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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Reeb/Chavez, N./De La Cruz/Borrego      **ORIGINAL DATE** 2/6/2025

**BILL**

**SHORT TITLE** Delinquency Act Changes      **NUMBER** House Bill 134

**ANALYST** Garcia

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Juvenile Justice Services (JJS)</b>	Indeterminate but minimal	\$27,900	\$27,900	\$55,800	Recurring	General Fund
<b>AOC</b>	Indeterminate but minimal	At least \$936	At least \$936	\$1,872	Recurring	General Fund
<b>County Jails and Detention Facilities</b>	Indeterminate but minimal	Indeterminate	Indeterminate	Indeterminate	Recurring	County Revenue
<b>Public Defenders</b>	Indeterminate but minimal	At least \$582	At least \$582	\$1,164	Recurring	General Fund
<b>District Attorneys</b>	Indeterminate but minimal	Up to \$582	Up to \$582	\$1,164	Recurring	General Fund
<b>NMCD</b>	Indeterminate but minimal	At least \$28.2	At least \$56.4	\$84.6	Recurring	General Fund
<b>Total</b>	Indeterminate but minimal	At least \$30,028	At least \$30,056	\$60,084	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 39

### Sources of Information

LFC Files

U.S. Office of Juvenile Justice and Delinquency Prevention

#### Agency Analysis Received From

Office of Family Representation and Advocacy (OFRA)

New Mexico Sentencing Commission

Department of Public Safety (DPS)

Children, Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

Association of District Attorneys (AODA)

Law Office of the Public Defender (LOPD)

#### Agency Analysis was Solicited but Not Received From

Association of Counties

New Mexico Municipal League

New Mexico Corrections Department (NMCD)

## SUMMARY

### Synopsis of House Bill 134

House Bill 134 (HB134) makes a variety of changes to the Delinquency Act as follows:

Section 1 amends Section 32A-2-2 NMSA 1978 to add language noting deterrent and community-based alternatives should only be used “when appropriate.”

Section 2 makes a variety of changes to the definitions of “serious youthful offender,” “youthful offender,” and “delinquent act,” including:

- Lowering the age requirement for “serious youthful offender” from age 15 to age 14;
- Expanding the definition of “serious youthful offender” to include juveniles charged with second-degree murder, voluntary manslaughter, robbery while armed with a deadly weapon, and shooting at or from a motor vehicle or at a dwelling;
- Adding to the definition of “youthful offender” the crimes of unlawful possession of a handgun, homicide by vehicle, involuntary manslaughter, and failing to stop a vehicle when involved in an accident resulting in injury or death;
- Removing the age requirement that classified 14-year-olds adjudicated for first-degree murder as youthful offenders, which will allow them to be treated as serious youthful offenders.

Section 3 would require serious youth offenders to be physically segregated from adult offenders when transported to court.

Section 4 would remove existing requirements that a children’s count attorney consult with juvenile probation officers before filing a delinquency petition.

Section 5 would amend the criteria for detention of children to eliminate the use of a risk-assessment instrument before placing a child in detention.

Section 6 would amend the section of statute that prohibits transferring a juvenile from a juvenile facility to a county jail solely on the basis of turning 18 to allow age-based transfers.

Section 7 would amend existing statute to remove special masters or magistrate judges from conducting probable cause determinations or detention hearings, allowing electronic hearings for probable cause at the court’s discretion.

Section 8 would remove the existing statutory right to bail for youthful offenders and instead provide for the right to a hearing to consider conditions of release. This section would also allow a child 14 years or older who is adjudicated as a youthful offender to waive the children’s right to an amenability hearing (a hearing to determine if a child is amenable to treatment) and instead choose to be sentenced as an adult.

Section 9 changes existing law that requires predisposition reports, instead requiring the report only be written and provided to the parties if directed by the court.

Section 10 would allow juvenile dispositions to be admissible in adult pretrial detention hearings

or in hearings considering conditions of release.

Section 11 would limit the court’s commitment options to probation or confinement on a delinquent child up to age 25, while allowing the transfer of a delinquent child from a juvenile facility to an adult prison when they turn 18. The bill would also increase the number of days that a child can be placed in a local detention facility from 15 to 30.

Section 12 would amend Section 32A-2-20 related to the amenability factors, no longer requiring a judge to weigh offenses against people more heavily than offenses against property.

Section 13 makes explicit that the state and the child’s defense attorney must agree to suspending proceedings and continuing a child under supervision in their home and that such agreements must be approved by the court. This section would also be amended to prohibit consent decrees for children charged as youthful offenders or serious youthful offenders.

Section 14 would allow the court to extend judgments until a child reaches the age of 25.

Section 15 removes exclusive jurisdiction to release an adjudicated delinquent youth from the Children, Youth and Families Department (CYFD).

Section 16 lowers the standard of proof for juvenile probation revocations from beyond a reasonable doubt to preponderance of evidence.

Section 17 would allow a party, with prior notice to the court, to reference a juvenile record in any subsequent adult conditions of release or sentencing hearings. This section would also allow reference of the existence of juvenile records in written pleadings, but the contents of juvenile records cannot be disclosed in written pleadings unless otherwise allowed by law.

Section 18 repeals Section 32A-2-32.1, which bars state agencies or political subdivisions from disclosing on a website information concerning an arrest or detention of a child, delinquency and adjudication proceedings of a child, or an adult sentence imposed on a child.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in juvenile detention facilities, jail, or prison and the length of time served in prison, juvenile detention, or jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase in severity, removing alternatives to incarceration, or increase of sentencing penalties will likely increase the population of New Mexico’s juvenile detention facilities, prisons and jails, consequently increasing long-term costs to state and county general funds.

Overall, House Bill 134 makes it more likely that juveniles committing certain crimes will be detained, provides greater discretion to the court related to probation and commitment, and broadens the list of crimes that come under the ‘serious violent offender’ and ‘youthful offender’ definitions in statute.

The bill will, thus, increase costs associated with the detention of juveniles and increase costs associated with the prosecution of youthful offender and serious youth offender cases, which the Administrative Office of the District Attorneys reports are more involved than delinquency cases. As a result, costs associated with the judiciary, district attorneys, public defenders, and juvenile probation officers will likely increase. The bill also removes requirements for the development and use of a risk assessment as a decision-making tool for juvenile detention.

### **County Juvenile Detention Centers**

Currently, four juvenile detention centers are operated in New Mexico by Bernalillo, Doña Ana, Lea, and San Juan counties. These facilities are county-operated but some have received state funding in the past, most recently from state funding for recruitment of detention officers. HB134 would likely increase the number of youth detained in these facilities, creating a risk of potentially exceeding the capacity. AOC also notes the mandatory transfer of 18-year-old inmates would likely affect the operations of county jails and notes existing county jails already experience capacity challenges.

County jails and youth detention facilities would likely experience a fiscal impact from this bill. AOC notes this section may require county jails to comply with federal requirements pertaining to the separation of adult and juvenile inmates, which may result in the need for capital improvements in county jails across the state. While the cost to counties could be significant, it is listed as “indeterminate” in the tables above.

### **Judiciary**

AOC notes special masters are on call in the 2nd Judicial District to assess probable cause within 48 hours of arrest, and they primarily preside over detention hearings. Eliminating the role of the special master at the court may increase the workload of district court judges and potentially result in the need to create additional judgeships. The total cost to add one additional judge, including administrative costs, is \$468.1 thousand. This analysis assumes the state would need to add at least two judgeships, for a potential cost of \$936 thousand.

AOC also reports a minimal administrative cost for statewide update, distribution, and documentation of statutory changes and reports any new laws have the potential to increase caseloads in the courts, thus requiring additional resources.

Both the Administrative Office of the District Attorneys (AODA) and the Law Offices of the Public Defender (LOPD) indicate the bill would likely require additional resources for district attorneys and public defenders. LOPD assumes the cost of a mid-point level attorney, including benefits, support staff, and operating costs, to be roughly \$291 thousand annually. Assuming the LOPD must hire at least two additional attorneys to implement HB134, the state may assume an annual recurring cost of at least \$582 thousand annually. While the AODA did not provide specific fiscal analysis, LFC estimates the state would need to need to hire at least two additional prosecutors at a similar cost, including salary, benefits, and other support costs.

### **Juvenile Justice Services and Juvenile Justice Facilities (State Operated)**

The bill would likely result in increased costs to Juvenile Justice Services operations within

CYFD, associated with supervising those on probation longer, increasing severity of juvenile offenses, and potentially housing any juveniles committed to the age of 25.

In 2020, the Justice Policy Institute estimated the national average cost for secure confinement of juvenile was \$588 per day, or \$214 thousand annually. A 2023 LFC program evaluation progress report on juvenile justice noted the per-client cost in a secure juvenile justice facility was \$383 thousand, though the evaluation noted the cost per client had increased 44 percent since FY19, as the number of clients in secure facilities decrease. Assuming the 2020 national average cost, if New Mexico were to increase the number of youths in secure juvenile justice facilities by 100 clients, the state could experience estimated annual cost increases of \$21.5 million.

The LFC progress report also estimated the per-referral, per-year cost of field supervision to be \$2,900 annually. If the number of juveniles under field supervision were to increase by 200 individuals, the state could expect a cost of almost \$600 thousand annually.

CYFD estimates total potential increased costs, including probation and transitional services, costs for space and increased secure facility commitments, contractual services, and other operating expenses of \$27.9 million annually to the general fund.

### **Corrections Department**

The bill would allow for the transfer of a delinquent child from a juvenile facility to an adult corrections institution when the child turns 18. Current law prohibits ever transferring a delinquent child to an adult correctional facility. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$56.2 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities. HB134 is anticipated to increase the number of individuals in New Mexico's prison system or amount of time individuals spend incarcerated, and this analysis assumes at least juvenile is transferred to an adult correctional facility.

### **SIGNIFICANT ISSUES**

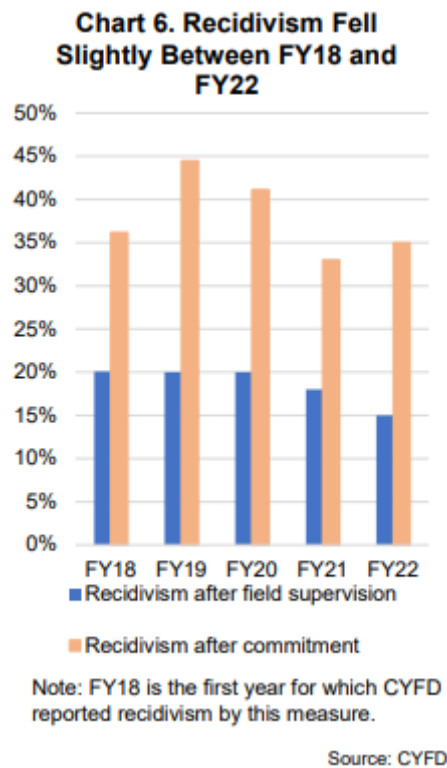
In 2006, New Mexico reached a settlement agreement aimed at improving juvenile justice in New Mexico. Subsequently, New Mexico implemented a series of evidence-based juvenile justice system reforms, including development and validation of risk and needs assessment tools to guide detention admission decisions and treatment decisions (at CYFD), improvement of behavioral health services, hiring of additional staff to diagnose and understand system trends, and using community-based alternatives to confinement for lower risk cases. The system reforms also referred to as the Cambiar model emphasized rehabilitation over punishment and followed some best practices of similar reforms in the Missouri juvenile justice system.

Between FY08 and FY23, referrals to Juvenile Justice Services at CYFD, almost all from law enforcement because of a violation of the Delinquency Act, declined from nearly 24 thousand in FY08 to a low of less than 5,000 during the pandemic in FY21. The 2023 LFC progress report attributed this decline to a variety of factors, including a drop in the state's youth population and the state's reforms in juvenile justice. In FY22, referrals to Juvenile Justice Services began to increase.

In FY23, a total of 5,528 juveniles were referred to Juvenile Justice Services, an increase of 828 juveniles, but well below the 8,230 juveniles referred to JJS in FY19. Once referred to JJS, the case may either be handled informally (roughly 70 percent of cases in FY23) or formally through the filing of a petition in court (roughly 26 percent of cases in FY23). In FY23, the five most common offenses for delinquent referrals were battery, battery against a household member, possession of cannabis products, public fighting, and resisting or evading an officer.

As a result of the reforms and declines in juvenile justice system referrals, the population in secure facilities in New Mexico declined, and New Mexico closed two secure facilities and two reintegration centers. In addition, following over 15 years of a downward trend, the population in CYFD’s secure juvenile justice facilities increased in FY24 and the beginning of FY25. In FY24, CYFD reports average daily census in the state’s secure facilities averaged 96 young people, following a low of 80 in FY23, and average daily census exceeded 100 in the first quarter of FY25. While census in secure facilities has increased, the secure population remains below the overall capacity of the state’s two operational secure facilities.

The 2023 LFC progress report on Juvenile Justice Services noted recidivism rates fell slightly among both youth discharged from field supervision and secure commitment declined between FY19 and FY22.



Since the pandemic, New Mexico has experienced persistently high rates of certain types of crime, particularly in Bernalillo County, as documented in the 2024 LFC report *Update on Crime in New Mexico and Bernalillo County*. While violent crime decreased statewide by 5 percent between 2021 and 2022, New Mexico had the second-highest violent crime rate in the nation. The report also noted an increase in certain types of juvenile crime, particularly in Bernalillo County. In 2023, the 2nd Judicial District Court reported 781 juvenile criminal cases, an increase of 38 percent relative to the prior year. Of those cases, 34 percent involved juveniles with

firearms. The 2nd Judicial District Court has also reported an increased in homicides committed by juveniles since the pandemic.

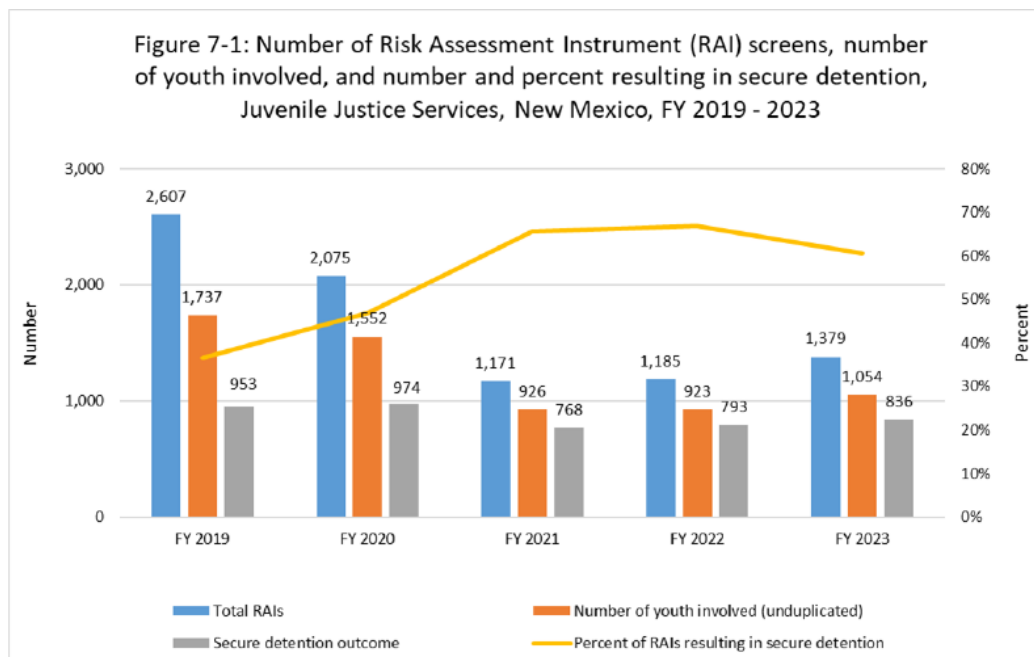
The 2024 LFC report noted, although New Mexico has invested heavily in criminal justice reform and public safety, outcomes remain mixed. For example, the report noted clearance and conviction rates remain low across the state.

Despite the uptick in referrals and specific offenses, CYFD’s FY24 report card data indicates recidivism among youth released from field supervision improved compared to FY22 levels (86 percent did not recidivate within two years), though recidivism among youth released from secure facilities worsened (34 percent did not recidivate in two years).

### Risk Assessments and Detention

In 2003, the Legislature amended statute to require CYFD to use a risk assessment instrument to help make objective decisions about referrals into juvenile detention. The risk assessment instrument includes an assessment of public safety risk, which includes the risk of committing another public offense prior to adjudication, and risk of failure to appear in court after release. The tool is used to inform decisions about detention, and the tool was revalidated in 2022.

CYFD has historically published data regarding the risk assessment instrument in the annual *Juvenile Justice Services Report*. In FY23 1,054 were screened using the tool and 836 resulted in a secure detention outcome. These data indicate that since FY19, the rate of screenings resulting in secure detentions has increased.



Source: CYFD Juvenile Justice Annual Report FY23

According to CYFD RAI validation data in 2022, 8 percent of clients released after a delinquent risk assessment instrument reoffended within 30 days, and 3 percent failed to appear. Since 2022, CYFD has made changes to procedures to override the tool and detain in certain cases, including juvenile cases involving a firearm and cases involving the assault of a CYFD staff

member.

House Bill 134 would strike the section of statute that requires the use of a risk assessment tool in decisions to detain a juvenile, removing the use of a tool to help predict potential risk and potentially increasing the detention of juveniles.

