

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 326 makes a variety of changes to provisions of the Delinquency Act, as follows:

Section 1: The first section of SB 326 amends Section 32A-2-2 NMSA 1978, the purpose section of the Act in two places, inserting “if deterrents are appropriate” into the purpose concerning providing effective deterrents to acts of delinquency; and inserting “if alternatives are appropriate” into the purpose concerning developing community-based alternatives.

Section 2: changes certain definitions in Section 32A-2-3, the definitions section of the Act, as follows:

1) Homicide by vehicle is removed from the definition of a “delinquent act” and placed into the definition of “youthful offender”.

2) The age for being considered a “serious youthful offender” is lowered from 15 to 14.

3) A child can be considered a “serious youthful offender” for crimes beyond first degree murder. The additional crimes are: murder in the second degree, voluntary manslaughter, robbery while armed with a deadly weapon, and shooting at a dwelling or occupied building that results in great bodily harm to another person or shooting at or from a motor vehicle that results in great bodily harm to another person.

4) A child no longer has to be indicted or bound over for the given crime, but merely charged, to be considered a “serious youthful offender”.

5) Similarly, a “youthful offender” no longer has to be adjudicated, but merely charged with one of the listed crimes.

6) The crimes under the “youthful offender” definition have been changed. Shooting at a dwelling has been modified, to reflect the gbh crime that was moved to the “serious violent offender” definition, so it now reads “shooting at a dwelling or occupied building that does not result in great bodily harm to another person or shooting at or from a motor vehicle that does not result in great bodily harm to another person”. In addition, unlawful possession of a handgun by a person, homicide by vehicle, involuntary manslaughter, and failing to stop a vehicle when the vehicle is involved in an accident that results in injury or death have been added.

Section 3: Section 32A-2-4.1, regarding adult jails and lockups used as temporary holding facilities, is amended so that a “serious youthful offender” is treated differently under this section. A serious youthful offender is to be transported to a district court when the child’s appearance is ordered by the district court; but still shall be physically segregated from adult offenders and segregated by sight and sound from adult offenders.

Section 4: Section 32A-2-8, regarding authorization to file a petition of delinquency, is amended so that the Children’s Court attorney no longer has to consult with probation services.

Section 5: Section 32A-2-11, regarding the criteria for detention of children, has been amended to remove the requirement for a detention risk assessment to be completed before placing a child in detention. The requirement for CYFD to develop a detention risk assessment has been

removed.

Section 6: Section 32A-2-12, regarding placement or detention of a child, has been amended so that a child who reaches 18 in a juvenile detention facility shall be transferred to the county jail.

Section 7: Section 32A-2-13, regarding required detention hearings, has been amended to remove special masters from the process. Additionally, the court can use its own discretion, rather than, as in present statute, solely wait for a request from a party, to conduct a detention hearing electronically. All restrictions on electronic hearings have been removed, including the requirement that a recording be made and preserved as part of the record.

Section 8: Section 32A-2-14, regarding the basic rights of a child, has been amended so that a detained “serious youthful offender” no longer has a right to bail, but to a hearing to consider or address conditions of release. Additionally, a new subsection is added under which a child fourteen years of age or older who is adjudicated as a youthful offender may waive the child’s right to an amenability hearing and instead be sentenced as an adult.

Section 9: Section 32A-2-17, regarding predisposition studies, requiring the court to direct the provision of the listed predisposition reports to the parties.

Section 10: Section 32A-2-18, regarding the court’s judgement, has been amended. Under current law, the juvenile disposition can only be used in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report. The change broadens the use of the juvenile disposition by removing the language around a felony conviction and resentence study and report and saying that the disposition can be used in any sentencing proceedings, a bail hearing, or to consider conditions of release.

Section 11: Section 32A-2-19, concerning the disposition of an adjudicated delinquent offender, has been changed so that the court has discretion to consider the child’s unique circumstances and history when imposing probation or commitment and may impose probation or commitment for any period up to the date the child reaches 25. The restrictions in the present statute on short- and long-term commitments and the age cap of 21 have been removed. The time for which a child can be held in a local detention facility has been increased from 15 to 30 days. The prohibition on transferring a child found to be delinquent to a penal institution now would have the exception of when the child reaches 18.

Section 12: Section 32A-2-49, regarding the disposition of a youthful offender, has been changed so that the judge no longer has to weigh offenses against persons greater than offenses against property.

Section 13: In Section 32A-2-22, regarding continuance of supervision without judgement and consent decrees, language has been added to the subsection regarding extension of a consent decree that notes, “provided that a consent decree shall not be available to a child charged as a youthful offender or serious youthful offender”.

Section 14: In Section 32A-2-23, regarding limitations on dispositional judgements and termination or extension of court orders, the language concerning long- and short-term commitments has been removed. Additionally, the court may now extend a judgement of commitment, as well as probation as in current law. The time of this extension of judgement has been changed – current law has it that the extension can be for a period of up to one year until

the age of 21, but the changes to this section allows the extension until age 25.

Section 15: Section 32A-2-23.1, regarding release eligibility, has been amended to remove the balancing factors CYFD has to consider under current law before releasing a child.

Section 16: Section 32A-2-24, regarding probation revocation, has been amended so that the standard of proof in probation revocation proceedings has been lowered from beyond reasonable doubt to a preponderance of the evidence.

Section 17: Section 32A-2-16, regarding the sealing of records, has a new subsection added to it allowing a party to reference a juvenile record for bail hearing, a hearing held pursuant to Supreme Court rule to consider or address conditions of release, or a sentencing hearing. Under this new subsection, a party may reference the existence of a juvenile record in written pleadings but may not disclose the contents of the juvenile record unless otherwise allowed by law.

Section 18: This section repeals Section 32A-2-32.1, which bars state agencies or political subdivisions of the state from disclosing on a website information concerning an arrest or detention of a child; delinquency proceedings for a child; an adjudication of a child; or an adult sentence imposed on a child, except information required to be disclosed pursuant to the Sex Offender Registration and Notification Act; or social records pertaining to a child.

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.

SIGNIFICANT ISSUES

SB 326 makes it easier for children to be held, extends the time for which a child can be held, and broadens the list of crimes that come under the “serious violent offender” and “youthful offender” definitions. The Sentencing Commission examined the impact of these changes to the “serious violent offender” and “youthful offender” definitions.

For serious violent offenders under the current parameters of the law (between 15 and 18, first degree murder, bound over for trial), on or after July 1, 2023, there were 34 unique cases, representing 33 people – one person had two cases (separate incidents) meeting the criteria. Under the proposed changes (between 14 and 18, the wider universe of possible crimes, and only being charged), on or after July 1, 2023, there were 84 unique cases, representing 80 people (two people had 2 distinct cases, one person had three). This would mean that in the last year and a half the number of serious violent offenders would have potentially doubled.

For youthful offenders, under the current parameters of the law, on or after July 1, 2023 there were 157 unique cases, representing 153 people (some people had multiple distinct cases). Under the proposed changes, there were 346 cases, representing 326 people (some people had multiple distinct cases), again, a doubling of the potential number of youthful offenders in that time period. (Note that the counts for youthful offenders exclude the provisions of J(2) of the definition – is adjudicated for any felony offense and who has had three prior, separate felony

adjudications within a three-year time period immediately preceding the instant offense – due to the difficulty of determining how many individuals that would include.)

In Section 13 of the bill, amending Section 32A-2-22, regarding continuance of supervision without judgement and consent decrees, the language added to the subsection regarding extension of a consent decree notes, “provided that a consent decree shall not be available to a child charged as a youthful offender or serious youthful offender.” It is unclear whether the extension of the consent decree is not to be available to a youthful offender or serious youthful offender, which is the implication of that language being in this subsection, or whether consent decrees at all are not available to youthful offenders or serious youthful offenders.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 326 is a duplicate of HB 134.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS