includes courthouses. Each month, court administration at each courthouse in the state must complete a secure detention log for any and all juveniles that were held in secure areas of the courthouse. That log gathers demographic information and minute-by-minute detail of where the juvenile was held

within the courthouse. Every three years, the U.S. Department of Justice conducts an audit of a given state's compliance monitoring, which is tied to the Title II Formula Grant Program. More information can be found here: <https://ojjdp.ojp.gov/about/core-requirements#2-0>

C. Section 32A-2-12 – Placement or Detention.

1. This amendment would require all newly-turned eighteen-year-old inmates to be transferred from a juvenile detention center to the county jail regardless of the individual's charges, behavior at the facility, or the stage of the individual's case. In Bernalillo County, the mandatory transfer of eighteen-year-olds will require the Metropolitan Detention Center (MDC) to more frequently transport inmates to the Juvenile Justice Center. This will complicate the secure holding procedures at the Juvenile Justice Center because MDC inmates must be kept sight and sound separated from juvenile inmates at the courthouse.

Additionally, mandatory transfer of eighteen-year-old inmates, will implicate the county jails' ability to comply with federal requirements pertaining to sight and sound separation of adult and juvenile inmates. Turning eighteen while in detention does not make an individual an "adult inmate" under federal law. 34 U.S.C. §11103(26). Under federal definitions, an "adult inmate" is "an individual who . . . has reached the age of full criminal responsibility under applicable State law; and . . . has been arrested and is in custody for or awaiting trial on a *criminal* charge, or is convicted of a *criminal* offense[.]" *Id.* (emphasis added). If an inmate is under the jurisdiction of the Children's Court for a pending *delinquency or youthful offender* case, that inmate is considered a juvenile for purposes of federal sight and sound separation requirements. *See id.* (explaining that an adult inmate "does not include an individual who . . . at the time of the offense, was younger than the maximum age at which a youth can be held in a juvenile facility under applicable State law; and . . . was committed to the care and custody or supervision . . . of a juvenile correctional agency by a court of competent jurisdiction or by operation of applicable State law").

2. Mandatory transfer of eighteen-year-old inmates could affect the operations of county jails. In Bernalillo County, MDC has been operating at or near maximum capacity of inmates based on the facility's under-staffing levels for many months. *See* Cathy Cook, [Four things to know about the Metropolitan Detention Center](https://www.abqjournal.com/news/article_e7b1a99c-720d-11ef-b24c-975b00a775fd.html), *Albuquerque Journal* (Sept. 19, 2024) at https://www.abqjournal.com/news/article_e7b1a99c-720d-11ef-b24c-975b00a775fd.html When detention centers reach peak capacity, the resultant strain on facility staff could lead to slowed court processes due to late or missed transports of inmates.

D. Section 32A-2-19. Disposition of an Adjudicated Delinquent Offender.

Under amendments to Subsection D, an adjudicated delinquent offender who reaches the age of 18 could be committed or transferred to a penal institution used for the execution of sentences of persons convicted of crimes. The same considerations regarding federal holding requirements explained above would apply to this category of juvenile offenders who would not meet the federal definition of an "adult inmate." *See* 34 U.S.C. §11103(26).

E. Section 32A-2-24 – Probation Revocation – Disposition.

1. Amendments to Subsection B lower the burden of proof in probation revocation proceedings from evidence beyond a reasonable doubt to preponderance of the evidence. This may present

a constitutional issue under the Due Process Clause of the Fourth Amendment and Article II, Section 4 of the New Mexico Constitution. Under both constitutional provisions, juveniles have the constitutional right to require the State to prove every element of a criminal offense beyond a reasonable doubt. *State v. Gonzales*, 2001-NMCA-025, ¶ 25, 130 N.M. 341, 24 P.3d 776 (citing *In re Winship*, 397 U.S. 358, 364 (1970)).