CYFD notes the elimination of the previously required detention risk assessment before placing a child in detention may potentially “increase the risk of arbitrary detention decisions and disproportionately impact of youth of color and lower-income juveniles, as risk assessments were designed to reduce ... disparities.”

CYFD also notes the bill will require the transfer of detained juveniles to county jails when they turn 18, which may “disrupt access to rehabilitative services provided in juvenile facilities [and] increase the risk of physical and psychological harm due to exposure to adult inmates.”

The proposed statutory change would provide greater discretion to detain youths who may have committed a violent offense, limiting their ability to reoffend.

### **Filing a Delinquency Petition**

Currently under Section 32A-2-7(E), Juvenile Justice Services probation staff within CYFD must be consulted before a petition is filed. HB134 would remove this requirement, providing prosecutors with greater discretion and flexibility to file petitions, potentially increasing the number of petitions filed.

CYFD notes the bill would remove the role Juvenile Justice Services plays to “assess or assist in the best course of action before a juvenile case proceeds” and notes this statutory change may, “prevent early intervention opportunities, reduce the court’s ability to make informed treatment and rehabilitation recommendations, and prevent diversion from formal prosecution.”

### **Changing Definitions of Serious Violent Offenders and Serious Youth Offenders**

Currently, the Delinquency Act creates three tiers for juvenile offenses:

- “Delinquent acts,” which are prosecuted and punished exclusively as a juvenile;
- “Youthful offender,” which are prosecuted as a juvenile and may incur adult sanctions only after adjudication and after assessing the juvenile’s “amenability to treatment”; and
- “Serious youthful offender,” which triggers automatic adult prosecution and sentencing.

Currently, the only “serious youthful offender” charge is first degree murder. The bill would expand this definition to include juveniles charged with second-degree murder, voluntary manslaughter, robbery while armed with a deadly weapon, and shooting at or from a motor vehicle or at a dwelling resulting in great bodily harm.

In addition, the bill would amend the definition of “youthful offender” and add the following crimes that are currently treated as “delinquent acts”: unlawful possession of a handgun, homicide by vehicle, involuntary manslaughter, and failing to stop a vehicle when involved in an accident resulting in injury or death.



The bill also removes the age requirement that classifies 14-year-olds adjudicated for first-degree murder, treating them as serious youthful offenders, instead of youthful offenders, and the bill lowers the age requirement for “serious youthful offender” from 15 years old to 14 years old.

Under the current definition of “serious violent offenders” since July 1, 2023, the Sentencing Commission reported 34 unique cases representing 33 people (one person had two separate cases). Under the proposed definition, there would have been 84 unique cases, representing 80 people. The Sentencing Commission reported the proposed statutory change would effectively double the number of serious violent offenders.

Under the current parameters of the law, the Sentencing Commission reported 157 cases of serious youth offenders representing 153 people during the same time period. Under the proposed definition, there would have been 346 cases, representing 326 people. The Sentencing Commission, thus, reported the proposed statutory could effectively double the number of serious youth offenders.

The Administrative Office of the District Attorneys reports the expanded definition of youth offenders will allow prosecutors to respond to violent youth crimes and seek harsher punishments for offenders.

This section of the bill aims to deter juvenile crime, particularly violent crime, by increasing punishment.

### **Amenability Hearings**

Under the existing Children’s Code, an amenability hearing requires a judge to consider different factors, including a child’s maturity, environmental situation, social and emotional health, brain development and history when sentencing a juvenile.

CYFD notes amenability hearings allow the court to determine whether a juvenile offender can be rehabilitated within Juvenile Justice Services and includes evidence from psychological experts. CYFD reports, “If a juvenile is allowed to waive their right, it increases the risk that juveniles, who may not fully understand the long-term consequences of their decisions, face harsher penalties.”

NMAG notes appellate courts would be unlikely to uphold amenability hearing waivers if challenged, unless the record clearly reflects the waiver is “knowing, intelligent, and voluntary.” This language could be added to the proposed Section 32A-2-14(N) to ensure a court clearly establishes a record that would withstand scrutiny. NMAG notes similar language is contained in other subsections related to the waiver of other rights.

### **Extending Juvenile Court Jurisdiction**

New Mexico currently ends jurisdiction for juveniles at age 21, and HB134 would extend the Children’s Court jurisdiction to age 25.

According to AOC and the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), most states (41 states) end jurisdiction by age 22. The federal Office of Juvenile Justice and Delinquency Prevention notes several states have moved toward increasing the upper age

boundary to keep older youths in the juvenile justice system, rather than having them processed in the adult criminal justice system.

According to the federal OJJDP, research findings have underscored the role adolescent development plays in processing and treating youths in the justice system. This research indicates that ages from as young as 10 to as old as 24 correspond to an age range of adolescence. States that have sought to expand the scope of juvenile jurisdiction generally report an intention to prevent youth from entering adult court and thereby avoid the negative effects of incarceration in adult prison, the OJJDP reports. However, according to a literature conducted by OJJDP, states that have raised the age of majority have found no impact on juvenile recidivism rates.

In addition, a 2016 meta-analysis that aggregated results from nine studies examining the specific deterrence of juvenile transfer to adult court found no statistically significant effect on recidivism; however, the studies found a small insignificant effect on increased odds for recidivism, suggesting transfers may increase likelihood of recidivating. Similarly, OJJDP research concludes that transfer laws to adult court are not a deterrent to delinquency and may increase the likelihood of future offending.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB134 relates to House Bill 39, which also makes changes to the Delinquency Act and the sealing of juvenile records.

## **TECHNICAL ISSUES**

The Administrative Office of the District Attorneys (AODA) notes the proposed change to “youth offender status” conflicts in Section 32A-2-19(B)(1). AODA reports the purpose of “youth offender” status is to give greater jurisdiction over the juvenile offense and to possibly impose an adult sentence. The proposed change in 32A-2-19(B)(1) would allow the court discretion on all delinquent acts up to the age of 25. Most “youthful offender” offenses are third-degree felony offenses, punishable by 18 months to three years in prison. As such, a prosecutor would have more jurisdiction in charging the child as a delinquent child instead of a “youth offender.” In addition, AODA notes Section 32A-2-19(B)(1) would clash with youth offender sentencing; if a court does not impose an adult sentence, then the court can only sentence the juvenile up to age 21.

AOC notes one of the newly proposed changes under the bill’s definition of “youthful offenders,” the unlawful possession of a handgun by a person under the age of 19, is a misdemeanor violation for an adult and is punishable by a fine of not more than \$1,000 and or imprisonment in the county jail for a term of less than one year (Section 31-19-1(A) NMSA 1978).

The Sentencing Commission notes in Section 13 of the bill, amending Section 32A-2-22 NMSA 1978 regarding continuance of supervision without judgment and consent decrees, the bill language provides “that a consent decree shall not be available to a child charged as a youthful offender or a serious offender.” The commission notes:

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 section, or whether consent decrees at all are not available to youth offenders or serious youthful offenders.

The bill also contains potentially conflicting definitions related to the failure to stop: Section 2(A)(1)(b) includes “failure to stop in the event of an accident causing personal injury or damage to property” while Section 2 (J)(1)(p) notes “failure to stop a vehicle when the vehicle is involved in an accident that results in injury or death”

NMAG also points out Section 12 notes the court “cannot weight one factor more heavily than another” which could be interpreted to mean that all factors must be weighed equally.

The Department of Public Safety (DPS) notes Section 8 of HB134 would allow the juvenile to waive the right to an amenability hearing and instead be sentenced as an adult. While children treated as serious youthful offenders are appointed counsel, DPS suggests adding language to the bill to require a child consult with counsel and counsel providing a statement or testimony of it being done, before a child waives the right to an amenability hearing.

## OTHER SUBSTANTIVE ISSUES

AOC reports the U.S. Supreme Court explained in *Kent v. United States* :

In the juvenile justice system, “non-criminal treatment is to be the rule—and the adult criminal treatment, the exception [that] must be governed by particular factors of individual cases.

The U.S. Office of Juvenile Justice and Delinquency Prevention has three key priorities related to juvenile court, which include “treating children as children; serving children at home, with their families and in their communities, and opening up opportunities for system-involved youth.”

According to the U.S. Department of Justice, youth charged as adults are 34 percent more likely to be rearrested than those who spent time in the juvenile justice system.

CYFD notes Section 1 of the bill, which adds the language about “deterrents” and “alternatives” when appropriate, does not specify who determines whether “deterrents” and “alternatives” are appropriate, “creating ambiguity in implementation.” CYFD states current law already “allows for facts and circumstances to determine when community-based alternatives are warranted without these additional changes.”

DPS notes the bill may raise constitutional challenges because it lowers the standard of proof in revocation hearing from evidence beyond a reasonable doubt to the preponderance of evidence (Section 16-B).

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