2. The consequences for probation violators in juvenile proceedings are different than the consequences for probation violators in criminal court. In criminal court, if a probation violation is established, the court has the following options: (1) continue the original probation; (2) revoke the probation and order a new probation with conditions; (3) revoke the probation and require the probationer to serve the *balance* of the sentence imposed *or any lesser sentence*; or (4) following the imposition of a deferred sentence, “impose any sentence that might originally have been imposed, *but credit shall be given for time served on probation.*” NMSA 1978, § 31-21-15(B) (2016)(emphasis added). Because criminal defendants get credit for time served on probation—the court is not sentencing the defendant anew—the lowered burden of proof of “reasonable certainty” in a probation revocation hearing is constitutionally permissible. *See State v. Guthrie*, 2011-NMSC-014, ¶ 14, 150 N.M. 84, 257 P.3d 904.
3. Under the current language of Subsection B, if a probation violation is proved, the court may extend the probation term or “make any other judgment or disposition that would have been appropriate *in the original disposition of case.*” (emphasis added). The Children’s Court’s ability to impose the original disposition (which could include another full term of probation or a full term of commitment) does not carry with it the requirement that the juvenile receive credit for the time served on probation. Because the original disposition can be imposed without credit for time served, the juvenile probationer has the right to have the alleged violation proven beyond a reasonable doubt. The juvenile’s liberty could be further curtailed by the allegations in the probation revocation petition, so proof of those allegations should meet the highest constitutional burden.

PERFORMANCE IMPLICATIONS.

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 134 (duplicate).

HB 163 seeks to amend 32A-2-3(A) as well. The renumbering of Subsection A of SB 326 in direct conflict with the reorganization HB 163 provides.

TECHNICAL ISSUES

The charge of “failure to stop in the event of an accident causing injury...” is listed twice in Section 32A-2-3 as both a delinquent act (see Subsection A) and a youthful offense (see Subsection J).

Although in Subsection A, SB 326 seeks to remove the word “death” leaving “failure to stop in the event of an accident causing personal injury or damage to property,” the word “injury” is still found in both subsections.

New Subsection N of Section 32A-2-14 NMSA 1978 would permit an adjudicated youthful offender to waive the child’s right to an amenability hearing and instead be sentenced as an adult. This conflicts with NMSA 1978, § 32A-2-20(B). Under that statute, in order to sentence a child as an adult, the court must make the finding that “the child is not amenable to treatment or rehabilitation as a child in available facilities.” The amenability determination is not a right of the child’s that can be waived; it is “a necessary predicate to the court’s exercise of adult sentencing authority.” *State v. Jones*, 2010-NMSC-012, ¶ 34, 148 N.M. 1, 220 P.3d 474 (citing *Kent v. United States*, 383 U.S. 541, 560-61 (1966)).

Generally, SB 326 expands the jurisdiction for serving a juvenile disposition from up to twenty-one years of age to up to twenty-five years of age. The exception is Section 32A-2-20(F) which still states, “until the age of twenty-one” and references Section 32A-2-23, much of which is amended by this bill.

OTHER SUBSTANTIVE ISSUES

New Subsection L of Section 32A-2-26 NMSA 1978 allows the parties in subsequent cases to reference a juvenile record in written pleadings and use a party’s juvenile record in a conditions of release or pretrial detention hearing or sentencing hearing. Under Subsection C of this section, once the case is sealed, “the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted.” Furthermore, the court, law enforcement officers and departments and agencies, which would include the district attorney’s office, are to reply that “no record exists” when asked about a person’s juvenile record.

SB 326 seeks to repeal one of the newer sections of the Delinquency Act, Section 32A-2-32.1, *Information not to be disclosed on a public access web site*, effective July 1, 2007. Therefore, it would be permitted for a state agency, including a school or municipality, to disclose online any information about a child who has been arrested or detained, charged, adjudicated as a delinquent child, or sentenced for a youthful offense or serious youthful offense. It would also permit the online dissemination of social records pertaining to children in the juvenile justice system. Repealing this section may be contrary to two named purposes of the Delinquency Act: (1) to provide children with care and rehabilitation and (2) to successfully reintegrate children into homes and communities. Sections 32A-2-2(A), (C).

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS